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Original Article

## Constitutionality of Treating Addis Ababa as a Regional State and Its Effect on Jurisdictions of Oromia Regional State Courts

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### Abstract

Since 1995, constitutionally Ethiopia has been experiencing a federal form of government. The FDRE Constitution has recognized nine regional states within federations and leaves room for the formation of new regional states (internal secession). The FDRE constitution also identified the criteria and rules to be followed to form new regional states. However, there are circumstances in which the House of People's Representatives treats Addis Ababa as an independent regional state contravening the rules and criteria incorporated within the FDRE constitution. This writing tries to assess the constitutionality of treating Addis Ababa as a regional state and its effect on the jurisdiction of Oromia regional state courts. Treating Addis Ababa as a regional state has adverse effects since it reduces the jurisdiction of regional courts in general and that of the Oromia regional state in particular. To accomplish this task, the writer utilized qualitative methodology in which both the laws of the House of People's Representatives and the decisions of federal Supreme Court cassations have been analyzed to forward possible remedies. Since treating Addis Ababa as a regional state is unconstitutional, the writer recommended quashing the laws of the House of People's Representatives and decisions of federal Supreme Court cassation that treat Addis Ababa as a regional state before the House of Federation.

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## **1. Introduction**

Federalism is a system of government in which, there is a division of powers between tiers of government: the federal at the center and other sub-national states that are, also independent each of other in their respective jurisdiction and autonomous from one another. Such distributions of powers are prescribed within a constitution, as one of them would not take the other's jurisdiction discretionary. These distributions of powers are not only attributable to the federal and sub-national governments but also to the executive, legislative, and judiciary. Different countries throughout the world are now becoming federal states for different purposes: to protect against the central state authority by securing immunity and non-domination for minority groups; to accommodate minority nations who aspire to self-determination and preservations of their culture, language, or religion; to increase opportunity for citizens participation in public decision making and resource allocations, etc. Ethiopia is not an exception to this fact and starting from 1995 Ethiopia has been exercising a full-fledged form of federalism. The federation of Ethiopia was formed from the federal government as the center and nine regional states horizontally based on settlement patterns, languages, identity, and consent. That means; the Federal Democratic Republic of Ethiopia comprises the Federal government and the state members.<sup>1</sup> State members are members included under article 47/1 of the Federal Democratic Republic of Ethiopia (hereinafter abbreviated as FDRE) constitution. However, it does not close the

door for the creation of a new state in the future for the Nations, Nationalities, and peoples of Ethiopia. The FDRE constitution also sets criteria and procedures for the formation of new regional states within Ethiopian federations. Since the nature of the Constitution is general, it requires subsidiary laws that are specific to enforce matters included within the Constitution in a general manner. Those subsidiary laws are expected to be in light of the principles and values FDRE constitution to enforce the latter. If they contravene the FDRE constitution, they are null and void.<sup>2</sup>

This writing; therefore, dwells on assessing the constitutionality of treating Addis Ababa as a regional state by the House of People's Representatives<sup>3</sup> and the decisions of federal supreme court cassation and its effect on the jurisdiction of Oromia regional state courts. To this end, this writing has different sections that talk about the general framework of how states are formed under the FDRE constitution, a specific description of the Oromia regional state, the status of Addis Ababa under the FDRE constitution, and the structure of the Ethiopian court system, the laws of the house of people's representatives that treat Addis Ababa as regional state, practical decisions of federal Supreme Court cassation and concluding remarks.

### **1. Methodology**

The methodological approach of this article was Qualitative research methodology supported by secondary sources. That means the qualitative approach enables the researcher to be flexible enough for data collection and

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<sup>1</sup>The Constitution of Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazeta, Year, 1 No. 1 August, 1995.

<sup>2</sup>Ibid, Article 9(1).

<sup>3</sup>For instance proclamation no 251/2000, 943/2016 and 1234/2021

analysis. This methodology aimed to achieve an in-depth understanding of the *constitutionality of treating Addis Ababa as a regional state and its effect on jurisdictions of Oromia regional state courts.*

## 2. State Formations Under the FDRE Constitution

When we examine the formation of the Ethiopian Federation, it is from the federal government at the center and nine regional states at regional levels. There are arguments about how the Ethiopian federations are formed; some say by way of holding together<sup>4</sup> and others say by way of coming together.<sup>5</sup> In this piece of writing, the writer is not interested in ways of forming a federation instead to indicate a sub-national state on one hand and the federal government at the center is building bricks to the Ethiopian federation. After having the above concepts for the formation of the Ethiopian Federation, it is better to discuss how regional states are formed within the FDRE constitution. The Federal Democratic Republic of Ethiopia shall comprise states and those states are delimited based on settlement patterns, language, identity, and consent of the people concerned.<sup>6</sup> Those factors that demarcate regional states are both objective and subjective. It is authoritative to discuss how the drafter of the FDRE Constitution formed a regional state. There were two arguments; the first argument was forming regional states based on geography and the second argument was forming regional states

based on language and identity.<sup>7</sup> The first argument supports mostly people who were supporters of a unitary system of government and promoters of one language, one culture, etc. The second argument supporters were mostly the representatives of EPRDF (Ethiopian People's Revolutionary Democratic Front), based on geography to form a regional state was only for administration by dividing land not for the protection of nations, nationalities, and peoples which is directly the same with previous historical injustice.<sup>8</sup> They strongly affirmed that the geographical basis for state formation is undistinguishable from the non-answering of self-governance/self-determination for which nations, nationalities, and peoples have been fighting for more than a century. The criteria for state formation incorporated within Article 47 of the Constitution to form a state were primarily meant for the exercise of rights enshrined within Article 39 of the FDRE Constitution. It is debatable if the regional states formed within the FDRE Constitution were purely based on language and identities. Owing to those facts, the FDRE constitution has established nine regional states under article 47/1, and currently, three regions including the Sidama *regional state* internally have seceded from Southern Nations, Nationalities, and Peoples regional states.

However, the FDRE constitution did not close a room for the creation of a new regional state within Ethiopian federations. This implies that

<sup>4</sup>TsegayeRegassa, *Ethnic federalism and the right to self-determination as a constitutional legal solution to problems of multi ethnic societies-the case of Ethiopia*, (LLM thesis) University of Amsterdam, (2001) unpublished.

<sup>5</sup>Assefa Fisseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study*, Revised edition, Forum of Federations, an international Network

on Federalism, (2007) Wolf Legal Publishers, And Nijmegen: the Netherlands

<sup>6</sup> Supra note 1, Article 46 1/and 2

<sup>7</sup> አስራት አብርሃም፣ የሕገ መንግሥቱ ፈረሰኞች፣ 2009 ዓ.ም፣ አዲስ አበባ ገጽ78-79

<sup>8</sup> Ibid.

nations; nationalities and peoples within nine regional states have a right to form their regional state at any time.<sup>9</sup> Those empowered groups to form new states are a group of people who have or share a large measure of common culture or similar customs, mutual intelligibility of language, belief in a common or related identity, a common psychological makeup, and who inhabit an identifiable, predominantly contiguous territory.<sup>10</sup> For instance, recently the Sidama nationalities of Southern nations, nationalities, and peoples regions have formed their regional state. What is expected from those nations, nationalities, and peoples to form a new state is to follow procedures and conditions listed under Article 47/3 of the FDRE Constitution. Matters included under Article 39 are also either directly or indirectly applicable to the formation of a state since it is one of the components of the right of self-determination. Based on those facts, it is not possible for people or residents of Addis Ababa to form new regional states or to claim independent regional states. Because; residents of Addis Ababa do not fulfill the criteria included under articles 47/2/ and 39/5 of the FDRE Constitution. For the formation of new regional states in Ethiopian federations in the future, the criteria included under articles 47/2 and 39/5 of the FDRE Constitutions are cumulative requirements. That means; those two provisions of the FDRE Constitution support

each other to be pragmatic on the ground within the essence of the FDRE Constitution.

### **3. Oromia Regional State**

Oromia is the homeland of the Oromo people. Its name is derived from its people or for the people belonging to the lowland eastern Cushitic linguistic family.<sup>11</sup> Trace back to history, the Oromo nation has its own social, political, and economic system. The Gada system is an institution that is a highly developed self-sufficient system used to influence every aspect of Oromo life. It is further said to be the law of the society; a system by which Oromo administer, and defend their country and through which all their objectives are fulfilled.<sup>12</sup> The transitional charter of the Ethiopian government guaranteed the right to establish local administrative purposes based on nationalities. According to Article 13 of the Ethiopian transitional charter, there shall be a law establishing local and regional councils for local administrative purposes defined based on nationality.<sup>13</sup> Later on, by Proclamation No\_ 7/1992, fourteen regional self-governments were established.<sup>14</sup> This proclamation established Oromia as one of the members of fourteen established regional self-governments. Self-government as defined by this proclamation; is related to a nation or regional entity vested with legislative, executive, and judicial power<sup>15</sup> and regional transitional self-government means transitional self-government which is jointly established by

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<sup>9</sup> Supra note 1, Article 47/2

<sup>10</sup>Ibid. Article 39/5 which gives definition for Nations, Nationalities and Peoples

<sup>11</sup>Betru Dibaba, *Special interest of Oromia on Addis Ababa*, LLB thesis Mekelle University, (2011) unpublished. P.9

<sup>12</sup>Geda Melba, *Oromiya: an introduction*, Khartoum, (1998) p.10-11

<sup>13</sup>The Transitional Government of Ethiopia, Article 13

<sup>14</sup>The transitional Ethiopian government, proclamation for the establishment of national/ regional self-governments, Proclamation No7/1992, *Negarit Gazeta*, Addis Ababa, Article 3

<sup>15</sup>Ibid. Article 2/3

and with the agreement of two or more adjacent nations, nationalities, and peoples and which is considered as a national self-government.<sup>16</sup> However, constitutionally Oromia regional state was established as one of the building bricks of the federal government of Ethiopia under article 47/1/ of the FDRE constitution. The FDRE constitution guarantees the regional state council the power to adopt, draft, and amend the state constitution and also empowers them to enact and execute the state constitution and other laws.<sup>17</sup> Based on this legal ground similar to other regions of Ethiopia, Oromia regional state has enacted the regional constitution which is a supreme law of the region. According to the Oromia regional state constitution; Oromia regional state is the *uninterrupted* territory inhabited by the people of the Oromo nation and other peoples who chose to live in the region, the border of which is; to the south of the region of the southern nations, nationalities and peoples and Kenya, to the north Afar and Amhara region, to the east the Somali region, and the west the Benishangul Gumuz, the Gambella region and Sudan.<sup>18</sup> From this provision, it is straightforward to infer that Addis Ababa or Finfinnee, Dire Dawa, and Harari regions are an integral part of the Oromia regional state. The phrase uninterrupted and the federal constitution do not harmonies with each other. Because, the phrase uninterrupted territory means a land mass, the territory of which is connected from one point to the next without being interrupted by another land mass or

territory. In light of the Harari regional state, the Oromia regional state constitution is unconstitutional and the FDRE constitution has a paramount value. That is why the FDRE constitution under Article 9 indicates the supremacy of the FDRE constitution to any laws including the regional state constitution. That means the FDRE Constitution has recognized the Harari regional state as a region that interrupts the geographical location of the Oromia regional state. Pertaining to Addis Ababa and Dire Dawa, the phrase uninterrupted territory does not raise the constitutionality issues. In this section, the writer does not intend to analyze the constitutionality of boundaries but rather to reveal the geographical location of the Oromia regional state as per the regional constitution. Based on the provisions of the FDRE constitution such as Article 5, article 8, and Article 39, the Oromia regional state has determined Afaan Oromoo as their working language.<sup>19</sup>

#### **4. Status of Addis Ababa/Finfinnee Under The FDRE Constitution**

Addis Ababa is the capital city of the Federal Democratic Republic of the Ethiopian government<sup>20</sup> as well as the headquarters of the African Union. Proclamation number 7/1992 which was enacted for the establishment of national/regional self-government specifically declared the status of Addis Ababa as a regional state.<sup>21</sup> Under the FDRE constitution, nine constituting regions were established.<sup>22</sup> Constitutionally speaking, the Addis Ababa

<sup>16</sup> Ibid. Article 5

<sup>17</sup>Supra Note 1, Article 50/5

<sup>18</sup>The Revised Oromia Regional State Constitution, Proclamation No.46/2001, *Megeleta Oromia*, 2001, Finfinnee, Article 2/1

<sup>19</sup>Ibid. Article 5

<sup>20</sup>Supra Note 1, Article 49/1

<sup>21</sup> Supra note 14, Article 3/1

<sup>22</sup>Supra note 1, Article 47/1. Currently Sidama Regional state and two new regions in southern nations, nationalities, and peoples are formed. Once the formation of regional state is recognized by house of

city administration is entrusted with a full measure of self-government. Though English version of the provision is different from the Amharic version in which the former gives the full measure of self-government for residents while the latter empowers self-government for city administration which is the legal person/legal entity. However, granting full measures of self-government for city administration or residents is not the same as having the status of the region within the FDRE constitution. Even though the FDRE constitution has not set the status of Addis Ababa expressly, different reasons possibly lead us to deduce that Addis Ababa is below the status of a regional state within Ethiopian federations.

At the outset the preamble of the FDRE constitution which is both a political and legal document starts with, We, nations, nationalities, and peoples.... Those Nations, Nationalities and peoples are empowered groups in which they can manifest their rights decisively by being a member of the House of Federation. However, those nations, nationalities, and peoples living in Addis Ababa city administration are not constitutionally guaranteed to be represented in the House of Federation. Even they are below the minimum threshold for the definition of nations, nationalities, and peoples in light of article 39/5 of the FDRE constitution. The writer is not saying that the House of Federations is the representative of the state within the context of Ethiopian federations. Rather, to compare the status of Addis Ababa with regional states utilizing as one element.

Constitutionally speaking, the House of Federations is the representatives of nations, nationalities, and peoples of Ethiopia not the representatives of regional states. However, de facto is different; because if we see the selections of the House of Federation members in light of article 61/3 of the FDRE constitution, members of the House of Federations are elected by state councils themselves or hold direct elections. From this, practically the members of the House of Federations are more or less state councils that are elected to represent the state rather than the Nations, Nationalities, and peoples of Ethiopia what the FDRE constitution aspired to achieve. Secondly, Addis Ababa does not have a constitution enacted by its council like that of regional states. Having an Addis Ababa city administration charter does not amount to having a constitution though it serves as such. Because, it is a law, which is enacted by the House of People's Representatives, organs not empowered to enact a constitution. Even though a dozen nations, nationalities, and peoples of Ethiopia have been residents of Addis Ababa, they are not entitled to rights listed under Article 39 of the FDRE constitution as a whole. Had they been entitled to such rights, article 49 of the FDRE constitution clearly states the rights of self-determination, secession rights, and equitable representation within the federal government without selecting only rights of the full measure of self-government which is provided under article 39/3 and the representation in the House of People's Representatives by ignoring the representation in the House of federation.

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federation, which is empowered to decide on the issues of self-determination, it automatically takes the place of nine regional states included within FDRE constitution.

Besides this, if we see the terms self-government and self-determinations separately; self-determination is the principle by which people freely determine their political status and freely pursue their economic, social, and cultural development.<sup>23</sup> It helps to define who should have power and why, who should have a voice in decision-making, and how an account should be rendered.<sup>24</sup> It could be either external or internal self-determination. Internal self-determination refers to those rights listed under article 39/2/ of the FDRE constitution which in turn encompasses the self-government as part and parcel of it. While external self-determination mostly involves an entity more in the international arena thereby determining its international status.<sup>25</sup> In any way, external self-determination deals with the status of a people vis-a-vis another people, state, or empire. Moreover, external self-determination embraces the rights of people to be free of external interference.<sup>26</sup> Self-government is defined as the rights the rights of each member of the community to choose in full freedom, the authorities that will implement the genuine will of the people.<sup>27</sup> As such self-governance is narrower in scope than that of self-determination. Those aforementioned reasons confirm the argument that the status of Addis Ababa is below the regional state within the FDRE constitution.

### **5. Relationship of Addis Ababa and Oromia Regional State Under the FDRE Constitution**

From the foregoing discussion, it is easy to see that Addis Ababa is part and parcel of the Oromia regional state of geographical location saving the administration issues as an exception. Constitutionally, because Addis Ababa is located within the center of the Oromia region, it gives some guarantees for the latter. According to article 49/5 of the FDRE constitution reads as follows;

*The special interest of Oromia in Addis Ababa, regarding the provision of social services or the utilization of natural resources and other similar matters, as well as joint administration matters arising from the location of Addis Ababa within the state of Oromia shall be respected.*<sup>28</sup>

By reading this provision, it is difficult to define what is the special interest that the Oromia region has in Addis Ababa (Finfinne)? However, it is possible to guess it by phrases included under the provision such as social services, utilization of natural resources, and joint administrative matters. The provisions of social services that the Oromia regional state assumes on Addis Ababa were related to sectors of peacekeeping, water services, the interactions in the health, education, and infrastructures such as road, electricity, and transportation sectors are by far limited to informal exchange of information when the need arises<sup>29</sup>. The issue of utilization of natural resources may include timber, minerals, oil, water, wildlife, and other environmental gifts<sup>30</sup>. The FDRE constitution states that Addis Ababa is the capital city of the Federal government.

<sup>23</sup> M. Pomerance, *self-determination in law and practice*, the doctrine in United Nations 12/1982

<sup>24</sup> WondesenWakene, *self-governing Addis Ababa, the federal government and Oromia; bottom lines and limits in self-government*, LLM thesis Addis Ababa university unpublished.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid

<sup>27</sup> Ibid.

<sup>28</sup> Supra note 1 Article 49/5

<sup>29</sup> Betru Dibaba, supra note 8

<sup>30</sup> Ibid.

This does not mean that the Oromia regional state cannot make its capital city in Addis Ababa / Finfinne as far as no word or phrase states that Addis Ababa shall be the capital city of the Federal government solely. The Addis Ababa City Administration Charter which was previously amended by Proclamation No-87/1997, article 33/2 states that Oromia has been given the right to make its capital city in Addis Ababa<sup>31</sup>. This could be taken as the manifestation of exercising joint administration that was specified under the FDRE constitution. The revised charter of Addis Ababa city administration proclamation number 361/2003 under article 62/1/ states that the relation of the Addis Ababa city government and the Oromia regional state rests on fruitful cooperation and the special interest of Oromia region shall be respected as provided under Article 49/5 of FDRE constitution. The details shall be set out by the agreement to be made between the city government and the Oromia region or by law to be issued by the House of People's Representatives<sup>32</sup>. Even though this proclamation adds the methods of determining the special interest of Oromia in Addis Ababa, the federal constitution gives recognition to the latter one, laws enacted by the House of People's Representatives (by the sentence particulars can be determined by gives a hint of it). Proclamation number 94/ 2005 Article 6 of the Oromia regional constitution states that Finfinne is the capital city of the Oromia regional state. Article 49/5 of the FDRE constitution is a neglected provision that may not have an impact for now because a single party has controlled the federal government,

the Addis Ababa municipality, and the Oromia region relatively for the past three decades.

However, the situation could become problematic if this changes. That means, that when there is the practical move from a single political party system to a multi-system of political parties there would be progress from simple to more complex and challenging. What would happen if the Region/City falls under the opponent political party against the ruling party at the center or vice versa? Even the Oromo nations are demanding the enactment of the Special Interest of the Oromia regional state on Addis Ababa city administration.

When we relate those issues to the federal cities throughout other federations, we can find three models of cities.<sup>33</sup> The first model is the *Federal District*. In this model, the city is under the exclusive control of the federal government. This reduces the conflict of interest concerning to jurisdiction and rights between the federal government and regional state. In light of this model, the federal city cannot exercise the rights of self-determination. Concerning to jurisdictional if there is a controversy between the Oromia regional state and Addis Ababa, which had been a follower of the federal district model, it automatically falls within the jurisdiction of federal courts in light of the federal court establishment proclamation. It gives the central government sufficient control over the planning and development of its capital. Furthermore, it avoids having the laws of any one-member state dominating the capital of the whole federation, interfering with the organs of the central government, or imposing its legal and cultural dominance on the federal

<sup>31</sup> Proclamation No-87/1997 article 33/2.

<sup>32</sup> Proclamation number 361/2003 article 5

<sup>33</sup>Ronald Watts, *Comparing Federal Systems*,3<sup>rd</sup>ed. (2008) Queen's University Press, London p. 79



capital.<sup>34</sup>For instance, Washington, DC(USA), Canberra, the Australian Capital Territory (Australia), the Federal District of Mexico City (Mexico), the Federal District of Caracas (Venezuela), etc.

Addis Ababa does not fall within the category of this model city because; it has some sort of self-determination rights under article 49/2 of the FDRE constitution though self-determination rights are ambiguous as for the residents or the city itself. The second model is a *full-fledged city-state*. This model city has the double duty of a federal capital and constituent member of a federation simultaneously. They are constitutionally guaranteed to exercise both rights of a capital and state together; it is less influenced by federal governments. The city has full autonomy and can exercise full rights of self-determination rights. Vienna (Austria), Moscow (Russia), Berlin (Germany since reunification in 1990), and Brussels (Belgium) are examples of full-fledged city-state models. Had Addis Ababa city been categorized under this model of the federal city, it would have been under the jurisdiction of federal courts when a matter arises between the Oromia regional state and residents of Addis Ababa city.

The final model is a *city in the state*, the capital city falls under the competence of a member state of a federation. The capital city is treated similarly to other cities located in the region. This model highly restricts the direct influence of the federal government and does not raise conflict of jurisdiction with the region in which the city is situated. Bern (Bern, Switzerland), Ottawa (Ontario, Canada), Kuala Lumpur (Selangor, Malaysia), etc are examples of city in the state models. By reading of the Oromia

regional state constitution, goes to the extent of deducing that Addis Ababa is a city located within the Oromia regional state. If so, it does not raise a conflict of jurisdiction between the Oromia regional state and Addis Ababa concerning jurisdictional wise. The writer opts for the final model of a federal city-state within Ethiopian federations.

#### **6. Some Proclamations that Treat Addis Ababa as a Regional State Under the Federal Democratic Republic of Ethiopian Government**

Both federal and regional states within the Ethiopian federation have their respective legislature, executive and judicial powers.<sup>35</sup> The legislative organs of each government are empowered to enact laws on their respective matters. They are expected to carry on their functions in light of promoting principles and values of good governance. The FDRE constitution also includes the principles of good governance under article 12 which indicates the activities of government officials must be transparent and they are expected to be accountable for any failure in their official duties. For this reason, they are obliged to enact laws in light of the principles and values of the FDRE constitution. The House of Peoples Representatives is the main organs of the federal government empowered to enact laws which the federal governments are assigned to carry on. For instance matters included under articles 51 and 55 of the FDRE constitution are belong to the federal government and the House of People's Representatives is authorized to enact laws on such matters. In the guise of legislating laws on matters assigned to federal governments, the House of Peoples

<sup>34</sup> Ibid.

<sup>35</sup> The FDRE constitution, Article 50/2

Representatives is not at liberty to enact laws which against the FDRE constitution.

Even though the House of People's Representatives has enacted several proclamations that treats Addis Ababa as a regional state, this writing tries to encircle Proclamation No- 251/2001, No-943/2016<sup>36</sup>, and Proclamation No-1234/2021.<sup>37</sup> The writer is limited to those proclamations since they are directly *proportional* to the jurisdiction of courts and the Justice Office of regional states. Treating Addis Ababa as a regional state hurts the jurisdiction of regions that are constitutionally established in general and that of the Oromia regional state in particular. This is a result of the geographical location of Addis Ababa within the umbilical of the Oromia regional state. For instance "State" shall mean the states formed by Article 47/1 of the Constitution of the Federal Democratic Republic of Ethiopia and, includes the Addis Ababa City Administration and Dire Dawa Administrative Council.<sup>38</sup> Currently, the proclamation No-251/2001 is amended by Proclamation No-1261/2021. The latter Proclamation, defined region/member states are member states of the Federal Democratic Republic of Ethiopia which are established by Article 47 of the FDRE Constitution.<sup>39</sup> "Region" means any regional state referred to in Article 47 (1) of the Constitution and includes Addis Ababa and Dire Dawa city administrations.<sup>40</sup> Those two proclamations declare Addis Ababa and Dire Dawa as independent regions. This setting is against the

rules and procedures of making a new regional state incorporated within the FDRE constitution. Besides, Under the provision that deals with the jurisdiction of federal court, the federal courts have jurisdiction over cases that arise between persons permanently residing in different regions; regions and Addis Ababa; regions and Dire Dawa, Addis Ababa, or Dire Dawa.<sup>41</sup> From this proclamation, it is possible to deduce two issues which need to be answered. The first issues relate to the Amharic version and English version of the law. The English version needs the existence of two regions or more regions and Addis Ababa or Dire Dawa to empower federal courts. Because, it says between *regions and Addis Ababa*, which is plural *form*. On the other side, the Amharic version says 'ክልልና አዲስ አበባ' literally state and Addis Ababa *not* 'ክልሎችና አዲስአበባ' literally states and Addis Ababa. Taking the English version as binding does not as goes with treating Addis Ababa as equivalent to a regional state while taking the Amharic version is the reverse. It is not defensible to conclude the intention of legislation has both retrospective and prospective effects on the jurisdiction of courts. Retrospectively, the legislature was intended to give effect and support for the judgments of federal Supreme Court cassation that was decided on the cases between Addis Ababa and Oromia regional state as the power of federal courts. Those decisions which the legislatures intended to recognize retroactively were discussed under the section which talks about

<sup>36</sup>The Establishment of Federal Attorney general proclamation No\_943/2016

<sup>37</sup> Federal courts Establishment proclamation 1234/2021, *Negarit Gazzet*, No- 1, 26 April, 2021

<sup>38</sup>Supra note 36, Article 2/1

<sup>39</sup> A Proclamation to define the Powers and Functions of House of Federation, Proclamation No. 1261/2021, *Federal Negarit Gazeta*, Year, 27 No. 43 August, 2021, Article 2/15

<sup>40</sup> Supra note 37, Article 2/5

<sup>41</sup> Supra note 38, Article 5/1/h

the practice of federal Supreme Court cassation treating Addis Ababa as a regional state. Prospectively, the legislatures intended to lubricate the relation of regional courts and federal courts on the cases arising between residents of Addis Ababa and another region specifically the Oromia regional state through having a legal framework.

Even though the writer selected those proclamations that extend the scope of the region to Addis Ababa and Dire Dawa, it is possible to find several proclamations enacted by the House of People's Representatives that treat them as regional states. Since the Ethiopian Federation is a covenant of nations, nationalities, and peoples of Ethiopia, both levels of government are expected to safeguard their pledges. When the Houses of People's Representatives proclaim a law that treats Addis Ababa as an independent state within some proclamations contrary to the FDRE constitution, the federal government particularly the House of Peoples Representatives is reducing the pledges of empowered groups of the FDRE constitution. This practice also leads to the practices of centralization of the Ethiopian federation which in turn encourages suspicions among nations, nationalities, and peoples of Ethiopia. So, treating Addis Ababa as a regional state by the House of People's Representatives is unconstitutional since it did not full-bodied the

criteria and procedures of state formation under the FDRE constitution.

It is significant to relate the cause of treating Addis Ababa as a regional state by the House of People's Representatives to the concepts of federation and second chambers. Because, the primary role of most of the federal second chambers in the federations reviewed in this study has been legislative, reviewing federal legislation to bring to bear upon it regional and minority interests and concerns.<sup>42</sup> That means other federations, like the USA and Germany have regional representation in federal policy-making or legislature. Even though the House of Federation is not the representative of the regional state, it does not have a legislative function. However, in other federations, the chamber of the second chamber has equal power with lower houses to enact laws and policy. For instance, the Senate in the case of the American Federation represents regional states at the federal law-making stage and they can exercise either suspension or veto power.<sup>43</sup> By utilizing this mechanism, those federations safeguard the interests of regions or Landers.<sup>44</sup> However, this mechanism is lacking in the Ethiopian Federation. Because, in Ethiopia, the House of Federations are not the representatives of the regional state. Even though the Ethiopian legislature is bicameralism, strictly speaking, the House of Federation does not have law-making power. The Ethiopian House of Federation is unique

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<sup>42</sup> Ronald watts, supra note 33 p. 153

<sup>43</sup> Suspension power and veto powers are the mechanism by which regional state representatives/second chambers protects the interest of regional state at federal law/policy making level. For instance, Bundesrat (second chambers of Germany federation) has absolute veto power on federal legislations affecting any states administrative functions. This also works in USA federations. The effect of absolute veto is when the law is enacted

affecting the interest of certain regional state, it does not have binding effect up on regions contested that law by way of veto power. In case of Malaysia and Spain federations, the second chambers exercise suspension power to protect the interest of regional state and they suspend the draft law not to proclaim or enact for some time limit.

<sup>44</sup>Landers are the name of regional state within Germany federation.

among federal second chambers in having been assigned a role as the ultimate guardian of the constitution. It has the exclusive right and ultimate authority to interpret the Constitution, and this indeed is its main function. In doing so, they protect the interest of nations, nationalities, and peoples of Ethiopia not the interest of regional states. Had the House of Federation been empowered to enact law/policy at the federal level equally with the House of Peoples Representatives; the house of Federation is not the representative of regional states but rather the representative of nations, nationalities, and peoples of Ethiopia.

Representatives of the regional state are quite different from the representatives of nations, nationalities, and peoples of Ethiopia, particularly in divided societies to protect the interest of the regional state. This reflects Ethiopia's adoption *Tri Cameralism (three houses)*<sup>45</sup> to protect the interest of the regional state in federal law-making or policy-making. Besides, political reasons can also be taken as a cause for treating Addis Ababa as an independent regional state by the House of Peoples Representatives. That means; the Federal governments of Ethiopia for the past three decades were politically dominant over the regional states and the regional states were also not autonomous to resist the practice of the federal government when the latter

contravened the values and principles of the constitution practically.

Treatment of Addis Ababa as the regional state hurts the symmetrical federation of Ethiopia included under article 47/4 of the FDRE constitution.<sup>46</sup> This provision reflects all regional states in the Ethiopian Federation have equal power/jurisdiction and rights. Regional states' power extends from the capital city of their region to the kebele/ administrative lower level. When the laws of the House of People's Representatives treat Addis Ababa as a regional state, it reduces the jurisdiction of Oromia regional state in general and that of Oromia regional state courts in particular. That means; the FDRE constitution aspired to increase the powers and rights of the Oromia regional state included under article 47/4 of the FDRE constitution by utilizing article 49/5 of the FDRE Constitution. That means; the Oromia regional state has equal power and rights with the other regional states of Ethiopia in light of article 47/ 4 of the constitution and even exceeds them in light of article 49/5 of the FDRE Constitution. However, the practices of the House of People's Representatives are deviating from concepts of powers and rights intended by the FDRE constitution.

### **7. Structure of Courts Under the FDRE Constitution**

The FDRE constitution provides for the structure of courts and provides some hints

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<sup>45</sup>In addition to House of Federation and House of Peoples Representatives, it is better to have a house that safeguard the interest of regional state may be *Council of States* or *Senate* or other name for the third house. Because House of Federations are the representatives of nations, nationalities and peoples of Ethiopia and its law making power within Ethiopian federation is very minimal. This house works to protect the interest of those nations, nationalities and peoples rather than regional state through constitutional adjudication and fiscal

matters. The House of Peoples Representatives is the law making organ and they are the representatives of the people. Therefore, it is better to have another third house to the context of Ethiopian federation for the protection of the interest of regional state. This must be supported with empowering it equal law making power with that of house of people's representatives.

<sup>46</sup>It states that regional states of Federal Democratic Republic of Ethiopia shall have equal rights and powers.

about the organization of courts. Though some federal systems establish monolithic court structures, it is commonly acceptable to have dual court structures within federations. The aim of the federation to have a parallel side of the court is to bring justice closer to the people. Local problems should be solved by local institutions. The FDRE constitution clearly states that the federal government and the states shall have legislative, executive, and judicial power.<sup>47</sup> The FDRE Constitution states that Supreme federal judicial authority is vested in the federal Supreme Court and reserves for the HoPR to decide by a two-third-majority vote to establish inferior federal courts, as it deems necessary, nationwide or in some parts of the country.<sup>48</sup> However, the House of People Representatives did not establish federal courts within regional states until 2003. The decisions of the framers of the FDRE constitution to empower HoPR for the establishment of lower federal courts could be for the sake of flexibility and the opportunity to draw some experiments from another federal judicial system. This means, had those lower federal courts established by the FDRE constitution likewise that of the Federal Supreme Court, it would be less flexible to establish and demolish it, and closes the door for getting experiences from another federal judicial system. Besides, granting the power to establish lower federal courts to the House of People's Representatives also advantageous in deciding just how much jurisdiction those courts ought to have power. Proclamation No-322/2003 was issued to provide for the establishment of federal high

courts in the state of Afar, Benishangul Gumuz, Gambella, Somali and Southern Nations, Nationalities, and Peoples.<sup>49</sup> As far as the organization of the inferior federal courts in the states is concerned, the constitution declares that the jurisdictions of the Federal High Court and the First Instance Courts are delegated to state courts.<sup>50</sup> However, the jurisdiction of the federal Supreme Court cannot be delegated to state courts. By setting this delegation, the state Supreme Court exercises, in addition to its state jurisdiction, the jurisdiction of the federal High Court, and the state high courts exercise, in addition to their state jurisdiction, the jurisdiction of the federal First Instance Court. To guarantee the right of appeal of the parties to the case, decisions rendered by a state high court exercising the jurisdiction of the federal First Instance Court are appealable to the state Supreme Court.<sup>51</sup> Decisions rendered by a state supreme court on federal matters are appealable to the federal Supreme Court.<sup>52</sup> To have a clear and full-fledged dual court structure, there should be federal courts in each state to entertain federal jurisdictions even though the delegation is stated under Article 78/2 of the FDRE constitution.

### **8. The Practice of Ethiopian Federal Supreme Court Cassation Bench Treating Addis Ababa as a Regional State**

Both under the federal and state courts of Ethiopia, in addition to the regular Supreme Court, there is a special structure, the cassation court. A court of cassation is a high instance court that exists in some judicial systems.

<sup>47</sup>Supra Note 1, article 50/2

<sup>48</sup> Ibid, article 78/2

<sup>49</sup>The Establishment of the Federal High Court in Some Regions, Proclamation No.322/2003, *Negarit Gazeta*, 9th year, No.42, 8th April, 2003

<sup>50</sup> Cumulative reading of article 78/2 and 80 of FDRE constitution

<sup>51</sup> Supra note 1, Article 80/5

<sup>52</sup> Ibid.

Courts of cassation do not re-examine the facts of a case, they are only competent for verifying the correct interpretation of the law. For this, they are appellate courts of the highest instance. Thus, they are different from systems that have only a Supreme Court, which can rule on both the facts and the law of a case. The power of cassation in the Ethiopian federation has a constitutional status both at the federal and regional states. The Federal Constitution recognized the existence of such a system at both tiers of government.<sup>53</sup> Cassation court currently comes into reality where there is a basic error of law from the final decision of regular and appellate jurisdiction of courts. The FDRE constitution under article 80/3/a gives the federal Supreme Court, the power of cassation over any final court decision. The English version of the constitution is limited to any final court decision while the *Ahmaric* version of the FDRE goes beyond the English version. That means the Amharic version of the FDRE constitution under article 80/3/a, states that any final decision (*manachohunyemecereshawusane*) without identifying the institutions that rendered the final decision. But concerning to the state court's cassation, it is limited to any final decision on state matters.

Even though the FDRE constitution gives the cooperative relationship between organs of federal and regional government in general and that of courts in particular, there are some subsidiary laws and practices that make the

relation of federal courts superior to regional courts.<sup>54</sup> In light of the power of cassation over cassation<sup>55</sup>, even if the federal constitution established parallel jurisdiction of courts in both tiers of the government, the cassation division of the federal Supreme Court reviews any final decision of courts. This is when it manifests a prima facie case for basic error of law.<sup>56</sup> The cassation division of the federal Supreme Court is located at the apex of the present court system in Ethiopia. The Cassation Division court shall exercise the cassation authority in a way that the legislative branch of government intended the law to be applied. This is because, unlike courts of the common law legal system, the Cassation Division of Civil law countries have no authority to pile an original precedent. Each interpretation shall go hand in hand with the spirit of separation of power. It shall not refute the doctrine of separation of power which is equally recognized under the FDRE Constitution.

The FDRE constitution declares that the federal Supreme Court has the highest and final authority over federal matters. The Federal Supreme Court includes a cassation division, which has the power to review and overturn decisions issued by lower levels of federal courts and state supreme courts containing fundamental errors of law. As can be seen from the experience of other Federal countries like the USA, the federal Supreme Court is intended for guaranteeing uniformity reasons regarding some cases and that function of guaranteeing

<sup>53</sup> Ibid, Article 80/3/ a/&b

<sup>54</sup> See for instance, Article 6/2 of proclamation no-25/96. This provision gives supremacy clause for federal laws at the time when it contravenes with regional laws. However, supremacy of law is not included within the constitution of FDRE. Article 35 /1/ a/ of the proclamation also states that federal Courts of any level may order that decisions and orders given by them be

enforced by Regional Courts. This makes any level of federal courts as a boss to regional courts.

<sup>55</sup>The term cassation over cassation signifies the possibilities of review of decision rendered in state supreme court through its cassation bench (on a purely state matter) by the federal counter part on the same basis.

<sup>56</sup> Supra Note 1, Article 80/3/a/

uniformity is often limited to federal laws.<sup>57</sup> This important qualification is missing in the Ethiopian situation and the Federal Supreme Court extends its scope beyond what was intended by the Supreme Court of another federal country.

The establishment of the Federal Supreme Court Cassation Division is to guard the legislature's purpose and intent. However, the Division sometimes deviates from what the law says and the lawmaker intends even to the extent of twisting a clear provision of the law. Traditionally, the function of cassation courts was to examine a case assumed to incorporate a fundamental error of law, quash it if it finds the same, and remand it to a court of rendition. In Ethiopia, the role of the judiciary is to interpret laws.<sup>58</sup> Law-making power is exclusively given to the legislative branch of government which other organs or branches of government cannot exercise except through delegation power. For this reason, as one facet of law-making, the judicial branch cannot amend and/or repeal laws. Moreover, if the law is clear, the Cassation Division shall apply it as it is. As the words of the law are presumed to express the intention of the legislator, there is no need for interpretation, unless the interpretation of the law may lead to an absurd conclusion. In short, unless there is strong evidence that shows the intention of the legislator was different, it is not proper to give a different meaning to a clear provision of the law.

Consequently, when the decision of the Cassation Division is repugnant to the legislative intent and is made mistakenly or deliberately, it always costs justice. However, the Ethiopian Federal Supreme Court Cassation division is deviating from its normal business and enacting laws, which is the role of the legislature. The federal system counteracts the concentration of power. This means the horizontal division of power, where state authority is divided into executive, legislative, and judicial powers, and which vertical division of powers between central and constituent states in terms of legislative, executive, and judiciary supplement. However, in the case of the Ethiopian Federation, practically the federal courts especially the Federal Supreme Court cassation division are striving to centralize the Ethiopian Federation through snatching the jurisdiction of state courts. Such practice of the Federal Supreme Court Cassation is unconstitutional.

For instance, under the case of *Mengistu Lema and Chalchisa Oromiya vs. Guta Tullu*<sup>59</sup>, the case was initiated within the Oromia region, Oromia Special zone Surrounding Finfinnee, Sabata Hawas Woreda (District) court. The detail of the case is the injunction of construction between the plaintiffs, who were residents of the Oromia region, and the defendants, who are residents of Addis Ababa in light of article 1149 of the Ethiopian civil code. At the Woreda level, the defendants submitted their statement of defense to the court raising preliminary objections. The

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<sup>57</sup> Sileshi Zeyohannes, *Constitutional Law II, Teaching Material*, Justice and Legal System Research Institute, (2009), Addis Ababa at 206

<sup>58</sup> Supra Note 1, Article 79/1

<sup>59</sup> Federal supreme court cassation decision file number 98973 (decided on 10/4/2007 E.C), Mengistu Lemma

was the resident of Addis Ababa, Kirkos sub city Administration, Chalchisa Oromia was the resident of Addis Ababa, Nifas Silk Lafto sub city administration and Guta Tullu was the resident of Oromia Regional state Sebata Haws Woreda.

preliminary objection was raised by the defendants at the Woreda court stating the court has no material jurisdiction to entertain the case at hand since the parties to the suits are permanent residents of different regions. The defendants of the case at hand are residents of Addis Ababa and the plaintiff was a resident of an Oromia regional state. Due to this fact, the defendants asked the court to dismiss the case as a result of lack of material jurisdiction since parties to the suits were residents of different regional states (one resident of Oromia regional state and the other party was a resident of Addis Ababa). Legally speaking, if the suit arises between permanent residents of different regional states within the Ethiopian federation, it is the jurisdiction federal court.<sup>60</sup> Woreda courts do not have jurisdiction to entertain matter that falls within the jurisdiction of federal courts by the mechanism of delegation. The Woreda court of Sabata Hawas overruled the preliminary objection raised by the defendants and pronounced judgment to release the illegally seized land for the plaintiff. However, the defendants were dissatisfied with the decision of Woreda courts and appealed to the Zonal high court of the Oromia special zone surrounding Finfinne. This Zonal appellate court confirmed the decisions of the Woreda court and for this reason, defendants were appealed to the Oromia regional state Supreme Court Cassation. The Oromia regional state Supreme Court cassation bench also confirmed the decision of lower courts stating that there is no fundamental error of law committed by lower courts. Finally, those defendants were appealed to the Federal Supreme Court

cassation bench. The federal Supreme Court Cassation bench admitted the appeal of the defendants of the Woreda court and summoned the opponent parties. The federal cassation court framed an issue which says, are lower courts entertained the case at hand having material jurisdiction or not? By analyzing different laws and flows of arguments, the federal cassation court concluded lower courts are entertaining the raised case without having material jurisdiction. The Federal Supreme Court cassation bench reversed the lower court's decision and came up with a new decision that treats Addis Ababa as an independent regional state. This may result from the political dominance of the federal government over the regional state. On the other side, Oromia regional state legislation No- 216/2018 empowers the Oromia regional state Supreme Court to establish and organize necessary court levels in Finfinne to entertain matters included within article 24/3/a-d of the same proclamation. This indicates the existence of exercising power and rights enshrined within the FDRE constitution by the Oromia regional state on one side and contravening the principles and values incorporated within the FDRE constitution by HoPR and the Federal Supreme Court on the counterpart.

The federal Supreme Court cassation has reversed the decisions of Oromia regional state courts starting from the Woreda court to the state Supreme Court cassation bench based on article 5(2) of Proclamation No-25/1996.<sup>61</sup> This provision empowers the federal courts to have jurisdiction over parties that are residing

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<sup>60</sup>Federal Courts Establishment, Proclamation No. 25/1996 , 2nd year, No.13, *Negarit Gazeta*, 15th February, 1996, Article 5/2

<sup>61</sup>Federal courts have civil jurisdiction over suits between persons permanently residing indifferent Regions



permanently within different regions. If a certain case arises between two or more permanent residents of different regions, it automatically falls within the jurisdiction of federal courts. In this situation, regional courts can only entertain such matters through delegations. Currently, Proclamation 1234/2021 which amended Proclamation No-25/1996 did not directly categorize Addis Ababa as a regional state but, indirectly tried to put the status of Addis Ababa as a regional state. This is mainly inferred from the phrase which dealt with the jurisdiction of the federal government when the raised case is between permanent residents of Addis Ababa and regions. That's why the writer argues the retrospective effect of the latter legislation which tries to recognize the decisions of federal Supreme Court Cassation preceding the enactment of Proclamation No-1234/2021.

One may easily grasp that the intention of legislation departing not to define the meaning and scope of the region under the definition of words or concepts was an indicator for limiting regional states that are listed under Article 47 of the FDRE constitution. As per the case cited above, the two defendants were residents of Addis Ababa with different sub-city administrations Kirkos and Nifas Silk Lafto Sub-city administration and the plaintiff was a resident of Oromia regional state. The Federal Supreme Court Cassation division has criticized the decisions of all levels of Oromia regional courts stating they have committed a fundamental error of law.

For this reason, the federal Supreme Court Cassation concluded that Oromia regional state

courts do not have original jurisdiction rather they have delegation power as incorporated within the FDRE constitution (translation is by writer). The decree part of the judgment clearly states that: ‘የሰበታ ሀዋስ ወረዳ ፍ/ቤት እና በየደረጃ ያሉ ፍ/ቤቶች የግራቀኙ መደበኛ መኖሪያ ቤት በሁለት ክልሎች ሆኖ ሳለ እና ጉዳዩ በዉ.ክልና የሚመለከቱት የፌዴራል መሆኑ እየታወቀ የክልል ስረነገር ስልጣን ስር በማድረግ መወሰናቸዉ በአግባቡ አይደለም ብለናል’ the reason of court decision is as far as the case was between residents of different regions, the Federal court has the first instance jurisdiction. Is Addis Ababa City is regional a state? The FDRE constitution under articles 47(1) and (2) recognizes nine regional states under the Ethiopian federation and provides a right to form additional new states for nations, nationalities, and peoples within the above nine states (internal secession). By any means, Addis Ababa would not be a state if we read cumulatively article 39(5) and article 47(1), (2) of the FDRE constitution. The reasons that the writer discussed above under state formation also support the idea that Addis Ababa cannot be treated as a regional state constitutionally.

In addition to the above real case which treated Addis Ababa as a regional state by federal Supreme Court Cassation, *Yasin Ibrahim and Getu Ishetu Vs Hailu Taye*<sup>62</sup> the Ethiopian Federal Supreme Cassation bench decided Addis Ababa as an independent regional state. The Oromia regional state courts starting from the high court to the Oromia regional state Supreme Court cassation didn't treat Addis Ababa as an independent regional state for two reasons. Firstly, they are based on article 47 of the FDRE constitution which lists nine regional states and opens a room for forming new

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<sup>62</sup> Federal supreme court cassation decision(2012 E.C), file number 144613 ( decided on 30/9/2010 E.C) volume 23, p.358

regional states excluding Addis Ababa. Secondly, the property which is subject to the case and agreement for the transaction was made in the Oromia regional state. The Federal Supreme Court Cassation treated Addis Ababa as an independent regional state by reversing the decision of the Oromia regional state Supreme Court Cassation bench based on two reasons. First, they are based on Article 47 with Article 50/4 of the FDRE constitution and Article 49/2 of the same constitution. That means; regional states were empowered to establish their self-administration as per article 50/4 of the FDRE Constitution. They thought it was the same with concepts incorporated within article 49/2 of the constitution that treats Addis Ababa as a self-governing power. However, having self-governance by itself does not lead the entity as a regional state in light of the FDRE constitution. Besides, self-governance/administration within the spirit of article 50/4 of the FDRE Constitution is expected to be organized and formed by regional states. On the other hand, self-governance concerning Addis Ababa in light of article 49/2 was merely the stretching arms of the federal government. Finally, the federal Supreme Court cassation relies on Addis Ababa having a charter to treat it as an independent regional state. The writer supports that the decisions rendered by Oromia regional courts were constitutional and sound not to treat Addis Ababa as an independent regional state. Such a decision of federal Supreme Court cassation contravenes the values and principles of the FDRE constitution, which does not treat Addis Ababa as a regional state. If we took such a decision as justifiable by law, it snatches the jurisdiction of Oromia regional state courts in general and that of Woreda courts in particular when a case arises between residents

of Addis Ababa and Oromia regional state. This is because of geographical location of Addis Ababa is within the Oromia region and most of the residents of Addis Ababa have been owning property within the Oromia regional state especially surrounding Finfinne. This in turn reduces the jurisdiction of Oromia regional state court compared to other regional states court's jurisdiction if a case arises between residents of Oromia and Addis Ababa.

Since the decisions of federal Supreme Court cassation have a binding effect on federal lower courts and regional state courts, it limits the scope of argument of parties to the suits. That means parties are expected only to argue on whether the parties are residents of Addis Ababa or not, instead of arguing Addis Ababa is not a regional state. Besides, it can affect the smooth relationship between the federal and Oromia state courts, especially in the case of transferring judgment for execution and delegated powers. It creates a reluctance to execute decisions of the federal courts when the federal Supreme Court cassation takes the jurisdiction from the Oromia regional state instead of correcting fundamental errors of law. It may also negatively affect the rights of parties who are the residents of Oromia regions especially when original jurisdictions have been taken from regional state courts; it reduces the extent of appeal rights of parties. It is also possible to relate this problem to language rights. If delegation power is taken from a regional state, parties to the case who are residents of Oromia regional states are expected to argue and to claim their rights by using the Amharic language.

Even though Proclamation No-454/2005 amended by Proclamation No- 1234/2021 oblige the lower federal and state courts to be bound by the federal Supreme Court cassation,

it is observable from some judges as they are refusing to be bound by the decision of the federal Supreme Court cassation that was not published under the volumes of cassations such as above raised decisions<sup>63</sup>.

The FDRE constitution also aspires to become a sort of solution for past mistakes and to put the nation on the path of chosen policy. The past mistakes could be the centralization of power. While distributing or dividing powers, the federal and states have a constitutional agreement to share the power and not to centralize it. Thus, it is understandable to infer that the federal Supreme Court cassation is breaching the pact of nations, nationalities, and peoples of Ethiopia. The Federal Supreme Court cassation was not empowered to divide powers between federal and regional state courts through correcting fundamental errors of laws.

The practice of Federal Supreme Court Cassation affects the smooth relationship working between federal and regional courts in general and that of Oromia regional courts in particular. That means, Federations require IGR (Intergovernmental Relationships) to solve the issues of ambiguity on the division of power between or among levels of government. Within Proclamation No-25/1996 and Article 51/4 of proclamation 1234/2021, it is the Federal Supreme Court that solves issues about conflict of jurisdiction between federal and regional courts. In this circumstance, it is a difficult event to claim jurisdiction before a regular court of the federal Supreme Court while the special court of it violates the law. That means; the federal Supreme Court is

entertaining matters by which it is the party itself that opens the argument of its neutrality.

### **9. Concluding Remarks**

The writer has indicated the criteria and procedural rules for forming new a regional state in light of the FDRE constitution. It is nations, nationalities, and peoples who are empowered to form regions with the FDRE Constitution. Contrary to those criteria and procedural rules forming a regional state or treating certain administrative units as regional states is unconstitutional. All legislative, executive, and judicial organs of both Federal and regional governments must respect and enforce the FDRE constitution. However, the House People's Representatives were in some laws as the writer indicated above proclamations go to the extent of categorizing Addis Ababa as an independent state.

Particularly under the provision which defines the word or phrase of the region. This categorization is unconstitutional because it adversely affects the jurisdiction or powers of regions in general and that of the Oromia regional state in particular as a result of the geographical location of Finfinne. The Federal Court's establishment proclamation simply says civil matters that arise between permanent residents of different regions fall within the jurisdiction of federal courts. If someone reads the federal court's establishment laws thoroughly, it is easy to glance at as it did not treat Addis Ababa as an independent regional state. So, it is a clear indication of the works of federal Supreme Courts as it is enacting a law that is unconstitutional in the guise of correcting the fundamental error of law. This mostly snatches the jurisdictions of Oromia

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<sup>63</sup>The case of Mengistu Lema and ChalchisaOromiya vs. GutaTullu file number 98973, cassation decision not

published under the volumes of Federal Supreme Court, It is available with parties to the Suit.

regional state courts in general and that of Woreda courts in particular. Before the enactment of Proclamation No-1234/2021, the Federal Supreme Court cassation treated Addis Ababa as an independent regional state by fact and its binding interpretation. However, the new Federal Courts Proclamation No-1234/2021, Article 5/1/h retrospectively legalized the practice of the Federal Supreme Court Cassation treating Addis Ababa as an independent regional state.

Since treating Addis Ababa as a regional state is unconstitutional, the writer recommends quashing the laws of the House of People's Representatives, specifically Article 5/1/h of Proclamation No-1234/2021 and decisions of federal Supreme Court cassation that treat Addis Ababa as a regional state before the House of Federation. Alternatively, to have regional representation at the federal law-making/policy-making level that has equal law-making power with the House of Peoples Representatives to safeguard the interest of regions including Oromia regional states.