THE ROLE AND LEGAL STATUS OF URBAN LOCAL GOVERNMENT IN THE IMPLEMENTATION OF PLANNING LAW IN ETHIOPIA:
THE CASE OF AMHARA NATIONAL REGIONAL STATE

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DECLARATION

I declare that ''THE ROLE AND LEGAL STATUS OF URBAN LOCAL GOVERNMENT IN IMPLEMENTATION OF PLANNING LAW IN ETHIOPIA: THE CASE OF AMHARA NATIONAL REGIONAL STATE'' is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references. I further declare that I submitted the thesis/dissertation to originality checking software and that it falls within the accepted requirements for originality. I further declare that I have not previously submitted this work, or part of it, for examination at UNISA for another qualification or at any other higher education institution.

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Research of such magnitude requires long hours of hard and lonesome work daily for quite a few years. It would have been all the more difficult had it not been for the generous assistance of colleagues and the loving care of one's family.

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Abstract

This study investigated the role of urban Local Governments (ULGs) of Amhara National Regional State (ANRS) in implementing planning laws. Most of the ULGs in the developed world, unlike their counterparts in the developing world, have been executing planning laws for years. As a result, their system of urban planning and development has attempted to deal with the emerging problems of urbanization. In federal Ethiopia, ULGs are vested with the planning laws implementation authority. But the developments of urban centres in the study area show that ULGs have not been effectively exercising their power as mandated by law. This study therefore intended to find out why ULGs in the study area are not effective in the implementation of urban planning laws. The study was dictated by the fact that the understanding of the involvement of LGs in implementation of urban planning laws has paramount importance. Such argument was taken because ULGs are closer to the challenges confronting urban development at the local level and they are in a better position to address them. The study employed document analyses. To lay down the general theoretical and philosophical background the existing scholarly writings; the relevant federal and regional laws; research and seminar papers, journals etc. were analysed. The examination of these materials revealed that although ULGs studied have suitable legal status and they are better positioned than other stakeholders in areas of their jurisdictions, they are not effective in exercising their authority and were not able to address the planning needs of their community. The problem identified were low financial capacities of LGs, weak capacities of human resources and lack of comprehensive regulations for carrying out certain provisions of the planning processes and procedures. The study therefore recommended that ULGs must undertake capacity building measures for the staffs and the city administrator entities. It is also suggested that there shall be a move towards improving the legislative quality of planning laws. It is also recommended that RSs shall endeavour to enhance the financial capacity of ULGs by providing additional funds. Besides, it is advised to create legal instruments which govern IGR issues by clearly defining the power and duties of each entity in the relation.

Key Issues: Local Government, Urban Local Government, Legal status, Role, Planning Laws, Implementation, Authority, Decentralisation, Urban plan, IGR

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List of Abbreviations and Acronyms

AAU	Addis Ababa University
ANRS	Amhara National Regional State
BO	Building Officer
CBO	Community Based Organisation
CC	City Council
CCSUD	Central Cooperative Societies of Urban Dwellers
CUDA	Central Urban Dwellers' Association
ECSU	Ethiopian Civil Service University
EIA	Environment Impact Assessment
EPC	Environment Pollution Control
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
FEPA	Federal Environment Protection Agency
FUPCB	Federal Urban Planning Coordinating Bureau
FUPI	Federal Urban Planning Institute
GOE	Government of Ethiopia
HCSUD	Higher Cooperative Societies of Urban Dwellers
HUDA	Higher Urban Dwellers' Association
ICMA	International City/ County Managers Association
IGNOU	Indira Gandhi National Open University
IGR	Inter-governmental relation
IIED	International Institute for Environment and Development
KCSUD	Kebele's Cooperative Societies of Urban Dwellers
KUDA	Kebele Urban Dwellers' Association
LDP	Local Development Plan
LG	Local Government
MOA	Ministry of Agriculture
MUDC	Ministry of Urban Development and Construction
MUDH	Ministry of Urban Development and Housing
MUDHCo	Ministry of Urban Development, Housing and Construction
NGO	Non-Governmental Organisation
NUDS	National Urban Development Scheme
NUDSP	National Urban Development Spatial Plan

NUPI	National Urban Planning Institute
OECD	Organisation for Economic Co-operation and Development
ONRS	Oromia National Regional State
PA	Peasant Association
PDRE	Peoples’ Democratic Republic of Ethiopia
PLAF	Planning Law Assessment Framework
PMAC	Provisional Military Administrative Council
RLG	Rural Local Government
RS	Regional State
RSA	Republic of South Africa
RUDP	Regional Urban Development Plan
SECPR	State of Ethiopian Cities Project Report
SECR	State of Ethiopian Cities Report
SNNPR	Southern Nations Nationalities Peoples’ Region
SP	Structure Plan
SPRDP	Sustainable Development and Poverty Reduction Program
SSA	Sub Saharan Africa
SSMED	Service Science, Management, Engineering and Design
SWM	Solid Waste Management
TGE	Transitional Government of Ethiopia
TNRS	Tigray National Regional State
UDA	Urban Dwellers’ Association
UDCS	Urban Dwellers’ Cooperative Societies
ULG	Urban Local Government
ULGDP	Urban Local Government Development Project
UN	United Nations
UN-Habitat	United Nations Human Settlements Programme
UNHRC	United Nations Human Rights Council
UNRISD	United Nations
UPI	Urban Plan Institute
USA	United States of America
VSA	Viable Systems Approach
WB	World Bank

CHAPTER 1

Introduction

The Constitution of FDRE establishes a federal form of government and power is divided between the federal and the RSs (States). It provides for a decentralised form of state polity and prescribes to the RSs how to establish and adequately empower LG.[1] The readings of articles 50(4), 52(1) and 52(2) (a) of the constitution imply municipal affairs are local matters and allocated to state governments.[2]

The adoption of decentralisation as an immediate option for national development in the country is considered by the constitution. However, its practical application was seen after the federal government adopted a poverty reduction and development policy in 2001[3]. Decentralisation was preferred as a key mechanism for the implementation of this policy.[4] With a declared intention of implementing this policy, the RSs amended their constitutions[5] and enacted legislations[6] to restructure their urban local governance system consistent with the policy.

The regional laws (*here in after called as city proclamations*) have established Urban Local Governments (ULGs) or city administrations and have provided for the establishment of both the legislative and executive organs at city level. There is a representative assembly in each city administration whose members are directly elected by the local people which constitutes the legislative organ plus an executive body which is chaired by a mayor. Moreover, they authorise city administrations to decide on matters regarding social services and economic

1 The constitution of Federal Democratic Republic of Ethiopia, 1994 (here in after the FDRE Constitution)

2 These provisions of the constitution oblige regional states to adequately empower LGs to enable the people to participate directly in their affairs.

3 See Sustainable Development and Poverty Reduction Program (SPRDP) (2002) at 40.

4 Zemelak Ayele ''Local government in Ethiopia: still an apparatus of control?'' 2011 *LD and R* 11

5 In Ethiopia each region has semi-sovereign status because it has a constitution, a flag and a regional language to be used in schools, courts and public administration.

6 See TNRS proclamation No. 107/ 2005; Revised Proclamation for the establishment, organization and definition of powers and duties of urban centers in the Amhara Region, No. 91/2003 andThe revised Oromia City Proclamation No. 116/2006.

development, adopt their own budgets and hire and fire their administrative staffs within their territorial jurisdiction.

The proclamations further prescribe the authority of urban centres in urban plan initiation, preparation, approval, implementation, and related issues. All the city proclamations clearly state that urban centres at all levels have the authority to initiate, prepare, approve, and revise their urban plans. In this connection, they are also authorised to administer the lands and natural resources found within the borderline of the city.

1.1. The problem statements

In many countries of the south (the developing countries), as Decentralisation deepens, sub national levels of government and, for that matter, LGs become the front-runner in local level development.[7] LG is always, in all circumstances, considered as the vital device and the way to provide state benefits and services to the local inhabitants.[8] Without LG's system it is not possible to consider any political system to be complete and entirely democratic.[9] The federal constitution of Ethiopia only formally establishes two government levels. It is neutral on the subject of local government; no article addresses Decentralisation and/or local autonomy.[10] According to Zemelak, the place of local government in the federal matrix that the constitution established is not evident.[11]

Nevertheless, LGs, as the third tier, are recognized by RSs according to their own constitutions and governance structures. The most common LG structures are

7 Eric Oduro-Ofor *The Role of Local Government in Local Economic Development Promotion at the District Level in Ghana:* A Study of the Ejisu-Juaben Municipal Assembly Doctor rerum politicarum Thesis (University of Dortmund 2011)27

8 Asaduzzaman M ''Development Role of Local governance Institutions in Bangladesh, an empirical review'' 2009 *NJPPG* 2vol. XXIV available at https://www.researchgate.net/publication/280247414 accessed on 03/10/2018.

9 Adnan ul Haque ''Theoretical Perspective of Local Government - Literature Review'' 2012 *RIBP* 2

10 Assessing the Institutional Environment of Local Governments in Africa 2015 2nd edition 62: report published for the 7th Africities Summit, which was held in Johannesburg (South Africa) by *United Cities and Local Governments of Africa and Cities Alliance*

11 Zemelak Ayitenew Ayele and Yonatan Tesfaye Fessha ''The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia'' 2012 *IUP* 4

Woredas (in rural areas) and City Administrations (in urban areas) which are also referred to as ULGs.

Although the Constitution fails to recognize the LG level or falls short of in providing constitutional rights or protections to ULGs, each State has adopted city proclamations that describe the cities' powers and responsibilities. By this, cities came to be semiautonomous LG entities, having legal status as corporate bodies with their own political leadership (council) and their own budget.[12] They have also the right to collect municipal taxes and revenues.

ULGs are provided with lots of responsibilities for the development of the areas within their jurisdictions. This is mainly because they are closer to the action spots of many development issues. They are required to address complex and varying urban problems at the local level. The responsibilities of ULGs in developing countries cover local development related tasks including implementation of urban planning laws. In Ethiopia these responsibilities are clearly stated in the Regional and Federal proclamations.[13] These legislations authorise the ULG's to implement the urban planning laws. This means they are empowered to initiate, prepare, approve, and implement urban plans of within their jurisdiction. The success of ULGs in achieving these tasks would show their strength in addressing the challenges of urbanisation and their competence of grabbing its opportunities. Moreover, their success in this sector means bringing about orderly physical development in the urban centre and contributing to the local and national development. Cities are the main growth centres of economies and play the leading role in driving the change towards a more sustainable future and improved quality of life.[14]

But, conversely, failure in the implementation of urban plan laws would result in different urban problems and affects quality of life of the urban dwellers.

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12 See for example, Revised ANRS Proclamation No 91/2003 Articles 5-8

13 See for example, Revised ANRS Proclamation No 91/2003; SNNPR Proclamation No. 103/2006 Article 8-9; ONRS Proclamation No. 195/2015 Article 6

14 See message delivered by Dr Roland Busch CEO infrastructure and cities sector member of the managing board of Siemens AG on Urban Planning for City Leaders UN Habitat 2013 2nd edition p. v.

If cities are to perform their role as drivers of economic and social development, these problems should be addressed through effective planning and governance. Cities without practicable urban legal systems give rise to urban pathologies that negatively affect a country's economic and social development prospects.[15] Cities without planning laws are administered by a combination of an unbridled market, cultural traditions, and brute power.[16] Urban planning laws are, therefore, important tools for systematic and orderly development of cities and towns; including the eradication of influx of informal settlements in urban areas. They establish and regulate multifaceted systems that not only govern spatial development but also directly impact land management and finance at local and national levels.[17] They are in place to control and regulate development and to sustain perfect health of the society through their effective implementation. Therefore, the effectiveness of ULGs in the business of urban development, through implementation of urban planning law, is important for the benefit of local people and the state.

But there is evidence where the above-mentioned problems have persisted despite the existence of urban planning laws and ULGs are charged with the responsibility of implementing the same. Many urban centres in the country including the ANRS (the study area) face problems related to urban planning processes.

- Some urban centres are subjected to excessive delays in the preparation and approval of urban plans[18] which means, time elapse between the commissioning, finalization and approval of urban plans is very long. Often this results in haphazard and unguided development of urban centres.

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15 Wouters Jan, Alberto Ninio, Teresa Doherty and Hassane Cissé eds. 2015 The World Bank Legal Review, Volume 6. Improving Delivery in Development: The Role of Voice, Social Contract, and Accountability 213 Washington, DC: *World Bank*

16 Alterman R ''Planning Laws, Development Controls, and Social Equity: Lessons for Developing Countries'' 2013 *WBLR* 7 Vol. 5.

17 ''Planning Law Assessment Framework'' 2017 *UN-Habitat Urban Legislation Unit* Working Document 8

18 For e.g. Two cities in the Amhara region (Gondar and kombolcha cities) took long period of time in the plan process. They are still on the preparation process of their structure and local development plan that should have been completed before four and two years respectively.

- There also exist out-dated plans. A study[19] conducted on twenty-seven major urban centres in all of the nine RSs, found that more than a third of the cities have out-dated plans.
- Besides, some are weak in implementing the urban plans despite the fact that they have the plans. For example, the same study[20] shows that many urban centres have high number of informal houses and huge amount of illegally occupied urban land from 2011 to 2013. This situation clearly signifies the failure of urban centres to formally respond to the residential land demand of their residents as well as to enforce urban planning and land development regulations.
- Furthermore, there are urban centres which do not implement their urban plans at all. Still, some urban centres wait for orders to come from the zones or the other regional authorities instead of making planning related decisions by their own. They consider themselves as pure administrative agents of the regional state not as autonomous government organs to exercise the authority in the area.

Developing countries are at an intersection point. They either lack planning laws altogether, or their existing laws and institution (*for the purpose of this study ULGs*) are functioning only partially.[21] Most of the land area, including urban areas, is in effect not controlled by planning laws, even where they exist on paper.[22]

This is, therefore, a good point in time to take a hard look at the role and legal status of ULGs in implementing urban plan laws in terms of its impacts on urban development, with specific reference to the ANRS selected urban centres.

The ANRS' ULG is being selected for this study because of two main reasons. First, the structural and political frameworks within which ULGs in Ethiopia operate share common features as all ULGs in the country are created by state legislation and contain similar objectives, role, functions, and powers. Therefore, a study of the role of ULG in the ANRS does have relevance to ULGs in other states. The

19 State of Ethiopian Cities Project Report, (SECPR) is a study conducted by *ECSU* and *MUDHCo* the report is made in 2015
20 State of Ethiopian Cities Project Report, (SECPR) *ECSU and MUDHCo* (2015)128
21 Alterman 2013 *WBLR* 8.
22 Alterman 2013 *WBLR* 8.

second reason is the practicalities of conducting the research component. As the researcher of this study had worked in different positions in the study area, there will be minimal barriers to accessing stakeholders' opinion for this study. The author's local knowledge of appropriate opinion of stakeholders assisted him in securing relevant data that would be pertinent, informed and authoritative.

The research questions for this study therefore, are:

1 Why are the urban local governments not effective in the implementation of urban planning laws in their areas of jurisdictions?
2 What are the implications of ineffective urban planning law implementation by ULG on urban development process?
3 What are remedial actions that can enhance the role of ULG and improve effectiveness of urban planning laws?

1.2. Point of departure

In order to have clear understanding of the structure of this study, the following key point needs to be considered.

In Ethiopia the federal urban plan law and city proclamations of regional states grant ULGs powers and responsibilities relating to urban planning. The authority granted is broad and includes such matters like issuing policies, formulating, and executing plans of action that help, direct and support the urban development. They are also authorised to issue regulations and directives on matters which fall under the jurisdiction of the city administration.[23] Furthermore, they are empowered to implement urban plan laws.[24] It means they have the authority to prepare or to cause the preparation, approval, and implementation of urban plans.[25] Related to this, they have the authority to expropriate land and for that matter pay compensation and coordinate the activities of stakeholders.

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23 See Revised ANRS Proclamation No 91/2003 Articles 8(1) and 8(2)b
24 See Revised ANRS Proclamation No 91/2003 Article 8(2)d
25 See Urban Plan Proclamation No. 574/ 2008

My point of departure is to investigate into whether ULGs in the study area have played their urban planning related roles mandated to them by law. It aims at provoking a series of debates with emphasis on increasing their understanding of their role and legal status within the broader Ethiopian polity and the theoretical principles upon which the ULG, have been founded. While doing so the study carefully analyses the motives behind any process of decentralisation and its actual implementation in the national context. It also assesses the appropriateness of the legal and institutional frameworks which are created for facilitating the activities of the ULGs in the area.

Therefore, it is imperative to take a hard look at the laws/ rules/ governing this area in terms of their functional effectiveness and to suggest a way forward.

1.3. Research Methodology and Design

The overarching methodology that is employed to undertake the research for this study is an interpretative approach, leading to the implementation of a qualitative research method. Qualitative method to research is focused on subjective assessment of attitudes, opinions and behaviour.[26] Research in such condition is a task of researcher's insights and impressions. Such an approach to research produces results either in non-quantitative form or in the form which are not subjected to laborious quantitative analysis.[27] Normally, the techniques of focus group interviews, document analysis and depth interviews are used.[28] For this, the research employs mainly document analyses.

A research design can be described as an action plan for getting from 'where 'to 'there'.[29] The expression "Where" describes the initial set of questions to be answered and the phrase "There" signifies some set of deductions about these

26 Kothari C. R Research Methodology: *Methods and Techniques* (New Age International (P) Ltd 2004) 5
27 Kothari Research Methodology 5
28 Kothari Research Methodology 5
29 Kothari Research Methodology 5

questions. According to Kothari research design strives to address the following questions:[30]

- What is the study about?
- Why is the study being made?
- Where will the study be carried out?
- What type of data is required?
- Where can data are found?
- What periods of time will the study include?
- What techniques of data collection will be used?
- How will the data be analysed? and
- How will the report be composed?

If all the above questions can be answered appropriately by the researcher 's research design, then the researcher is in the proper track. From this, a research design provides a procedure of conditions for the gathering of and examination of data in a manner that connects the research with its objectives and questions to its conclusion.

The research design and method as was followed in this study started with the conceptualization of the research ideas through the review of literature and examinations of legal documents discussing them and analysing, identifying the gaps, and ended with recommendations. In order to lay down the general theoretical and philosophical background the existing scholarly writings were used. And then the relevant laws and institutional practices of the study area were analysed. Likewise, relevant research and seminar papers, annual reports, magazines, contents of newspapers and journals were also analysed. This research process recognized the logical order connecting the statement of the problem, initial research questions, purpose of the study and the objectives through document analysis to the findings and recommendations of the study.

30 Kothari Research Methodology 5

1.4. Research Objective

In a broader perspective, the national effects of devolution are in large part the sum of its local level effects. Hence to understand the overall political and functional system we must first understand how local governments work.

Thus, the study begins with the contention that the understanding of the involvement of LGs in local level development particularly in implementation of urban planning laws has paramount importance. Such contention is taken because ULGs are closer to the challenges confronting urban development at the local level and they are in a better position to address them. Furthermore, they are closer to other actors both at the local and national levels in the urban development process and will be able to play an important role in coordinating them together for bringing about faster and more equitable socio-economic development for a nation.

ULGs are often regarded as the level of government most accessible and contiguous to the public; they are located within urban local community; they also ensure platforms for active community engagement and play significant role in determining how the community will progress and respond to changing circumstances.

Therefore, the overall objective of this study was to investigate the role of ULGs of ANRS in implementing the urban planning laws. Based on this general framework, the specific objectives that guide the study are as follows:

To scrutinize the ULG's urban planning law implementation process, its roles, legal mandates, competency in terms of manpower (professionals), technology and skill; and its institutional set-up (the organizational structure of the urban centre or city administrations);

To investigate the powers and authorities of the various levels of government in relation to the implementation of the urban planning laws and their vertical and

horizontal relationships the control and supervision of higher level over the lower level, if any.

To identify and examine the involvement of actors in planning i.e., the RSs, the Federal Government and the public through public participation and the role played by ULGs in local urban planning law implementation process; and

To provide a clear demarcation of urban local government's role and present a series of recommendations that will assist a discussion about urban local government's future direction and to propose legislative measures regarding implementation of urban planning law.

1.5. Delimitation and Limitation of the Study

Delimitation is the boundaries of research as it is being proposed, which includes as the 'case' being investigated.[31] Therefore, the range of this study is demarcated in terms of the concepts and theories underlying the study, and the spatial coverage corresponding to research philosophy. In terms of major concepts, the study focused on LG, ULG and planning laws. And the study presented the association of these major concepts with some other concepts in the study such as ULGs' roles, status, and their eminence in execution of the said laws. The various aspects and components of planning laws are also discussed. These include the phases in the urban planning process and the actors involved in the playing field of the process, their expected roles. The constituent parts of planning laws include legislation governing land building and environment. The relations between all these concepts and their components are presented. The spatial focus of the study covers some ULGs in the ANRS of FDRE.

The limitations of a study are factors that may affect the results and it is beyond the control of the researcher.[32] The following were the main limitations encountered in the study. First, there exist no specific theories that systematically

31 Endale Haile Gizaw *Urban Governance with respect to cities' competitiveness in Ethiopia: the cases of Dire Dawa and Hawasa cities* (PhD Dissertation AAU 2017)11.

32 Endale Haile Gizaw "Urban Governance with respect to cities' competitiveness in Ethiopia'' p. 11.

and comprehensively discuss the concept of planning laws and the role of ULGs in implementation of such laws. Therefore, it was considered necessary to go through varying theories to find out their applicability in the study. Another limitation aroused from multiplicity feature of planning laws. The existing planning related legislation setup is manifested by variety of laws including urban land lease, expropriation, urban plan, building, environmental pollution, impact assessment, and waste management laws. To conduct an empirical study on each of these legislations in one research was found to be a very difficult task. Each of them is broad topic worthy of independent study even without seeing, their relationship with ULGs. Hence, the broadness of the topic was a limiting factor. Third, nationally published materials in the area were not available. As there were no nationally written research articles or publications in the area, especially, relating to planning laws, it was very difficult to get sufficient secondary/tertiary data from local sources. To address these limitations and to attain the generalizability of the results of this study, the researcher suggested the need for further research in the area.

1.6. Significance of the research

In the FDRE there is no critical legal writing on urban planning law and its relationship with the LG. At national level, there are just a few papers on urban planning laws, and they may not cover the entire extent of this research. Moreover, very little attention has been paid to the theoretical grounds and methodologies which are suitable for analysing the interrelations between law, LG, and urban planning. As a result, this piece is original and unique. Thus, it will be a significant step in analysing and defining the roles and responsibilities of the local governments and other actors involved in the whole planning process for effective implementation of plan.

In sum.

- It will be a major critical academic contribution to socio-legal studies.
- It will give a new policy perspective for federal, state and local governments who are engaged in the working of urban plans and

- It will inspire further research in the field.

1.7. Scope and Exclusions

This thesis concentrates exclusively on the issues related to the role and legal status of ULGs in the implementation of planning laws. To assist the exploration of the primary and subsidiary questions of this research project, an extensive examination of the relevant materials will be undertaken. Therefore, this chapter provides an overview of and insight into the key concepts under study in this research work. It discusses the nature and concepts of LG, ULG, and urban planning law from the perspective of various writers and practitioners as provided in literature. Other minor concepts such as 'decentralization', 'roles', 'status', 'local' and 'urban' will also be examined. The discussion is based on the discourse of LG as a decentralised, representative public institution. The first part covers the concept of urban LG and the other minor concepts while the second discusses that of urban planning law. The third tries to bring these two concepts together and review the implementation practice of urban planning law.

A study of the role of LGs in relation to the implementation of planning laws must be guided by certain theories and strategies underlying the various concepts. Even though there is no single and specific theory concerning the topic at hand, there are bodies of theoretical work that are pertinent to and enlighten the various major concepts and their interrelationships. Hence, this part of the literature review discusses some selected theories within which the study is considered and tries to connect the two major concepts of ULG and urban planning law.

It is to be noted that 'Local government' is not synonymous with 'urban local government'. The former concept is the whole and the later concept, which is qualified by the concept "urban", is a part of the whole. LG includes rural LG as well. As the study focuses on urban LG per se Issues related with 'rural local government' (RLG) are excluded from the orbit of this examination.

It is also commendable to mention that the total number of the urban local governments in the region and the resultant complexities would make a study too broad for the scope of this thesis. Consequently, a decision is taken to exclude some ULGs and to focus on few specific ULGs within the ANRS.

1.8. Definitions and Conceptual Discussion of LG and Decentralisation

1.8.1. Introduction

LG has become virtually universal feature of modern states since Jeremy Bentham, the father of the Utilitarian School, conceived the term 'local government'.[33] In Britain, systems of LG have existed since the Norman Conquest.[34] They have long been regarded as bulwarks which protect the citizens from centralised tyranny**.**[35] In the USA, the LG system came with the arrival of Anglo-Saxons. When the first colonists came over from England to North America early in the seventeenth century, they brought with them, of course, a familiarity with the local institutions of the mother country.[36]

The history of LG in South Africa dates back to a time during the formation of the Union of South Africa in 1910**.**[37] The official history of the Ethiopian state was assumed to begin from the Axumite Kingdom. The kingdom was established in the first millennium in the northern part of the country. Some historical evidence submits that the Axumites governed in a decentralized way by imposing tributes on newly subjugated peoples and kingdoms in exchange for military protection by

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33 Hill D M. (1974) "Democratic theory and Local government" in Jong Soo Lee *Analysing Policy Variation in Local Government: An Empirical Study of Social Policies in Korean Local Government* (PhD thesis University of Sheffield, 1993) 11.

34 Howard E Local Government: Policy and Management in Local Authorities 3rd ed (Taylor & Francis e-Library 2005) 2.

35 Howard *Local Government* 2

36 HERMAN G James Local *government in the United States* (D Appleton and Company New York 1921)66

37 Mathenjwa M 2018 "The Legal Status of LG in South Africa under the New Constitutional Dispensation" *SAPL* 1 Available @ https://upjournals.co.za/index.php/SAPL accessed on 10/8/2019

the empire (Perham 1969: 22-25; Solomon 2008: 11).[38] For most of its long history, Ethiopia has had a decentralized arrangement of government in which the head of state at the centre co-existed with moderately autonomous regional and local nobilities.[39]

However, the present system of LG is not identical with that of the olden days. In those days there was no conscious effort at delegation of power and the local people were not involved in the decision-making process. Mainly, LGs were a kind of local administration established and organised under the control of the central government, with their heads and membership controlled mostly by the centre.

At the present time, LGs are created in different manner. In countries like Brazil, Denmark, France, India, Italy, Japan and Sweden they are created by national constitutions. Countries such as Australia and the United States formed LGs through regional state constitutions. New Zealand, the United Kingdom and most countries established LGs by ordinary statute of higher order of government. Still, some nations like Canada, Pakistan they are creature of provincial or state law. Countries like China establishes LGs by executive order to deliver a range of specified services to a relatively small geographically delineated area.[40] Moreover, their structures and powers (both formal and informal) vary significantly across the world.

Even though, LG may be seen commonly as a legally constituted body for development at the grassroots level, there are various types of LG based on their geographical location. Thus, we have the traditional, the English, the French and the communist types.[41]

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38 Perham M (1969) "The Government of Ethiopia" In Tesfay, Aberra *the extent and impacts of decentralization reforms in Ethiopia* PhD dissertation Boston University (Evanston: Northwestern University Press 1969) 44.

39 Assefa F "Federalism and the accommodation of diversity in Ethiopia" Gebru T "Ethiopia: power and protest" and Solomon N "Fiscal federalism in the Ethiopian ethnic based federal system" Cited in Zemelak A "Local government in Ethiopia: still an apparatus of control?" 2011 *Law Democracy & Development* 3. available @ https://www.researchgate.net/publication/272330019 accessed on 11/17/2019

40 Anwar Shah with Sana Shah *''Local governance in developing countries''*(WB 2006)1.

41 Osakede K and Samuel Ojo ''Local Government Autonomy and Democratic Governance: A Comparative analysis of Nigeria and United States of America'' 2014 Journal of *Policy and Development Studies* 60 available @ www.arabianjbmr.com/JPDS_index.php

According to Hesse and Sharpe, there are three broad types of local government.[42] The first is the Anglo group, in which LG is a creature of statute, but enjoys a high degree of day-to-day autonomy from central control. They advocate that such a group would comprise, in addition to the United Kingdom, countries such as the Republic of Ireland, Canada, Australia, New Zealand, and with some qualifications, the USA.[43] This group has limited legal and political status, but they enjoy wide discretion on a day-to-day basis.

The second group is known as the Franco group, in which LG follows the French, or Napoleonic model.[44] In its purest form, LG enjoys constitutional status, but, for provision of service, it is usually dependent on the assistance and direction of de-concentrated central field agencies.[45] This group comprised of France, Italy, Belgium, Spain, Portugal, and some parts of Greece. LGs in this group have greater political status but they have limited legal status and apparent limited discretion.

The third group to which Hesse and Sharpe draw attention is what they call the north and middle European variant. Under this group the Scandinavian countries, Germany, the Netherlands, Switzerland, and Austria are significant.[46] This group accords LG to enjoy high constitutional status.[47] According to this group, LG also has a relatively high degree of local self-rule and financial independence, as well as it is responsible for many of the personal welfare state functions than the other two groups.[48]

Today, despite noticeable historical and current differences between structures around the globe, LG worldwide is said to be at the lead of service delivery. They

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accesses on 11/27/2019

42 Mike Goldsmith “Normative Theories of Local Government: A European Comparison” in Gerry Stoker and Desmond king (eds) *Rethinking Local Democracy* (Macmillan press ltd 1996) 174-175.

43 Mike Goldsmith “Normative Theories of Local Government page 175.

44 Mike Goldsmith “Normative Theories of Local Government page 175.

45 Mike Goldsmith “Normative Theories of Local Government page 175.

46 Mike Goldsmith “Normative Theories of Local Government page 175.

47 Mike Goldsmith “Normative Theories of Local Government page 175.

48 Mike Goldsmith “Normative Theories of Local Government page 175.

are regarded as democratic, participative, responsive, efficient, and effective government at local level. LG in the world is currently undergoing a profound shift in the manner it organises its activities and the way it relates to the community it serves. It cannot be regarded as a quiet backwater of routine administration and parochial politics. Instead, it has been pushed into the limelight.[49]

The contemporary business of LG involves a directly elected body responsible for a range of functions. At present, most of them have assumed more responsibility for policymaking, management, and implementation of important national goals, policies and plans. In the words of Gerry stoker "The linchpins of the modern system remain directly elected, multi-purpose local authorities".[50]

1.8.2. Definition of LG

Despite the fact that the LG discourse has been in the limelight for a long period of time, it has no a common and settled definition.

In various literatures, LGs are interchangeably referred to as "local authorities'', "local self-government'', ''city councils'', "municipalities", "urban administration'', etc. The concept of LG varies from country to country in terms of its characteristics relating mainly to decentralisation of decision-making process. It is also difficult to invent a single and comprehensive conceptualisation of the term fitting to both the developing and developed nations of the world. It has been defined in different ways, depending on the orientation and practice of its users.

Yet there is the need to explore what exactly is meant by LG. For instance, Gomme[51] sees LG as that portion of the whole government of a country or state which is administered by authorities inferior to the state authority, but elected, independently of control by the state authority, by competent persons resident, or

49 Gerry Stoker The *politics of Local Government* 2nd ed (THE MACMILLAN PRESS LTD 1991) XIV.

50 Gerry Stoker *The politics of Local Government* XIV.

51 Gomme G.L. *"Lectures on the principles of the local government"* (Archibald Constable and Co.1897) 2

having property, in certain localities, localities which have been designed by communities having communal interests and shared History.

According to John J. Clarke, "LG appears to be that part of the government of a nation or state which deals mainly with such matters as concern the inhabitants of particular district or place".[52]

The guideline for LG reforms of Nigeria in 1976 defined LG as "Government at local level exercised through a representative council established by law to exercise specific powers and function within defined areas"[53] it is also required to initiate and direct the delivery of services; to determine and implement projects so as to supplement the activities of the state and federal government in their areas, and to ensure that local initiative and response to local needs and conditions are maximized.[54] LG simply means government at the local level or LG at the lowest layer of administration within a country.

The United Nations Office for Public Administration describes the term as "A political subdivision of a nation or (in a federal system) state". According to it, LG is constituted by law, and it has significant control of local affairs, including the powers to impose taxes or to exact labour for prescribed purposes.[55] The governing body of such an entity is elected or otherwise locally selected.[56]

The UNHRC at its Thirtieth session defined the term LG as the lowest tier of public administration within a given State.[57] In unitary states, LG usually comprises the

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52 Clarke J.J. *The local government of the United Kingdom and the Irish free state* London 7th ed (Sir Isaac Pitman and Sons ltd 1932) 2.

53 Cited at Abugu S O ''The role and challenges of local government in community development'' 2014 *RPAM* 2.

54 Chukwuemeka Emma et al ''Nigeria Local Government: A Discourse on the Theoretical Imperatives in a Governmental System'' 2017 *ARR* 308.

55 Otive Igbuzor ''Local Government Reform and Constitutional Review in Nigeria'' 2009 Centre for Democracy and Development (CDD) available @ http://www.gamji.com/NEWS2676.ht m accessed on 24/09/2018.

56 See Jha SN & Mathur PC (eds) *Decentralisation and local politics* (New Delhi, London: sage publications 1999) 58.

57 Role of local government in the promotion and protection of human rights: Final report of the Human Rights Council Advisory Committee (UN General Assembly 2015)3 A/HRC/30/49.

second or third level of government, whereas in federal states, it is instituted as the third or sometimes fourth level of government.

The concept of LG was conceived by Blair in a more elaborate form as an institution with peoples occupying a defined area. According to him, LG has a locally authorized organization and governing body with a separate legal entity and the power to provide certain public or governmental services and a substantial degree of autonomy having legal or actual power to raise part of its revenue''.[58]

In this regard, LG can also be well-defined as a public body which is a subdivision of a regional or national government found in relatively small area and which is authorized to decide and administer a limited range of public policies.

According to Vosloo, Kotze and Jeppe, LG is a "decentralised, representative institution with general and specific powers, devolved upon it, and delegated to it by central or regional government in respect of a restricted geographical area within a nation or state and in the exercise of which it is locally responsible and may to a certain degree act autonomously".[59]

LG is often viewed as the level of government most accessible and closest to the community: it is located within the local populations, providing opportunities for direct community participation in its affairs; it provides many basic services that impact the health, safety and quality of life of its inhabitants; and it has a substantial role in determining how a community will develop and respond to changing circumstances. In sum, LG deals with the problems that are close to home and that the actors find easy to grasp.[60]

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58 Chukwuemeka, Emma *et al 2017 ARR* 308

59 Stephen Chakaipa 2010 ''the future of local government in Zimbabwe a policy dialogue: Local government institutions and elections'' edited by *De-visser J, Steytler N and Machingauta* N 49.

60 Danny van A & Guido D (2007) ''The decentralisation of city government and the restoration of political trust'' available @ http://www.tandfonline.com/loi/flgs20 (Published online: 29 Jan 2007) 26 accessed on 05/10/2018

The organization and functioning of LG vary considerably between countries.[61] Based on the relations between local authorities and central government or regional authorities, the typology of LG may be different. In a federal system of government like Ethiopia, LG is usually the third level government. In a unitary arrangement, like Britain, it naturally exists as the second order government to the national level. The level and autonomy of local governments also varies between ethnic federal states, like Ethiopia, and those based their federal structure on civic nationalism, like the USA. Some local governments are created by constitutional arrangements; LG in RSA[62] and some are established by regional laws like ULGs in the FDRE.

LG is a worldwide institution, but it exists in various forms and in wide-ranging political systems. Yet, there are certain common features of local government. These features include the facts that a local government:

- usually exists as the lowest tier of government in the governmental administrative system i.e., it functions at the local or grassroots level;
- operates within a well-defined geographical territory;
- has a relative autonomy or independence; the capability of the LG to take some political, economic and social decisions without recourse to any of the two super structures; State and Federal Governments;[63]
- has a variety of legally delineated functions to perform;[64]
- has its council composed of elected or selected members;
- has a corporate status or has legal personality; can sue and be sued; has powers to raise resources for funding various development projects.

61 Role of local government in the promotion and protection of human rights: Final report of the Human Rights Council Advisory Committee (UN General Assembly 2015) 3 *A/HRC/30/49.*

62 The Constitution of the Republic of South Africa, 1996 section 40 (1)

63 Olasupo FA 2013 ''The Scope and Future of Local Government Autonomy in Nigeria'' Published Online September 2013 in Scientific Research available @ (http://www.scirp.org/journal/aasoci) 207 accessed on 28/09/2018

64 See for example section 156 and Schedules 4B and 5B of the Constitution of RSA 1996 that contain lists of functional areas that are the responsibility of local government.

1.9. Concepts of Decentralisation

The powers of LGs are subject to various forms of control by the central or regional government. The balance of this control is the power enjoyed by LG (which is technically referred to as autonomy). The less control on LG by the central government, the more autonomy permitted to these units. In this same vein, the tighter the control of LG affairs by the central government results into a reduced amount of the autonomy of LG powers. Decentralisation is an expression that summarises this continuum of power relations or levels of institutional powers.

1.10. Definitions of Decentralisation

Decentralisation is the allocation of authority and responsibility for civic functions from the central government to intermediate and LGs or quasi-independent government organizations and/or the private sector.[65]

Decentralisation is a relative, complex and multidimensional process.[66] It is relative in that it defines the distribution of state resources (responsibility, finance, personnel or discretionary power) between several institutional actors within the state and/or the social order against some normative mode in space or time. It is a multifaceted process in that it integrates and is impacted upon by political, economic, institutional and cultural factors. Moreover, programmes of decentralisation are a combination of centralization, privatization, and de-concentration and in some cases devolution. To conclude, decentralisation is a multidimensional process that frameworks the sharing of power and resources between state and society, the administrative and other branches of the government, at micro level between central and LGs, central government and their field administrations, central/LGs and non-governmental entities, as well as at

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65 Hans Bjørn Olsen (external consultant) 2007 Concept Paper on ''Decentralisation and Local Governance'' 4

66 Olowu D 2001 ''Decentralization Policies and Practices under Structural Adjustment and Democratization in Africa'' *UNRISD* 2

higher levels between governmental units within a federal or international system.[67]

LG is a decentralised political entity and local governments' systems are forms of decentralisations. These systems vary across countries and the level of power a LG enjoys may be categorised in to two forms; a truly decentralized one (devolution) or merely a delegated form by the system (de-concentration).

1.10.1. Devolution

Devolution is the legal function mechanism of conferring powers to discharge enumerated and listed or residual power upon legally constituted local authorities. Through devolution, the central government confers self-governing powers on local communities.[68] LGs that enjoy devolution of powers are likely to have more autonomy and exercise greater powers over its local affairs than LGs that are de-concentrated. Devolution requires that LGs be given autonomy and independence and be of clearly perceived as a separate level over which central level of government exercise little or no direct control.[69]

LGs that enjoy devolution are expected to exhibit the following characteristics:

- their existence is constitutionally guaranteed
- they also have constitutional backing to accomplish certain statutory functions
- Exercise authority or control over policies, budget preparation, its revenue and its workforces or staffs; and
- The council is democratically constituted and, therefore, accountable to the public (the people become the main source of power).

1.10.2. De-concentration

67 Olowu 2001 UNRISD2.
68 Olowu 2001 UNRISD13.
69 Dennis A. Rondinelli James S. McCullough and Ronald W. Johnson '' Analysing Decentralization Policies in Developing Countries: a Political-Economy Framework''1989 (SAGE, London, Newbury Park and New Delhi) 75.

De-concentration is the allocation of authority, adequate for the discharge of clearly stated functions to staff of central departments who are located outside the headquarters. It refers to “an administrative measure involving the allocation of management responsibilities and resources to representatives of the central government situated outside the headquarters at one or more levels (province, region, division and district)”.[70] As stated by Aldermen, it is the transfer of powers to subordinate or lesser authorities, whether offices, individuals or field units.[71] De-concentration is often understood as a controlled form of decentralisation and is employed most frequently in unitary states. It can merely shift tasks, responsibilities and accountabilities from central government officials in the capital city to employees working in regions, provinces or districts, or it can form strong field administration or local administrative capacity under the management of central government ministries. In its weakest form de-concentration simply involves the shifting of assignment from central government ministry headquarters to workers located in offices outside of the national capital.

The term “decentralisation” can also be viewed based on the subject matter in consideration or perspective taken. In this regard Decentralisation can be defined in four ways as discussed below:

1.11. Political Decentralisation

Groups at different echelons of government–central, meso and local– are empowered to make decisions related to what affects them. This model is most often practiced in highly decentralized political systems like federal states where sub-national governments have an independent legal existence guaranteed by constitutional arrangements.[72]

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70 Adamolekun; 2002 see at Jide Ibietan and Okey Ikeanyibe. 2017. “Decentralisation And Local Government Autonomy: Implications for Grassroots Development in Nigeria’s Fourth Republic.” *Administrative Culture* 8.

71 Aldermen 1967 (see at Jide Ibietan 2017).

72 Meheret Ayenew ‘’Decentralization in Ethiopia:Two Case Studies on Devolution of Power and Responsibilities to Local Government Authorities’’ in Zewde B and Pausewang S (eds) *Ethiopia: The Challenge of Democracy from Below* (Nordiska Afrikainstitutet, Uppsala and FSS Addis Ababa2002)130.

1.12. Administrative Decentralisation

Different orders of government administer and manage resources and matters that have been delegated to them, commonly through a constitution. In terms of decentralisation as a process of change, and along with the level of transfer of responsibilities, it is valuable to distinguish between de-concentration, delegation and devolution.

1.13. Fiscal Decentralisation

In this case, previously concentrated powers to tax and generate revenues are dispersed to other levels of government, e.g., LGs are vested with the power to raise and retain financial resources to accomplish their responsibilities.

1.14. Market Decentralisation

Government privatizes or deregulates market functions. Such type of decentralisation can also be exercised through market surrogate strategies. According to Rondinelli, a market surrogate approach is that kind of strategy which seeks to improve performance in public sector institutions by institutional reforms or designs which offer some important efficiency elements of markets.[73] He asserted that those local services over which the central government retains control for political reasons can be improved through 'market surrogate' arrangements.[74]

73 Dennis A. Rondinelli et al 1989 "Analysing Decentralization Policies in Developing Countries: a Political-Economy" Framework *SAGE, London, Newbury Park and New Delhi* 76.
74 Dennis A. Rondinelli et al 1989

1.15. Layouts of Chapters

The output of the study is organized into the following nine chapters.

Chapter 1

This chapter introduces the entire study. It consists of an extensive introductory framework that addresses the purpose of the study and explains the problem statement, the point of departure, the objective of the study, and the research methodology.

Chapter 2

The second chapter covers the conceptual and theoretical thoughts relating to LG, ULG, decentralisation and urban planning. This chapter is designed to contextualise LG and will present the theories that underpin and support the concept of urban local government.

Chapter 3

The third chapter explains the historical development of urban planning law and urban local government. It comes across at the origins, philosophical foundations and evolutionary trajectories of both areas of law, explaining their relations and complementarities that have directed to the current state of affairs. Special attention is paid to the Ethiopian situation given its unique historical and political context.

Chapter 4

The fourth chapter discusses the legal status of ULG in the broader Ethiopian political and legal context. It examines the powers, duties, functions and organisational structure of ULGs and their respective organs. The relations of multilevel government and the practical inconveniences in implementing the urban plan laws is also part of this chapter.

Chapter 5

The fifth chapter describes and explains the various planning laws and regulations functioning in the country. Planning law comprises some proclamations and regulations relating to urban planning. These are: Urban Plan Proclamation, Building Proclamation, Urban Land Lease Holding Proclamation, Land Expropriation and Payment of Compensation Proclamation, Environment Impact Assessment and Environment Pollution Control proclamation. It highlights briefly the content and significance of these legal instruments.

Chapter 6

Chapter six gives detailed account on the planning processes recognized under Proclamation 574/2008 it includes plan initiation, preparation, approval, implementation, modification and revision of urban plan.

Chapter 7

Chapter seven deals with ULGs legal roles and mandates in implementation of planning laws. The Ethiopian laws allocate the roles and mandate of implementation of planning laws to the different order of government i.e. to the federal, RSs, and ULGs. As the objective of this research is to investigate into the roles and responsibilities of ULGs in implementation of planning laws, this topic focuses on the roles and responsibilities of this organ as provided in the planning laws. It comprehends a detailed account of the encounters came across by the ULGs.

Chapter 8

Chapter eight consists of the major findings on the role of ULGs in the Implementation of Planning Laws and forwards workable recommendations. It includes findings on the roles performed by the ULGs and their capacity in the implementation of planning laws. Moreover, findings relating to the institutional framework and findings on the role played by different actors in the implementation of planning laws are part of this chapter.

Chapter 9

The final chapter, chapter nine, wraps up the study and briefly discuss the journey of the thesis. It highlights the problems investigated and dealt with and shows the existing and potential opportunities.

CHAPTER 2

Literature Review

2.1. Introduction

2.2. Definition of ULG

Local governments exist geographically both in urban and rural settings.[75] Generally, those local governments which exist in urban area are called ULGs. Here the term urban area usually denotes a compact and densely populated area as opposed to sparsely populated rural region. The definition of rural areas or grassroots is not in contest, they are basically typified by their features of infrastructural deficits; prevalence of poverty; peasantry; disconnect from urban areas due to poor feeder roads and many other factors.[76] Diversified functions can be found in urban areas including residential, industrial, commercial and recreational. Most inhabitants of urban areas, therefore, have non-agricultural jobs. Urban area can denote to towns, cities, and suburbs.

In various countries, the expression urban LG is interchangeably referred to as "urban government", ''city councils'', "municipalities", "urban administration'', ''city administration'', "city Government" etc. It is a type of government which is freely elected at city, town or otherwise municipality level and having authority to undertake the power to accomplish public activities within the geographically defined territory.

In Ethiopia, the issue of LG is entrenched in two ways. First, Article 39 provides for the establishment of an autonomous LG that is organized along ethnic lines. It means such LG can only be formed for an ethnic group that is geographically concentrated. The second one is provided under article 50(4) which is based on

75 Role of local government in the promotion and protection of human rights: Final report of the Human Rights Council Advisory Committee (UN General Assembly 2015) 4 *A/HRC/30/49.*

76 Jide Ibietan and Okey Ikeanyibe 2017 "Decentralisation And Local Government Autonomy: Implications for Grassroots Development in Nigeria's Fourth Republic" *Administrative Culture*13.

geography or administrative convenience. It is a LG that, like most other local governments in many countries, is established to enhance democratic governance, ease development, and foster public participation.[77]

The LG provided under article 50(4) has two forms: the urban administration and rural Woredas. ULGs have the same status as Woredas. They assigned with state and municipal functions. State functions comprise health, education, and agricultural services. Municipal functions consist of preparation, approval, and execution of development plans; assessment and collection of permissible municipal revenues; provision of internal roads and bridges; provision of markets, slaughter houses, terminals, public gardens, recreational areas, and other civic facilities; regulation of cleanliness and management and disposal of solid waste, water, sewerage, and drainage amenities; management of urban land and provision of urban land services; and delivery of varied services, including fire protection, libraries, public toilets, street lighting, nursery schools, and ambulance services.

Under the FDRE constitution, the issue of LG is the jurisdiction of regional states. And there is no explicit recognition of LG by the federal constitution.[78] Yet there is a provision which obliges states to grant adequate power to local governments. Based on this, regions created Woreda local governments through their regional constitutions.[79] And ULGs are created by city proclamation of regional states.

The ANRS (the study area) adopted its constitution[80] and organised its state structure. It comprised of regional, local (Woreda), and kebelle administrative units[81]. The power and functions of these administrative units are defined.[82] Ethnic

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77 Zemelak A and Yonatan T ''The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia''2012 *IUP* available @ http://www.jstor.org/stable/10.2979/africatoday 13 accessed on 12/07/2018.

78 See FDRE Constitution 1995: arts. 51 and 52, determining the powers of local governments is a matter left to the regional states and, in particular, to the councils of regional states.

79 FDRE Constitution 1995: article 50(4).

80 The revised constitution of the Amhara Natonal Regional State (ANRS) Proc. No. 59/2001 zikre hig gazette 7th year No. 2 Bahirdar.

81 See articles 45(1), 83, 84, 96 and 98 of revised constitution of the ANRS.

82 See articles 45(2), 47 and 73(1) of revised constitution of the ANRS.

based LG administration is also established.[83] The regional constitution also leaves the formation of other levels of administration whenever found necessary.[84] Accordingly, the regional council passed city proclamation[85] for the establishment of urban local governments in the region and defined their powers and functions.[86]

The proclamation classified urban centres into three categories: city administration cities, municipal towns and emerging towns.[87] Above and beyond, city administration cities take the form of organisation as city administration, amalgamated city administration and metropolitan city administration. These categories of urban centres have the power of issuing policies, formulation and execution of plan of actions that help, direct, and support the urban development. They have managerial, administrative, and financial autonomy.

2.3. Legal status and Roles of ULG

The legal status and roles of urban local governments, their organisation, and functioning vary considerably between countries.[88] ULGs are normally a third tier of government with the intermediate level occupied by some form of state or provincial government.[89] They may have different constitutional status, from large federal units like an Indian State to an upper level local authority like the Philippine Province or a level of de-concentrated administration such as the Kenyan Province.[90] Very large cities occasionally take this intermediate position, with or without lower-tier municipalities.[91] Beijing, Shanghai, and Tianjin are autonomous cities with provincial status, so are Bangkok and Jakarta.[92]

83 See articles 39(6), 45(2) and 73(1) of revised constitution of the ANRS.
84 See article 45(1)of revised constitution of the ANRS.
85 The revised ANRS Urban Centres Establishment, Organisation and Definitions of their Power and Duties Proclamation No 91/2003
86 See Articles 8 and 11 of the revised ANRS Proclamation No 91/2003
87 See Article 4(1) of the revised ANRS Proclamation No 91/2003
88 Role of local government in the promotion and protection of human rights: Final report of the Human Rights Council Advisory Committee (UN General Assembly 2015) 4 *A/HRC/30/49.*
89 Kenneth Davey ''Strengthening Municipal Government'' 1989 *WB Infrastructure and Urban Development Department* 8-9.
90 Kenneth Davey (1989)9
91 Kenneth Davey (1989)9
92 Kenneth Davey (1989)9

As in many other federal countries, the constitutional division of powers in Ethiopia is restricted to the regional states and the national government. Determining the powers of local governments is a matter left to the regional states and to the councils of regional states.[93] Although the Constitution establishes a federal state and outlines a clear division of powers between the levels of government, the same cannot be said about its position on the status and role of LG in the federal arrangement.[94]

However, the regional states in Ethiopia legally established the RLG (Woredas) and ULG. A Woreda i.e. the RLG has a council, a legislative organ whose members are directly elected by the local people. The chief administrator, elected by the council from among members of the council, heads the executive.

The equivalent of a Woreda in urban areas is a city administration (ULG), an equally autonomous LG. The deliberative arm of the city administration is the city council (CC), whose members are directly elected by the populations of each city administration. A city administration has a mayor, a mayoral committee, a professional municipal manager, a municipal judicial organ, and a municipal administrative court. ULG is created through regional statutes,[95] as opposed to a Woreda, established through regional constitutions.[96]

City administrations discharge two kinds of functions, state and municipal functions. State functions relate to such social services as education, health, and so forth, which are primarily the responsibility of regional states.[97] Municipal functions include sewage, streets, streetlights, land administration, solid wastes, firefighting, nursery, care centres, and so forth.[98]

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93 See Constitution of FDRE 1995 articles 50(4), 51 and 52.
94 See Constitution of FDRE 1995 articles 51 and 52.
95 For example, see The revised ANRS Urban Centres Establishment, Organisation and Definitions of their Power and Duties Proclamation No 91/2003.
96 For example, The revised constitution of the Amhara Natonal Regional State(ANRS) Proc.No.59/2001zikre hig gazette 7th year No. 2 Bahirdar.
97 Zemelak A and Yonatan T ''The Constitutional Status of Local Government in Federal Systems:The Case of Ethiopia''2012 *IUP* @ http://www.jstor.org/stable/10.2979/africatoday 21accessed on 12/07/2018.
98 Zemelak A and Yonatan T(2012) 21.

The major responsibilities of municipalities were set in Proclamation No 74/1945 and Proclamation No. 206/1981. More recently regional governments have adopted city proclamations and reviewed the roles and functions of municipalities under their jurisdiction. Allowable municipal functions include:

- preparation of budget proposals;
- assessment and collections of allowable municipal revenues;
- preparation and execution of development plans;
- provision of internal roads and bridges;
- provision of market, slaughter houses, terminals, public gardens, recreational areas and other public facilities;
- regulation of cleanliness, and provision of solid waste management and disposal, water, sewerage and drainage amenities;
- delivery of miscellaneous services including fire protection, library, public toilets, street lighting, nursery schools, ambulance services etc.

In the ANRS, the status, powers and responsibilities of ULGs is governed by the regional city proclamation.[99] For the purpose of their administrative organisation, management and accountability, the proclamation classified urban centres in the region into three major categories. These are city administration cities, Municipal towns, and Emerging towns.[100] In addition to this, city administration cities take the form organisation city administration, amalgamated city administration and Metropolitan city administration.[101] The proclamation regulates the powers and functions of these urban governments. A city administration established at any level shall have the power to issue local policies and regulations and the executives and judicial powers it needs to administer the city in accordance with the national regional constitution and other laws.[102] This shall include powers given by the constitution and other laws, and powers not plainly prohibited by such laws.[103] The powers and duties of city administration is further provided in a

99 The Revised ANRS Proclamation No 91/2003
100 The Revised ANRS Proclamation No 91/2003
101 The Revised ANRS Proclamation No 91/2003
102 The Revised ANRS Proclamation No 91/2003
103 The Revised ANRS Proclamation No 91/2003

detailed manner in the proclamation.[104] It includes such power as causing the study and revision of master plan; approval and supervision of its implementation.[105]

2.4. The concept of urban planning

The expression urban planning comprises of two terms; urban and planning. Urban means an environment in which natural surrounding has been dominated by artificial or manmade surroundings which man builds for himself, for his living, working and recreation. Planning means pre-thinking and pre-arranging things before an event takes place so as to attain good results in health, convenience, comfort and happiness of living beings.

The combined meaning of the expression urban planning is, therefore, denotes an activity that shape and guide the physical, social and economic growth of an urban centre. It is a future oriented activity. According to the Ethiopian law, urban[106] centre means any locality having a municipal administration or a population size of 2000 or more peoples, or at least 50% of its labour force is, primarily, engaged in non-agricultural activities.

Definitions of urban planning have a tendency to vary according to planning theory and the planning system of a country, region or city.[107] It ranges from those that focus mainly on physical form, such as "The branch of architecture dealing with the design and organisation of urban space and activities" via "part of societal planning, which aims at guiding human activities and the utilisation of land in human settlements", to more holistic ones.[108]

104 The Revised ANRS Proclamation No 91/2003 article 8(2)(a-z)
105 The Revised ANRS Proclamation No 91/2003 article 8(2) (c) see also Articles 60 and 61 for specific urban plan related powers.
106 Ethiopian building proclamation No.624/2009 and urban plan proclamation proc. No. 574/2008
107 Liisa H in ''New Approaches to Urban Planning'' *Insights from Participatory Communities* (Aalto University Publication series Aalto-ST 10/2013)12
108 Liisa H in New Approaches to Urban planning12

Urban planning is also defined as the "preparation of plans for a limited or as a whole development of cities, with the current situation, as well as forthcoming situations in mind".[109] This is to ensure that land use, transportation, buildings, landscapes, open places, infrastructure, economic investments, jobs and businesses are included in plans for the advancement of communities.[110] It is to formulate plans for the development or reconstruction of a city or urban locale. It takes place in view of current situations as well as future developments. Such plan is usually a combination of maps and written proposals and predictions, and its intention is to guide potential development in a coordinated manner.

The types of urban plans recognised under the Ethiopian law are city wide structure plan (SP); and local development plan (LDP).[111] An SP is a legislative framework that guides the development or redevelopment of property over a lengthy period (ten to fifteen years).[112] It is used to determine future development and land use patterns, as well as the layout of core distribution networks, infrastructure, and major transportation routes, including terminals, conservation and protected areas, and other essential characteristics for controlling growth direction. Under the Ethiopian law the duration of SP is 10 years, and it is a legally binding plan along with its explanatory texts formulated and drawn at the level of an entire urban boundary that sets out the basic requirements regarding physical development- the fulfilment of which could produce a coherent urban development in social, economic and spatial spheres.[113] The Structure Plan is a binding technical, institutional and policy framework for guiding the long-term social, economic, environmental, and spatial development of the city and its surrounding.[114] An LDP is also a legally binding plan depicting medium term, phased, and integrated urban upgrading, renewal and expansion activities of an

109 Endale Belay "Legal Issues and Professional Planning Practice" *Teaching Material Last updated 2017* (Mekelle University Institute of Technology2017) 62.
110 Endale Belay "Legal Issues and Professional Planning Practice 62
111 Urban plan proclamation proc. No. 574/2008 article 8
112 The Planning Model: STRUCTURE PLAN GUIDELINES Volume 3 by MAPLE and CERSGIS p. 3 available at www.tcpghana.gov.gh
113 Urban plan proclamation proc. No. 574/2008 article 9(1)
114 Lia, (2017) Addis Ababa City Structure Plan Draft Final Summary Report (2017-2027) *AACPPO* P.32

urban area with the view to facilitating the implementation of the SP by focusing on strategic areas.[115]

Urban planning has customarily been the field of architects and engineers . It was taught at engineering schools and technical colleges, as part of the ordinary education. It was viewed, first of all, as an exercise in the physical design and planning of land use and built form.[116] Today, urban planning is part of a more comprehensive social planning. Hence, it involves a number of other professional groups such as economists, environmentalists, geographers, demographers, environmentalists, economists, sociologist, lawyers, landscape architects, and many more. The complexity of the evolving urban setting requires planners to collaborate more closely with experts from other disciplines to make better and more effective decisions.[117] For example, in India, for comprehensive planning of cities and regions, the Core Planners' team must include urban planners and/or regional planners, environmental planners, transportation planners, and infrastructure planners.[118] Aside from a team of planners, the research requires specific professionals, such as an urban designer, a legal expert, an economist, a geographer and demographer, and a sociologist/anthropologist.

2.5. The concept of urban planning law

Planning laws or urban planning laws (we use them interchangeably for our purpose), are called differently in different countries: land-use planning, zoning plans, land management, local planning, urbanization, spatial planning, town and country planning, urban and regional planning, city planning, environmental planning, development control.[119] In this study, the expression planning law is used to signify that body of law which governs the urban plan initiation,

115 Urban plan proclamation proc. No. 574/2008 article 11(1)

116 Nigel T ''Urban Planning Theory since 1945'' Cited at Haagensen M MPhil ''Discourses in Urban Planning: A case study approach to understand what influences urban development in Harstad municipality'' (Centre for Development and the Environment University of Oslo Blindern, Norway Fall 2015)17.

117 United Nations Human Settlements Programme (2019) “URBAN PLANNING IN KENYA: A Survey of Urban Planning Practices in the counties” 86

118 Government Of India Ministry of Urban Development (2015) “Urban and Regional Development Plans Formulation and Implementation Guidelines (URDPFI volume 1) 105

119 Alterman 2013 *WBLR* 4.

preparation, approval, implementation and revision related matters. Therefore, it directly or indirectly includes certain national and regional legislations within its ambit. It comprises such proclamations relating to urban plan, building, land expropriation and payment of compensation, city, urban land lease holding, environment impact assessment, environment pollution control and many more. In this study, I use the term planning law to include these entire sets of instruments, including the regulations and directives issued at different levels.

Urban planning laws are important tools for systematic and orderly development of urban areas, including the eradication of influx informal settlements in cities and towns. They are important tools for systematic and orderly development of urban areas, including the eradication of influx informal settlements in urban areas.[120] They establish and regulate complex systems that not only govern spatial development but also have direct impact on land management and finance at local and national levels.[121.] They may have dramatic effects on personal health and wellbeing, housing prices, employment opportunities, family life, personal time (spent on travel), and accessibility to public facilities.[122]

Planning laws potentially touch more parts of our lives than many other laws. They are multidimensional pertaining to many areas of people's day-to-day lives; they target at the long range and have multi-generational outcomes. According to Alterman, planning laws apply to real property which is the key part of most people's investments; and they can and do create major socio-economic distribution and redistribution of wealth.[123] Planning laws produce decisions that determine where people may live; how neighbourhoods will function and what will be their socio-economic profiles; where businesses may situate and the distribution of employment opportunities; the implications for people's travel

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120 Adam Akram 2015 *The Assessment of Urban Planning Laws on Elimination of Increased Informal Settlement in Tanzanya Mainland Urban Areas: Case Study Mwanza City* (LL. B Dissertation University of Dodoma) page 4.

121 UN-Habitat Urban Legislation Unit Working Document 2017 ''Planning Law Assessment Framework'' 8

122 Alterman 2013 *WBLR* 1.

123 Alterman R ''comparative research at the frontier of planning law: The case of compensation rights for land use regulations'' *IJLBE* (2011)2.

behaviour; the setting and physical quality of public services, and the sustainability of the environment.[124]

2.6. Theoretical inquiry into the role and legal status of LG

Theory can be viewed as the philosophical dimension of a phenomenon.[125] It reinforces social science undertakings by providing philosophical assumptions**.** Theory is simply an orientation, framework, technique, or approach.[126] Scientific research endeavour usually depends on applying a theory or mix of theories to design theoretical, conceptual, and systematic frameworks to study certain phenomena. Different theories are best rightly suitable to varied units of analysis, such as groups, behaviour, and organisations. The selection of a right theory or mix of theories to inform a study should begin by recognising the problem, research goal, and units of analysis.[127]

The validity or usefulness of any theory rests on its capacity to describe, to explain, and to predict.[128] A theory, to be useful, should precisely describe or depict a real-world event or phenomenon.[129] Most theories do this at some level of abstraction.[130] According to G Vander Waldt, "describing, explaining, predicting, or controlling phenomena in a variety of contexts are the basic functions of a theory".[131] Theory provides understanding of the phenomenon under investigation and can be utilised as a mental model which attempts to explain how aspects of social reality work.[132]

Research in the field of Public Governance and particularly relating to the role and legal status of ULG is generally intricate by the fact that governance-related phenomena are complex and require varying dimensions, approaches, models

124 Alterman 2011 *IJLBE* 2.
125 Van der Waldt G ''Theories for research in Public Administration'' *African Journal of Public Affairs* (2017) 186
126 George H. Frederickson and Kevin B. Smith *public administration theory primer* (West view Press 2002)6
127 My unit of analysis is mainly ULG in the ANRS
128 George H. Frederickson and Kevin B Smith *public administration theory primer* p.6
129 George H. Frederickson and Kevin B Smith *public administration theory primer* p.6
130 George H. Frederickson and Kevin B Smith *public administration theory primer p.*6
131 Van der Waldt 2017 *AJPA* 185.
132 Van der Waldt 2017 *AJPA* 185.

and theories to analyse them. Due to this fact, it is frequently argued that there is no readymade theory of local government. It is also contended that as there is wide diversity in local affairs internationally and because of the very powerful link between urbanism and local government, no theory appears to be uniformly appropriate.

MacKenzie, in 1961, stated that: "There is no normative theory from which we can deduce what LG ought to be; there is no positive general theory from which we can derive testable hypotheses about what it is."[133] Mawhood also wrote that there is no "any general normative model or body of testable hypotheses which apply universally".[134] This means, there is no any comprehensive theory that can be utilised to explain politically decentralised structures.

Lyn Henderson in his Doctoral thesis stated that no one theory incorporates the totality of LG why it exists; its functions and actions; its historical and spatial aspects; its relationship with other local authorities and levels of government; its relationship with statutory authorities, with influential interest groups and with constituencies.[135] Therefore, theorists (philosophers) have usually adopted an careful eclecticism by blending a modification of the most suitable theory with certain concepts and approaches from other relevant paradigms to develop their theory of the LG.[136]

Thus, this study, too, does not attempt to make any new major theoretical contribution to the arena. What this framework attempts to do is to construct and discuss a model by borrowing and combining a modification of the most suitable theory with certain concepts and approaches from other pertinent paradigms. Douglas Ashford, in a study relating to cross-national comparative inquiry

133 Mackenzie W J M *Explorations in Government* (THE MACMILLAN PRESS LTD 1975)68
134 Mawhood, P., "Negotiating from Weakness: the Search for a Model of Local Government in Countries of the Third World" in Robert Greig Cameron *Local Government policy in South Africa (with specific reference to the Western Cape): Devolution Delegation Deconcentration or decentralization?* (PhD thesis University of Cape Town 1991) 80
135 Lyn Henderson More *than rates, roads and rubbish: A history of LG in action in Thuringowa Shire 1879- 1985* (PhD Thesis 1992 James Cook University) 192.
136 Lyn *More than rates, roads and rubbish* 192.

concerning local politics, policy and issues surrounding the theoretical choices confronting comparativists, asserted that, "without becoming mired in the controversies and debates surrounding theory formation, it is important to state as clearly as possible what one wishes to explain".[137] Actually, research findings have little scientific sense when presented outside the context of a particular theory or of certain theories in combination.[138]

For this reason, certain theories which can explain the varying dimensions of LGs are identified, developed into a theoretical model, and examined. These theories intend to explain and describe local government, which is the unit of analysis of this study, in the context of themes that are relevant to it. Here, it is to be noted that, in this study, the expression *'model'* denotes as an aid to complex theoretical activity, which directs our attention to concepts, perceptions or variables and their interrelationships. Moreover, the purpose of such model is to simplify phenomena as an aid to conceptualisation and explanation. The model is divided into four sections that explain why LGs exist, how they work, what their job is, and where they get their power.

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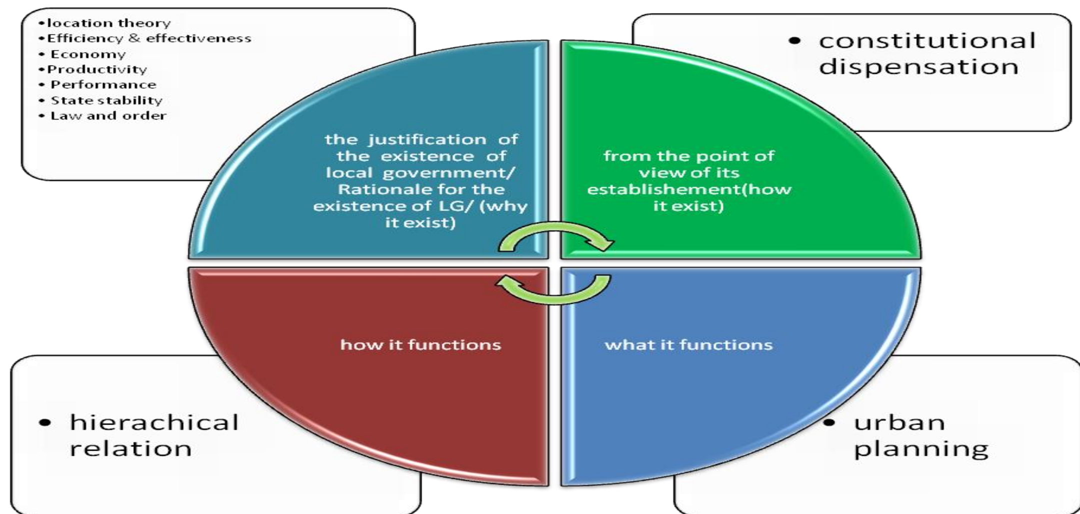
137 Douglas A. 1975 "COMPARATIVE POLITICAL STUDIES" *Sage Publications Inc. p.* 2
138 Van der Waldt 2017 *AJPA* 185.

Figure 3.1 Theoretical
Model



2.6.1. Rationale for the existence of LG (why is it created?):

i. Efficiency Services Theory:

The Efficiency Services Theory stipulates that LG exists to organise the collective interests and aspirations of the people for availing them better and more efficient services. The supporters of this theory argue that since the officials of the LG councils are indigenous of the areas, they are in a better situation to understand the needs and welfares of the people and provide efficient services for their wellbeing. The efficiency services theory also specifies that the smallness of the people allows for efficient provision of the basic social services. In addition, they insist that LG exists to articulate and aggregate the interests and wants of the people of distinct urban or rural district for better and more efficient services.

The proponents further argue that the efficient delivery of some local services is so compelling that if LG does not exist, something else will have to be created in its place,[139] implying that LG is necessary.

For J S. Mill, an elected LG was necessary owing to its ability to manage the affairs of the locality, based on local knowledge, interest and expertise. More likely, efficient and effective local services will be provided in a more effective way than the delivery of services by other agencies and certainly by a distant central government.[140] According to Mackenzie, LG is justified because it is an effective and convenient way to provide certain services.[141]

According to Francesco Kjellberg,[142] maintaining and strengthening LG is for the reason that elected local bodies offer the most efficient way of handling the disagreement between needs and demands in the community, as well as the production of public benefits. And this is due to three logics: First, being an expression of the local community, elected and politically responsible figures at the local level have, to a greater extent than de-concentrated central administrative agencies, the necessary knowledge to handle local issues and to transform needs into political action. Second, according to the efficiency argument, LG is more suited to promoting the management of public actions than are other possible alternatives. Third, being a multipurpose unit of government, it has a better potential for connecting the different outstanding issues in a community than do specialized state organs.

LG appears then with strong claims as an efficient provider of services, but, as remarked by Sharpe, surprisingly this has been seldom acknowledged, rather the reverse.[143]

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139 Sharpe L J 1970 ''LG THEORIES AND VALUES OF LOCAL GOVERNMENT'' *Nuffield College, Oxford Studies* 166.

140 Caroline Andrew C and Goldsmith M 1998 *From LG to Local Governance: And beyond?* International political science review 108 available @ http://www.jstor.org/stable/1601318 Acessesed on 25-05-2018

141 Mackenzie W] M "Explorations in Government" 80

142 Francesco Kjellberg 1995 "The Changing Values of Local Government" *Sage Publications, Inc. in association with the American Academy of Political and Social Science* available @ https://www.jstor.org/stable/1048038 Accessed on 29-11-2019

143 Sharpe L J 1970 *Nuffield College, Oxford Studies* 168.

The rationale behind the existence of LG also lies on the contention that locally elected leaders know their residents better than authorities at the central government level and so should be well located to deliver the public services local residents want and need. Moreover, physical nearness makes it easier for inhabitants to hold local officials accountable for their performance.

LG is regarded as the most efficient agent for providing those services that are essentially local. Efficient and effective provision of basic amenities and social infrastructures for the people at the grass root is a key factor to the existence of any government.[144]

L J. Sharpe, one of the supporters of this theory, also argues that LG is preferable precisely for the reason that locally elected institutions employing their own specialist staff are better positioned to understand and interpret both the conditions and the needs of local communities.[145]

In describing efficiency, Sharpe extends a series of arguments by alleging that efficiency covers variety of roles offered by local government. His starting point was J S. Mill, who provided a quite cast iron case for LG on the grounds that it was the most efficient agent for providing those services that are really local in character such as disposal of sewage and refuse.**[146]** According to him, If LG is to be justified in practical terms for modern conditions that justification has to rest on something a little more important than its efficacy for the disposal of sewage and refuse. **[147]** Sharpe promotes the efficiency value of local authorities as the strongest argument in favour of modern LG.[148]

144 Shamsuddin B and Ibrahim S. 2012 “Challenges of LG Administration in Nigeria: An Appraisal of Nigerian Experience” *IJSR* 2.
145 Sharpe L J 1970 *Nuffield College, Oxford Studies 155.*
146 Sharpe L J 1970 *Nuffield College, Oxford Studies* 166.
147 Sharpe L J 1970 *Nuffield College, Oxford Studies* 166.
148 Stoker G “Normative Theories of Local Government and Democracy” in Gerry Stoker and Desmond king (eds) *Rethinking Local Democracy* (Macmillan press ltd 1996) 8.

In explaining the inevitability of LG, Sharpe states that, 'If LG did not exist something very much like it would have to be created in its place''.[149] In the words of Gerry Stoker, Sharpe stretches the claim of efficiency to cover a wide range of roles offered by local government.[150]

Sharpe discusses the roles offered by local government: as a coordinator of services in the field; as a reconciler of communal opinion; as a consumer pressure group; as an agent for responding community demand; and as a counterbalance to incipient syndicalism, LG seems to have come into its own.[151]

Sharpe's argument over co-ordination is based on the British system of central administration which does not have an intermediate level of administration between central government and LG that is in charge for the mass of public services within its area. The British system of central administration has no intermediate level organ which is available in the Federal systems and in other countries. Such entities play the local generalist superior role. However, in Britain, some coordinating role is essential: "There must be some compendious, horizontal coordinating agency which can gather together the different vertical services coming down from the centre and regulate their content and character to the specific needs of each community".[152] LG in Britain contributes to efficient service delivery by performing this co-ordinating role.

Sharpe's contention over the role of LG as a reconciler of community opinion is based on the differences of opinion within the community. Disagreement in a locality usually arises between claim and resource-raising in relation to provision of services. This time local government becomes the means through which priorities are agreed upon, and the disagreement between claim and resource-raising is reconciled.

Sharpe also stresses the LGs role as consumer pressure group. He says that "in a system where a Minister can only comprehend the broad frameworks of

149 Sharpe L J 1970 *Nuffield College, Oxford Studies* 166.
150 Stoker G *Normative Theories of Local Government and Democracy* 9
151 Sharpe L J 1970 *Nuffield College, Oxford Studies* 174.
152 Sharpe L J 1970 *Nuffield College, Oxford Studies* 174.

nationwide policy and for anything less the democratic process expresses itself through parliament and through competing pressure groups, local authorities or LGs, because they are self-governing but within the public sector, are pressure groups of a very special and valuable kind". Sharpe further notes that LG speaks for and promotes the interests of weakly represented groups such as 'the retired, the young, and the married women'. Local authorities are pre-eminently consumer pressure groups who help redress such section of the community. They are important and credibly irreplaceable elements in a modern democratic political system. They are the ultimate allies of central government even though they may conflict with it.

Sharpe further argues in support of the efficiency value of LG as an alternative administrative arrangement to respond to rising demands. According to him, rising demand is a permanent feature of a large part of the personal health, welfare and education services. If such service is not run by LG nor is it in the market, the burden is in central hands, which provides irregular and inefficient service.

The final argument made by Sharpe in maintaining the efficiency value of LG relates to its capacity to keep professional groups in check. Sharpe believes that the specialisation and techno-logical complexity of government policy has given professional groups a large amount of discretion and power. The service gradually comes to serve objectives set by the professional group or groups running the service rather than by its receivers or the society at large. For this some form of control external to the professional group to check such power is required. LG offers the best possibility of counteracting incipient syndicalism. At national scale, the possibility of such control is not practicable except at the broadest level of policy or in response to a national scandal.

To sum up, the main arguments of this theory are:

- LG is an efficient agent for providing services that are local in character.[153]

153 Jide Ibietan "Local Government Administration in Nigeria" 2014*IJMS* 6

- LG exists to provide services and it must be judged by its achievement in providing services up to a standard measured by a national inspectorate" (Mackenzie page 79).[154]
- In view of its proximity to the grassroots, LG can deliver some services more efficiently than the federal or state governments.[155]
- The efficient delivery of these services makes the existence of LG very compelling (Sharpe, 1970:168).[156]

ii. Democratic participatory theory:

The exponents of the democratic participatory theory argue that LGs exist to bring about democracy and to afford the citizens the chances for political participation, training in the art of self-governance, and for political education and socialization. LG is the democratically constituted public body that is normally directly elected or accountable to a directly elected assembly.[157] According to John and Rupak,[158] the proper exercise of democracy is maximized when people at the grassroots level are empowered to elect their own representatives and capable of making accountable to them. The democratic nature suggests that LG plays at crucial role in ensuring local representativeness and participatory democracy.[159] According to this theory, LG is the closest public body to the community, which is convenient to respond in managing local affairs by encouraging citizen participation**.**

The accessibility of LG provides greater opportunities for citizens to engage themselves in political issues that have local importance to their immediate social and economic environment. Enhancing participatory democracy at the local level is not only about encouraging involvement in elections, but also various forms of part taking and engagement in local administrative activities. For instance,

154 Mackenzie W J M "Explorations in Government" 79.
155 Jide Ibietan 2014 *IJMS* 6
156 Sharpe L J 1970 *Nuffield College, Oxford Studies* 168.
157 JING PAN *The Role of LG in Shaping and Influencing International Policy Frameworks* (PhD thesis 2014 De Montfort University)24.
158 John K and Rupak C eds 2008 Local Government in Federal Systems in Chukwuemeka Emma, etal 2014 "Nigeria Local Government: A Discourse on the Theoretical Imperatives in a Governmental System" *IAARR* 310. Available @ https://www.researchgate.net/publication/284336114 accessed on 10/5/2018
159 JING PAN *The Role of LG 24.*

participation brings local knowledge on board and local initiatives can easily be identified. The opportunities of having their say in local decision-making stimulate stronger interests of citizens to participate proactively in political contribution. The closeness to the citizens urges LG to be more responsive of its administrative decisions and public service deliveries.[160]

LG, in the communal sense, means local people's political instrument to participate in resource allocation, distribution and power acquisition. Political participation concerns the desire to include local citizens in the management of local affairs.

Democratic participatory theory is entrenched in John Stuart Mills' idea of utilitarianism. According to him, the good form of government was representative government because it promoted liberty, equality, and fraternity; made men look beyond their immediate interest; recognized the just demands of other men; as well as promoted political education, participation and communication.[161] For Mill, local political institutions are essential elements in a system of democratic government, for the reason that they broaden the prospect to participate and provide the capacity to educate the citizen in the exercise of politics and government. J S. Mill stated that,

> *"There is no difficulty in showing that the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community; every citizen not only having a voice in the exercise of that ultimate sovereignty, but being, at least occasionally, called on to take an actual part in the government, by the personal discharge of some public function, local or general."* [162]

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160 JING PAN *The Role of LG 38.*

161 Course material "Advanced Comparative Local Government" *National Open University of Nigeria: School of Management Sciences* 15.

162 Mill J S *Essays on Politics and Society (COLLECTED WORKS)* eds. ROBSON J M (University of Toronto Press 1977)403

Sharpe claimed that, in democratic terms, local authorities are superior since it is only at the level of the municipality, the city state, that a person can really participate in his own government and so government is truly democratic.[163] According to him, local authorities do have a democratic primacy over national government because they allow more people to participate in their own government.[164]

Sharpe justified and discussed the participation value of LG based on three aspects. The first is the role of LG as a political educator. He contends that LG serves as a political educator and helps in socializing the people into politics through the medium of self-government. He exactly argues that "It is only by participating in and learning the arts of self-government at the local level that the individual had a stake in and come to appreciate the virtues of free government at the national level".[165]

The second aspect of participatory value that Sharpe claimed for LG is its role as a training ground for democracy.[166] Sharpe's contention is based on Bentham's view, who regards LG as 'a nursery for the supreme legislature; a school of appropriate aptitude in all its branches for the business of legislature'.[167]

The third and the final facet of participation as a justification of LG claimed by Sharpe, in addition to its role as a training ground for civic virtue or for the national legislature and as the breeder of better individuals is, that it is also a crucial element for establishing a stable and harmonious national state, the breeder of better societies.[168]

In recapitulating this theory, it can be said that every local set up has its peculiarities which are better understood and appreciated by its populace who possess the fuller awareness of their needs than outsiders, and their participation

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163 Sharpe L J 1970 *Nuffield College, Oxford Studies* 159.
164 Sharpe L J 1970 *Nuffield College, Oxford Studies* 160.
165 Sharpe 1970 *Nuffield College, Oxford Studies* 163.
166 Sharpe 1970 *Nuffield College, Oxford Studies* 163.
167 Sharpe 1970 *Nuffield College, Oxford Studies* 163.
168 Sharpe 1970 *Nuffield College, Oxford Studies* 163.

can be regarded as the manifestation of democratisation of local government. LG, thus, exists to bring about democracy, to serve as a base for political participation, political education, and a training ground for democracy

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iii. Theory of instrument of control

This theory possesses historical and political dimensions of LG. The historical dimension connotes that LGs were created to act as instruments of control not for self-rule at the grassroots.[169] They were not fashioned with a spirit to empower the citizenry at the grassroots. Instead, they were set up to facilitate the effective implementation of colonial policies. Similarly, the political aspect of this theory signifies that local governments are crafted to guard the national government's political power, to suppress resistance and to collect revenue to sustain them. In both cases, the establishment of LGs have not considered core values such as participation, autonomy, efficiency, transparency and accountability.

Henderson in discussing the history of LG in Queensland, raised Australia's case as example and said that 'LG in the country was imposed by colonial governments and was not "grass roots movement" as it occurred in America'.[170] He further noted that LG exists because of the legal authority of colonial and state parliaments.[171] Likewise, Adeyemo, in examining the nature of the LG autonomy in Nigeria, analysed three definitions of LG and noted that the definitions have some colonial underpinnings. He remarked that in colonial time, native administration was primarily established for maintenance of law and order. With the emergence of independence, the emphasis shifted from law enforcement to the provision of social services.[172]

Edwin Babeiya had also discussed the history of LG in Tanzania. According to him it was under the German colonial rule that Tanzania witnessed the formation of

169 Liviga A J 1992 "Local Government in Tanzania: Partner in Development or Administrative Agent of the Central Government?" and Mutahaba G 1989 "Reforming Public Administration for Development" in Edwin Babeiya 2014 "Local Government in Tanzania and the Legacy of a Faulty Take off" *AR* 13.

170 Lyn *More than rates roads and rubbish:* 201.

171 Lyn *More than rates roads and rubbish:* 202.

172 Adeyemo D O 2005 "LG Autonomy in Nigeria:A Historical Perspective" *Journal of Social Science* 77.

local governments. The Germans undertook some measures by enacting LG laws. However, such creation proved to be of no value to the general public, as the established LG meant to serve the colonial state than serving the citizens at the grassroots.[173] As remarked by Edwin, LG system created in Tanzania during the German colonial rule had three main features. The first one was that it was centralized and did not seem to recognize the existence of local governance systems and structures. Second, it did not entertain the "voice" and exit options. Any voice against the colonial state was a breach of law and was a punishable act. If any, such voice had to be in support of effective implementation of colonial policies. Likewise, there were no exit options and thus the colonial superstructure was the beginning and the end. The last feature was that local governments were to serve as agents of the colonial state and never were the two seen operating as partners of development.[174]

The British colonial state, the successor of the Germans, introduced indirect rule system.[175] Unlike the Germans, which were employing their own structure, it used traditional chiefs and other appointees to govern their societies. Under this system, designated traditional rulers were used by the colonial state to undertake various functions such as tax collection, maintenance of law and order, and acted as a link between the colonial state and the people.[176] The British colonial state had no intention of granting autonomy to local levels to manage their own affairs. It was rather one of the strategies employed by it to maintain peace and order for effective realization of the goals of colonization.[177]

Based on the functioning of the two colonial states, Edwin noted, two main observations related to the establishment of local governments. The first one is that local governments were not created with a spirit to empower the citizenry at the grassroots. Second, LGs were created as tributaries of the centre and they

173 Edwin Babeiya 2016 "LG in Tanzania and the Legacy of a Faulty Take off" *African Review* 12.
174 Edwin 2016 *AR* 12.
175 Edwin 2016 *AR* 12.
176 Edwin 2016 *AR* 12.
177 Edwin 2016 *AR* 13.

were never empowered and prepared to serve as autonomous organs that could operate on mutual and reciprocal basis with the central government.

The assumption that LGs were created to act as instruments of control also shown in the Ethiopian context. Zemelak discussed four historical phases of local government: the era of the princes (1855-1930), the reign of Emperor Haile Selassie I (1930-1974), the Dergue era (the socialist military Junta) (1974-1991), and the EPRDF regime, the post 1991 time. According to him, all the regimes that have seized power in the country, whether they follow centralised or decentralised system of governance, used local authorities to guard their political power, to suppress resistance, and to extract revenue to sustain them.[178] During the monarchical period, the LG power was vested on the regional and local lords who served as means of control over their own people in support of the central government. Even in the modern time, during the Dergue, and the EPRDF times, also local governments were used as, apparatus of repression and terror; as an institution which is used to keep political opponents at bay; and as an instrument used to reinforce the dominance of a single party.[179] As Aalan and Tronvoll put it, even if the ruling party did not rig elections, the very fact that it has control over local institutions would ensure victory for the party.[180]

The expression "Control" as used by Zemelak is to mean "using local authorities as political and administrative extensions of the political centre (central government).They are used as an instrument for repressing opposition against the political centre; and for extracting free labour and revenue in the form of taxation and tribute for the centre".[181]

It is worth noting to see Zemelak's inquiry as to why the contemporary Ethiopia, being formally a decentralised state, but the local bodies are instruments of control? According to him there are three reasons: Firstly[182], although Ethiopia is

178 Zemelak A 2011 "Local government in Ethiopia: still an apparatus of control?"
179 Zemelak A 2011 *Democracy and Development* 21.
180 Aalen L & Pausewang S "Blighting the seeds of democracy: The 2001 local elections in Addis Ababa and the central regions" in Zemelak A 2011 *Democracy and Development* 19.
181 Zemelak A 2011 *Democracy and Development* 2.
182 Zemelak A 2011 *Democracy and Development* 20.

formally a decentralised country, all levels of government are controlled by the ruling party, the EPRDF, and its affiliates. The grassroots structures are involved only in the execution of the decisions made by the party. Moreover, there is little or no practical difference between the government and the party. The policies and decisions of the party are enforced as government policies and decisions.

Second[183], local officialdom is a means of income and livelihood for many in Ethiopia. In spite of recent efforts to fill LG positions with university graduates, most of the local officers in both rural and urban localities lack a substantial educational background. They, therefore, do not have any prospect of finding better employment in another place. If the ruling party, on whom they depend, loses power in any given area, the local officials will likewise lose their positions and their livelihood. Thus, preventing opposition parties from assuming power is not only a political question but also one of personal interests for local officials.

Third,[184] it is submitted that opposition parties have done very little to contribute to the democratisation of LG. The opposition parties have not joined in any of the three local elections. Even though opposition parties were to seek to participate in local elections, finding the right candidates would not be an easy task. Many members of the opposition parties regard candidacy for a local assembly with disdain and choose the more glamorous candidacy for parliament and regional councils.

Jesse C. Ribot, in reviewing decentralization in African History, points out that decentralisation was initially used by the colonial regimes for the purposes of managing Africans under administrative rule rather than to enfranchise them.[185] He further signifies that the system of LG was a mere tool of administrative management, and such systems were inherited by African governments at independence.[186] After freedom, African countries continued to use LG as administrative units of central government without any sustainable autonomy of

183 Zemelak A 2011 *Democracy and Development* 21.
184 Zemelak A 2011 *Democracy and Development* 21.
185 Jesse C Ribot 2002 "African Decentralization Local Actors Powers and Accountability" *UNRISD* 4
186 Ribot 2002 *UNRISD* 18.

their own, to the extent that LG elections were either abolished or controlled by central governments.[187] Furthermore, they continued to use LGs as administrative units and their major functions —such as health care, education, road construction and local taxation—were transferred to central government control.[188]

All these show that LGs in Africa were created as arms of the centre and they had no the power and arrangement to serve as autonomous organs that could function on mutual basis with the central government. Even in countries where LG was entrenched in a constitution, LG was placed strictly under the control of the central government.[189]

Finally, it can be concluded that, according to this assumption, LGs were not created with a spirit to empower the citizenry at the grassroots. Instead, they were set up to facilitate the effective implementation of colonial policies during colonial period and after independence to guard the national governments' political power, by suppressing resistance, by controlling elections, and by extracting revenue to sustain them. Furthermore, LG is not seen as a political institution for 'home rule' or for 'democratic participation' in the courses of governance at the grassroots, instead it is seen and employed by the state government as an apparatus with which to attain its purposes at the local level and as alternative device for the provision of socio-economic services. In the 20th century, LG's were regarded as wards of the state and the governance was based on the principle of residuality, ultra vires and Dillon's rule.[190]

iv. Dillon's rule, the theory of inherent rights of self-government and Home rule:

Home rule and Dillon's rule are two legal concepts of LG which determine the state local relationship in the USA. Home Rule grants LGs governing authority to make wide-ranging legislative decision that have not been addressed by the state.

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187 Ribot 2002 *UNRISD* 18.

188 Ribot 2002 *UNRISD* 18.

189 Mathenjwa M 2016 ''The Role of Local Government in Strengthening Democracy'' *Journal of Law, Society and Development and UNISA Press* 1

190 Anwar Shah 2010 ''Empowering States and Provinces or Unshackling Local Governments: Does It Matter for Peace Order Good Government and Growth?'' *The Pakistan Development Review* 4 & 13 *available* @ https://www.jstor.org/stable/41428661 Accessed: 07-09-2018.

Whereas, the Dillon Rule allows LGs only to legislate what the state government has decreed to them.

Dillon's Rule is derived from a court decision issued by Judge John F Dillon of Iowa in 1868.[191] In the decision, he spelled out the terms of his municipal viewpoint as follows:

"A municipal corporation (an LG for this case) possesses and can exercise the following powers and no others: first, those granted in express words (from the state); second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation-not simply convenient, but indispensable; and fourth, any fair doubt as to the existence of power is resolved by the courts against the corporation."[192]

According to this verdict, a sub state government may engage in an activity only if it is explicitly sanctioned by the state government. This idea makes LGs as creatures of the state and holds that the political subdivisions of a state owe their existence to grants of authority from the state. Therefore, LGs possess no inherent sovereignty. Their powers are seen strictly to be no more than what is explicitly permitted by state law. No room can be made for discretionary power or even incidental authorities.

Given that the LG's power is originated from the state, the LG is strictly restricted to exercise what the state delegates to it. If LG exceeds the authority beyond its mandate, the state has the power to modify or cancel its powers. Ultimately, under the Dillon Rule, LGs are tenants of the state.[193]

In the above-mentioned landmark case, Dillon summarized his view of the relationship between the state government and LGs as under.

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191 The case was City of ''Clinton v. Cedar Rapids & Missouri River Railroad'', (1868),

192 Jon D. Russell and Aaron B 2016 ''Federalism, Dillon Rule and Home Rule'' *WHITE PAPER a publication of city American exchange* 2.

193 Jon D. Russell and Aaron B 2016 *WHITE PAPER a publication of city American exchange* 2.

"Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control…We know of no limitation on this right so far as the corporations themselves are concerned. They are so to phrase it, the mere tenants at will of the legislature."[194]

The U.S. Supreme Court upheld this notion in Atkins v. Kansas in 1903; and stated that:

"LGs are the creatures, mere political subdivisions, of the state, for the purpose of exercising a part of its powers. They may exert only such powers as are expressly granted to them, or such as may be necessarily implied from those granted. What they lawfully do of a public character is done under the sanction of the state. They may be created, or, having been created, their powers may be restricted or enlarged, or altogether withdrawn at the will of the legislature; the authority of the legislature, when restricting or withdrawing such powers, being subject only to the fundamental condition that the collective and individual rights of the people of the municipality shall not thereby be destroyed".[195]

As indicated by Boadway and Shah, in the 20th century, LGs were regarded as wards of the state and governance was based on the principle of resduality, ultra vires and Dillon's rule.[196] In the 21st century, LGs are the primary agent for the

194 Jesse J Richardson Jr. 2011 "Dillon's Rule is From Mars, Home Rule is From Venus: Local Government Autonomy and the Rules of Statutory Construction" *The Journal of Federalism* 4 available @ https://www.jstor.org/stable/23015095 Accessed on 14/12/2018

195 Jesse J R Zimmerman G and Puentes R 2003 "Is home rule answer? Clarifying the influence of Dillon's rule on growth management" *The Brookings Institution* 3. available @ www.brookings.edu/urban accessed on 11/23/2019.

196 Boadway Robin and Anwar Shah 2009 fiscal federalism in Anwar Shah "Empowering States and Provinces or Unshackling Local Governments: Does It Matter for Peace Order Good Government and Growth?" *The Pakistan Development Review* 4 Available @ https://www.jstor.org/stable/41428661 accessed on 07/09/2018.

citizens and leaders and gatekeeper for shared rule and governance was based on subsidiarity and home rule.[197]

Home rule refers to the powers of self-government afforded to municipalities by a given state. The home rule concept was originally articulated in the Cooley doctrine, holding that LG is a matter of absolute right, which cannot be taken away by the state. Judge Thomas Cooley,[198] one of the opponents of greater state control over municipal matter, argued that municipalities possessed an "inherent right of local self-government".[199] The proponents of the inherent right of local self-government contended that the framers of the state constitutions intended to recognize this right as it existed in the colonial era unless the right was specifically rejected in a state's constitution.[200]

Krane, Rigos, and Hill, present a definition of the "ideal" of home rule as "the ability of a LG to act and make policy in all areas that have not been designated to be of state wide interest through general law, state constitutional provisions, or initiatives and referenda." [201]

Home rule grants LGs some authority to manage and control their political structure; it also confers some right to adopt new laws and to initiate new regulations concerning matters of local concern; and to some extent, a measure of protection from state displacement when state and local measures come into conflict. However, it does not grant federal constitutional status to LGs.[202]

For example, (for comparative purpose) the Constitution of the RSA provided for three sphere system of government; national, provincial and local spheres, which

197 Boadway Robin and Anwar Shah 2009 fiscal federalism 4
198 Judge Thomas M. Cooley of the Michigan Supreme Court presented in 1871 a diametrically opposed view of state (to Dillon's rule) delegations of authority to local governments in his concurring opinion in People v. Hurlburt.
199 Diane Lang 1991 "DILLON'S RULE...AND THE BIRTH OF HOME RULE" *Reprinted from The Municipal Reporter* 2
200 Diane Lang 1991 *Reprinted from The Municipal Reporter* 2.
201 Jesse J R Zimmerman G and Puentes R 2003 "Is home rule answer?"11.
202 Richard Briffault 2004 "Home Rule for the Twenty-first Century" *American Bar Association*
257 Available @ http://www.jstor.org/stable/27895486 Accessed on 01/06/2018

are distinctive, interdependent and interrelated.[203] The relation of each sphere with each other is based on the principle of cooperation. Conversely, in America, LGs and their authority are not mentioned in the United States Constitution. LGs are not independent level or part in the federal system of governance. Therefore, their relationship with the higher order is based on the principle of subordination. Even with in state systems, home rule does not change the fact that LGs are creatures of state law.[204]

Ethiopia's Constitution creates a highly decentralised federal structure. It distributes power between the federal state at the centre and eleven state level entities (the nine regional states and two chartered cities). However, the status and role of LGs is not entrenched in the Constitution in clear terms. According to Zemelak, the Constitution appears to be ambiguous about the constitutional status of local government.[205]

The most important provision in the Constitution, for the purpose of this study, which mention the role and status of LG, is Article 50 (4). It provides that "State government shall be established at State and other administrative levels that they find necessary.[206] Adequate power shall be granted to the lowest units of government to enable the People to participate directly in the administration of such units".[207]

A careful reading of article 50(4), coupled with the reading of other provisions of the Constitution, reveals that the Constitution implicitly requires, not in articulated manner, the establishment of a democratic and autonomous local government.

Based on all these, it can be said that the role and status of LGs throughout the world is treated differently. It may have a constitutional recognition in express terms and the roles are clearly stated (as in the case of South Africa), or it may be

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203 Mathenjwa 2018 *SAPL* 3.
204 Richard 2004 *ABA* 257.
205 Zemelak A and Yonatan T 2012 ''The Constitutional Status of LG in Federal Systems: The Case of Ethiopia'' *IUP* 13available @ http://www.jstor.org/stable/10.2979/africatoday accessed on 12/07/2018.
206 The constitution of the Federal Democratic Republic of Ethiopia 1995 Article 50(4)
207 The constitution of the Federal Democratic Republic of Ethiopia 1995 Article 50(4)

impliedly recognised by the federal constitution and the roles of LG are not stated at all in the constitution (as in the case of Ethiopia) or the role and status of LG may be determined by the state laws (as in the case of America) by way of judicial construction of Dillon's rule, home rule, and/or the inherent right of local self-government theory .

To sum up, all the above doctrines are relevant as they inform a study relating to the role and status of LG and explain the functional and political relationship of LGs with the higher order of government, especially with state government.

v. The localist theory

Localism or the localist theory describes varying political philosophies which are mainly concerned with the local. The localist theory is strictly against encroachment by the central government of any political power that would otherwise be fully vested in the local authorities.[208] This theory advocates for full local decision making in dealings that affect and have the influence in people's day-to-day lives. It supports the stance that people should determine their own fate.[209] Localists are against any measures and schemes which may be designed to increase centralisation and consequently weaken LG. Localism can also refer to a systematic approach to organising a national government so that local autonomy can be retained rather than following the usual pattern of government and political power becoming centralised over time.[210] Normally, localism promotes local production and consumption of goods, local control of government, and promotion of local history, local culture, and local identity.[211] This implies the attitude of favouring what is local.

208 Ignatius Matete Naha "*Full Decentralization of Powers, Resources and Functions in the Kingdom of Lesotho: an Evaluation from a Developmental Local Government perspective"* (Master's thesis Stellenbosch University 2015) 27. Available @ https://scholar.sun.ac.za
209 Ignatius Matete Naha *Full Decentralization of Powers Resources and Functions in the Kingdom of Lesotho:* 27.
210 Jide Ibietan and Peter Ndukwe 2014 "Local Government Administration in Nigeria and the Localist Theory: Exploring the Nexus" *Research Academy of Social Sciences* 135. Available @ http://www.rassweb.com accessed on 11/24/2018.
211 Ibietan and Ndukwe 2014 *RASS* 135.

George Jones and John Stewart are strong advocates of the localist case. They openly state that they value a governmental system where there is considerable scope for local autonomy and decision-making.[212] Jones and Stewart rationalize the existence of LG based on the following arguments:[213]

First, LG is grounded in the belief that there is value in the dispersal of power and the participation of many decision- makers in many different localities. Spreading of power is an important value, and local authorities as elected bodies can represent the dispensing of legitimate political power in our society.

Second, there is strength in diversity of responses. “Needs vary from locality to locality, as do wishes and concerns; LG allows these differences to be accommodated”.

Third, LG functions within limited vicinity and, as a result, it is accessible and responsive to local needs. Furthermore, the closeness of councillors and officers to the decision they have to make, and to the people whose lives they affect, has considerable significance in seeing their effectiveness. Its localness and visibility makes it vulnerable to pressure when it fails to meet the needs of people who work and live in its area.

Finally, LG has the capacity to win public trustworthiness. It can better fulfil local needs and win support for public service provision because it allows choice. It facilitates a matching of homegrown resources and local needs. LG, by making government less remote and more manageable, makes it more comprehensible, enabling a clear and balanced choice to be made over the extent to which people wish to promote community values.[214]

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212 Stoker G “Normative Theories of Local Government and Democracy” in Desmond King and Gerry Stoker (eds) *Government Beyond the Centre* (Macmillan Press Ltd. 1996) 11.
213 Ibietan and Ndukwe 2014 *RASS* 135.
214 The whole arguments are taken from the article directly.

Localist theory has been further reinforced by other writers. Chandler develops the theme that LG is best justified by arguments about the value of local autonomy.[215] He remarks:

> *"The principal justification for LG is therefore that it is the political arrangement for ensuring that conflicts concerning a territorially delineated community are resolved solely by those affected by these conflicts.*" [216]

Chandler asserts that, through LG, people should be able to make decisions which are distinctively related to their local community. Intervention by outside parties and interests is proper only in limited circumstances.[217]

One of the focal aims of the localism theory is to create effective "subsidiaries" at the local levels that carry on the task of governance as well as the efficient delivery of public services. However, after 1980 the local government's contribution to efficient service delivery was lessened and more emphasis was laid on the political value of LG as a bulwark against an over-centralised state.[218] And its importance as a bulwark and shield against the centre's attacks makes it to be branded as the 'new official' ideology of local government.[219]

The localist theory is firmly against concentration and intrusion of any political power by the central/ federal government that would otherwise be fully vested in the local governments. In this regard Bayat and others put that "concentration of political power in the higher level of government should be avoided while the influence of local decision-makers, the councillors, should be fully extended".[220] LG is to be valued above all because it limits the concentration of power.[221]

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215 Chandler, J. 1989 "The Liberal Justification for Local Government: Values and Administrative Expediency'" " in Gerry Stoker and Desmond king (eds) *Re thinking Local Democracy* (Macmillan press ltd 1996)13.

216 Chandler 1989 "The Liberal Justification for Local Government'' 13

217 Chandler 1989 "The Liberal Justification for Local Government'' 13

218 Stoker "Normative Theories of Local Government and Democracy" 11

219 Stoker "Normative Theories of Local Government and Democracy" 11

220 Bayat S Ishmael N and Meyer I 1997 "Local Government Management Durban" in Ignatius Matete Naha "*Full Decentralisation of Powers, Resources and Functions in the Kingdom of Lesotho: an Evaluation from a Developmental Local Government perspective"* 27.

221 Stoker "Normative Theories of Local Government and Democracy" 11

Katz and Nowak, who suggest localism as truly the new progressivism and who encounter the top-down federally run approach to governance, argue that LG allows for flexible, fluid interactions between private and public institutions.[222] For them, localism creates a more fruitful system of governance and reform than our current top-down model.[223]

Katz and Nowak, also emphasize the ability to see, test, and tweak theories at the local level, a method that allows for variation, specialization, experimentation.[224] They claim that Washington's one-size-fits-all attitude ensures the "proliferation of highly rigid programs" administered by government that, "like a fossil, is inflexible and stiff."[225] Cities, by contrast, can "respond nimbly and flexibly to challenges and opportunities. . . a small city or regional philanthropy has more discretion to make smart, aligned investments than distant federal agencies do."[226] This allows (at least hypothetically) for less waste and greater accountability.[227]

According to them, localist approach accommodates differences in cities' identities and strengths:

> *"The people who actually live and work in a given place know what they do best, where their greatest assets lie. Rather than trying to replicate Silicon Valley or New York, each city must discover and determine its own ingredients for success. "Solutions are often more likely to succeed because they are customized to place". Instead of trusting in (and waiting on) some "omniscient central power," which often infantilizes cities, localism empowers and animates".*[228]

It is to be noted that, the principle of subsidiarity, the principle which suggests that matters ought to be handled by the lowest competent authority, has strong similarity with the spirit of the 'localist model'. Normally, subsidiarity is defined as

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222 Gracy Olmstead 2019 "When Localism Works'' *Newsletters of the Washington examiner from the archive of weekly standard* posted on Sunday, December 01, 2019 p.2. available @ https://www.googletagmanager.com/ns.html

223 Gracy Olmstead "When Localism Works 2.

224 Gracy Olmstead "When Localism Works 2.

225 Gracy Olmstead "When Localism Works 2.

226 Gracy Olmstead "When Localism Works 2.

227 Gracy Olmstead "When Localism Works 2.

228 Gracy Olmstead "When Localism Works 3.

the notion that a central authority ought to have a subsidiary function, performing only those tasks which cannot be done effectively at a more immediate or local level. The principle requires the allocation of government powers to be based on efficiency in that the level of government to which the power is allocated should exercise the power efficiently; otherwise, the power should be allocated to the level of government that has the capacity to perform the function in question.[229]

After all, one can infer from the above that localism implies interest in a locality; favouring what is local or of ideas generated or resulting from a locality. It can also imply that the existence and practices of the popular administration are rooted in the communal preferences of the local people. In short, this theory promotes for full local decision making in affairs that shape and have the influence in people's daily lives, meaning that the localist theory holds the position that people should decide their own destiny.

The localist theory explicitly recognized that the existing local authorities do not always act in a way that facilitates responsiveness to changing local needs.[230] This is because organizational arrangements associated with service delivery, bureaucratic bottlenecks, etc, can constrain the capacity for local choice. It therefore advocates a major reform of LG. Among the changes suggested (by Jones and Stewart) are: proposals for the enactment of a charter specifying the respective roles of the central Government and that of the LGs; the introduction of a local income tax; a move to proportional representation in local elections; and a shift to unitary local authorities.[231]

Despite the existence of inefficiency and non-responsiveness of LGs to local pressures, the localists have strong belief in full local decision making and disposing of local issues by those who are near to it. According to them, the

229 Mathenjwa 2018 *SAPL* 11.
230 Stoker G *The Politics of Local Government* 2nd ed. (*THE MACMILLAN PRESS LTD,1991*) 233.
231 Jones G and Stewart J 1983 "The Case for Local Government" in Stoker G *The Politics of Local Government* 2nd ed. 234.

defects of local government institutions are as nothing compared to the alternative of centralism.[232]

vi. Principal-agent theory

Principal-agent theory was initially developed to describe and explain the relationship between private contractual parties, such as landlords and tenants; buyers and sellers or owners and managers. But later on, the theory has been utilized to describe the dealings in relation to bureaucratic and public institutions. The central and local governments provide an example of a ranked and hierarchical power structure, in which the LG (agent) is engaged by central government (principal) to act on his/her behalf based upon a designated fee schedule.

Principal-agent theory can be utilised to make analysis of varying institutional relations in the public arena: federal-state; state-local; government-society; local government-local voters; bureaucrats-elected officials; the Supreme Court and its relationship to lower courts and many more. In a representative democracy the public sector can be analysed by an interlocking series of principal-agent relationships.[233] Moe also observes that ‘the whole of politics can be seen as a chain of principal-agent relationships, from citizen to politician to bureaucratic superior to bureaucratic subordinate and on down the hierarchy of government to the lowest-level bureaucrats who deliver services directly to citizens.[234]

Usually, principal agent model denotes issues such as: what the agent(s) can do and how his/her action affects the principal(s); what the principal(s) can do and how its action influences the agent(s); and who the principal(s) and the agent(s) are. In other words, principal agent relations stipulate a set of actors, possible actions they can take, and how they assess consequences of those actions.

232 Stoker G 1996 “Rethinking Local Democracy”14
233 Dollery B and Wallis J 2001 “Local Government Failure” *University of Otago Economics Discussion Paper* 9 Available @ https://www.researchgate.net/publication/228417694 accessed on 10/11/2019
234 Moe T M 1984 “The New Economics of Organisation” In Dollery and Wallis “Local Government Failure” 9

Sean Gailmard, studying the application of Principal-Agent Models in bureaucratic and electoral accountability of representatives of constituents, alleged that ‘‘in principal-agent models, some actor (or group of actors) called an agent undertakes an action on behalf of another actor (or group of actors) called a principal.[235] The principal, for its part, can make decisions that affect the incentives of the agent to take any of its various possible actions.[236] This process of structuring incentives for the agent is the central focus of principal agent theory.’’[237]

In the language of principal-agent theory, the decisions made by the principal that determine the agent’s incentive to take various actions establishes a contract. Principal-agent theory is often taken as a specific area of contract theory more generally.[238] Sean Gailmard also emphasized that principal agent theory is well understood as a family of models with a related perspective, than as a single encompassing theory with a specific set of assumptions and conclusions.[239]

As a contract, written specific document which clearly spells out the rights and duties of each party and which can be utilised as a guiding instrument for the agent to perform his or her tasks is a requirement. Even though, such detailed documents are available with private contracting parties, it is not seen among public institutions. For public institutions the source of specification of the agent's acts and the level of discretion possessed by the agent and the responsibilities of the principal emerge from constitutional provisions; laws made by different authorities (Federal, state, municipal etc.) and party manifesto.

Moreover, in a democratic system a party’s platform may be used as a contract between voters (principal) and the party (agent). When citizens decide to delegate the authority to a specific party (or parties), they accept at this point the platform (or platforms) offered. Therefore, they are within their rights to expect that this

235 Sean Gailmard *Accountability and Principal-Agent Models* (Oxford University Press 2012)3
236 Gailmard *Accountability and Principal-Agent Models 3*
237 Gailmard *Accountability and Principal-Agent Models 3*
238 Bolton, Patrick and Mathias Dewatripont 2004 “Contract Theory” In Sean Gailmard *Accountability and Principal-Agent Models* 3
239 Gailmard *Accountability and Principal-Agent Models* 21

document, or set of promises, will be implemented. They may also expect that their representatives (the Agent) will obey the constitutional rules.

The "Principal-Agent" model is frequently implemented into the analysis of contemporary democratic systems. The basic assumption is that the 'whole society' may be viewed as the principal, while the government (both central and local) may be considered as the Agent. To be more precise, the role of the Agent is played by politicians (parliaments, the president, ministers etc.) and civil servants (who are recruited outside an election procedure). The common ground connecting these two collective, institutional entities is that they are both citizens' representatives and perform actions on their behalf.

A policy research report by the World Bank Group, asserted that, Political engagement directly shapes the relationship between citizens as principals and government leaders as the agents of citizens.[240] According to this report, citizens play the role as principals in diverse ways across institutional contexts.[241] For instance, in nations with more democratic institutions, the power to select and sanction leaders is more dispersed among a large number of "ordinary" or non-elite citizens.[242] In countries with less democratic or more autocratic and repressive institutions, the power is instead more concentrated among elites or well-organized citizens, such as political parties.[243] However, even when formal electoral institutions are lacking, the threat of political engagement by non-elite citizens through informal means, such as protests and revolutions, can serve as a constraint on leaders.[244]

The report examined governance problems as a series of principal-agent problems, as follows: (i) between citizens and their political leaders; (ii) between political leaders and public officials who lead government agencies; and (iii) between public officials and frontline service providers, and it stated that political

240 World Bank 2016 "Making Politics Work for Development: Harnessing Transparency and Citizen Engagement" *Policy Research Report Conference Edition* 102.
241 World Bank *Policy Research Report Conference Edition* 102.
242 World Bank *Policy Research Report Conference Edition* 102.
243 World Bank *Policy Research Report Conference Edition* 102.
244 Acemoglu D Tarek A H and Ahmed T 2014 "The Power of the Street: Evidence from Egypt's Arab Spring" in World Bank *Policy Research Report Conference Edition* 102

engagement and transparency shape all three of these principal-agent relations in fundamental ways.[245]

In principal-agent study, problems arise because agents have better information and material than principals and because monitoring and disciplinary schemes designed by principals to ensure compliance with the established system and rules are inadequate. This condition is called the problem of informational asymmetry.

The report also states that the defining features of principal-agent problems are informational asymmetries, which exist even when political engagement happens in decent ways to select and sanction leaders based on their performance in providing public goods.[246] Principals have imperfect information about the actions of agents and the consequences of these actions.[247]

As stated by Bligh Grant, the classical principal-agent problem, in connection with information asymmetry, exists for LG on several levels. For example, elected representatives, who are typically engaged on a part-time basis (and do not have remuneration like political staffers), would appear to have access to a lesser amount of information than professional bureaucrats about the day-to-day operations of councils.[248] According to him, residents are also at an information disadvantage with regard to both elected representatives and bureaucrats. State government oversight bodies, too are, having less information than elected and non-elected council officials. In all cases information asymmetry exposes the principal to additional risk.[249]

There is, however, numerous measures that can reduce the information asymmetry and which can reduce risk. It is suggested that transparency and

245 World Bank *Policy Research Report Conference Edition* 101.
246 World Bank *Policy Research Report Conference Edition* 102.
247 World Bank *Policy Research Report Conference Edition* 102.
248 Grant B and Drew J *Local Government in Australia History: Theory and Public Policy* (Springer Nature Singapore Pte Ltd. 2017) 283. (eBook) DOI 10.1007/978-981-10-3867-9
249 Grant and Drew *Springer Nature Singapore Pte Ltd.* 283

implementation of freedom of information laws are fundamental to address principal-agent problems in government.

Most government systems around the world are an intricate mix of power being shared between appointed and elected officials across multiple jurisdictions. Principal-agent analysis provides insights into why governments at each tier (mainly being the agents of the people) and their officials function as they do. As stated by Alesina and Tabellini, theoretical research has examined how different tasks of government should be assigned to a publicly appointed official or to an elected official across these multiple jurisdictions, depending on the nature of the different principal-agent problems.[250]

In summary, while the principal-agent theory raises interesting issues for the study of the relationship between different actors in public institutions, it may not be regarded as a major supposition to describe and explain how LG is created and how it functions. Actually, it is important to mention here that the theories of local government, discussed here, are not mutually exclusive but complementary to each other. Together, they provide very good justification for LG.

vii. Systems theory

Systems thinking or systems theory is based on the idea that everything lives in an interconnected world. According to this theory, everything affects everything and nothing stands alone. The original idea of systems analysis came from biology and then has been adopted by the social scientists.[251] The German biologist Ludwig Van Bertalanfly was the first person to pronounce the formulations of the general systems theory way back in 1930s, then from the general systems theory social scientists had evolved and formulated the concept of the systems theory.[252] According to Bertalanfly system means "set of elements studying in interaction".[253]

250 Alesina A and Guido T 2007 ''*Bureaucrats or Politicians?''* In World Bank *Policy Research Report Conference Edition* 102
251 "Comparative Methods and Approaches: Systems approach: IGNOU Study material'' Content Digitized by eGyanKosh *IGNOU* 3.
252 Comparative Methods and Approaches IGNOU 3.
253 Comparative Methods and Approaches IGNOU 3.

In common parlance, a system is something which is composed of many interrelated actors and parts. According to Oxford Dictionary, the term 'system' represents "a complex whole; set of connected things or parts; organised body of things; working together in a regular relation".[254] A system can also be described as an assemblage of certain objects united by some form of regular interaction or interdependence. Under the report of the OECD's Observatory of Public Sector Innovation, the expression 'systems', is defined as "elements joined together by dynamics that produce an effect (result or outcome), create a whole or influence other elements and systems".[255] Systems exist on a spectrum of comprehensibility: from easily observed and analysed to highly composite or novel requiring postulation.[256] Our world is made up of systems: the universe, the earth, the continents, countries, cities, suburbs, streets, homes and rooms are all systems.[257] As remarked by Mele and Pele, the smallest system is a single unicellular organism; the largest one is represented by the universe.[258]

As stated by C.N. Shankar Rao, the term 'system' denotes the following points or factors:

a) *A system indicates an orderly arrangement of parts.* It has parts which are interrelated. These parts may have their clearly defined functions.

b) *A system may have its own boundaries.* In order to determine what lies within a particular system and what lies outside it, it is essential to specify the limits of that system.

c) *One system can be an element or a subsystem in another.* Let's say, city is a sub-system in the thaluk and thaluk is the sub-system in the district and district is a sub-system in the province, and so on.

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254 Della Thompson (ed) 1993 *The Oxford Dictionary of Current English* 2nd ed. (Oxford University Press) 925.

255 OECD observatory of public sector Innovation (2017) *Systems approach to public sector challenges* preliminary version (OECD) 102.

256 OECD *systems approach to public sector challenges preliminary version* 102.

257 Weston J I *The use of systems thinking to deal with managing change in the context of the new South Africa* (MSc thesis University of Cape Town(UCT) 1997) 18.

258 Mele C Pels J and Polese F 2010 "A Brief Review of Systems Theories and Their Managerial Applications" *Institute for Operations Research and the Management Sciences (INFORMS)* 5. available @ https://www.researchgate.net/publication/229020610 accessed on 05/02/2019

d) *To call something a system is an abstract (an analytical way of looking at concrete things).* A system is simply an aspect of things abstracted from reality for purpose of analysis.

e) *The concept of system is applicable to the study of both organic and inorganic realities.* The term "system' is used to refer to the organic realities; for instance, human digestive system, circulatory system, nervous system, and so on. It is also used in the study of inorganic realities such as political system, industrial system, educational system, social system, etc.[259]

A system can be, therefore, described as an entity, which is a coherent whole such that a boundary is perceived around it in order to distinguish internal and external elements and to identify and recognise input and output relating to and emerging from the entity.[260]

A systems theory is hence a theoretical perspective that analyses a phenomenon understood as a whole and not as simply the sum of elementary parts and its focus is on the interactions, interdependences and on the relationships between parts in order to understand an entity's organization, functioning and outcomes.[261]

Systems' thinking is multidisciplinary in its approach, in the sense that, it can be used in all system in nature, in society and in various scientific domains plus it is a framework with which we can investigate observable facts from a holistic approach. Thus, systems theory can be employed for many fields of study.

In the opinion of Mele, etal, a distinctive characteristic of systems theories is that it developed across various disciplines at the same time. This helped scholars working from a systems theory perspective to build on the knowledge and concepts developed within other disciplines.[262] According to them, today there are

259 Shankar Rao *Sociology Primary principles* 3rd ed (S Chand & Company Ltd New Delhi 2001) 114-115

260 Irene C L Roger M and Nick Y 2009 "Outcome-based Contracts as a driver for Systems thinking and Service-Dominant Logic in Service Science: Evidence from the Defence industry" in Mele C Pels J and Polese F 2010 *A Brief Review of Systems Theories* 5.

261 Mele C Pels J and Polese F 2010 *A Brief Review of Systems Theories* 3.

262 Mele C Pels J and Polese F 2010 *A Brief Review of Systems Theories* 3.

several kinds of systems viewpoints. There are service systems (from Service Science, Management, Engineering and Design - SSMED), smart systems (from systems thinking), viable systems (from Viable Systems Approach - VSA), reticular systems (from network theories), economic systems (from economics), social systems (from sociology), conceptual systems (from psychology), *institutional systems or legal systems (from law),* technological systems (from cybernetics), living systems (from natural sciences), and ecosystems (from ecology).[263]

Politicians frequently ask for application of the "systems approach" to pressing problems such as air and water pollution, urban blight, traffic congestion, juvenile delinquency, organized crime, city planning etc.[264] In one way or another, we are forced to deal with complexities, with "wholes" or "systems," in every field of knowledge.[265]

LG forms a subsystem of the political system at the state and central level. Considering from the standpoint of its own jurisdiction, an LG can be seen as a small political system which exists and works in interaction with its environment. As a system it may deal with set of complex problems relating to legal, institutional and structural issues and therefore systems approach can be applied to successfully tackle such multifaceted problems.

Analysis of a problem in any system of government involves many human actors (human resources and their corresponding roles) and non-human actors (technologies and legal instruments). It also deals with many goals and set up on different levels; federal, state and local. A systems approach is suitable for examining any obscure problem relating to the working of LG. As outlined by Checkland, systems of government may be viewed as ultimate catchalls for the set of complex problems of social science and management and therefore should

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263 Mele C Pels J and Polese F 2010 *A Brief Review of Systems Theories* 3.

264 Wolfe Harry B *Systems Analysis and Urban Planning-The San Francisco Housing simulation Model,* In Ludwig von Bertalanffy *General System Theory foundations, Development, Applications* (George Braziller Inc Newyork 1969) 4.

265 Ludwig von Bertalanffy *General System Theory: Foundations Development Applications* (George Braziller Inc.Newyork 1969)5.

provide fruitful ground for the systems approach.[266] L Scott has also stated that problems located within systems of government and its way of governance tend to be complex in that they are often multi-player, multi-objective and multi-level.[267] Besides, they imply local, regional, national perspectives.

From the above discussion, it can be noted that systems theory has the capability to explain the 'how' part of the above model. It can be employed to elaborate how LG acts in a particular way. It can also be applied to study the interdependence, connections and interactions made among the various components of the system as a whole. Systems' thinking looks beyond the individual entities themselves and try to see the relationships between the entities; the interaction of these links defines the system.

A study which aims at to investigating the role of ULG in implementing urban planning laws involves analysis of many interrelated components or objects of the system. These objects include various role players (the public, NGOs, CBOs etc through public participation); different levels of government (the federal, state and local governments their vertical and horizontal relationships the control and supervision of higher level over the lower level, if any); laws and policies (the constitution, planning and LG laws etc). Furthermore, it includes diverse offices and departments with their professional workers (the organisational structure, related roles and institutional set up).

It is to be recalled that every part is an independent unit; however, none can function optimally without interacting and interrelating on an ongoing basis with others in realizing the purpose of the whole system. It means in systems thinking the centre of attention is the interdependence, connections and interactions made among the various components of the system as a whole but not the individual components. Moreover, the key principle of systems thinking is that: "The whole is greater than the sum of its parts". The assumption is that when parts of a system come together and interact in some ways, something else emerges from the

266 Scott L 2005 "Unpacking developmental LG using Soft Systems Methodology and MCDA tools" ORRSA 4 available @ http://www.orssa.org.za
267 Scott 2005 *ORRSA* 4.

interface of those parts that was not present in the elements themselves. This can be defined as the principles of “emergence”. Rather than having discrete elements bound together in linear relationships, complex problems are emergent: they are greater than the sum of their parts.[268]

For the purpose of understanding the meaning of the expression system itself, systems analysis elaborates a set of concepts. It includes such concepts as system, sub-system, environment, input, conversion process, output, feedback, etc. System implies continuous relationships, signifying behavioural patterns, among its numerous elements, say objects or entities. A system that comprises an element of a bigger system is called a sub-system. The setting within which a system happens, or works is called environment. The line or the demarcation that separates the system from its environment is known as boundary. The system gets inputs from the environment in the form of demands upon the system and supports for its operation. As the system operates, inputs are subjected to a conversion process which leads to system outputs embodying rules or policies to be implemented. When system outputs have an effect on the environment and requires a change or modification of inputs, feedback occurs.

viii. Derivatives of the systems analysis

a. Input-output approach

Political system or the input-output approach is one of the derivatives of systems analysis. David Easton has been one of the political scientists who initially introduced the systems approach to politics. He selects the political system as the basic unit of analysis and concentrates on the intra system behaviour of various systems. He describes political system as "those interactions through which values are authoritatively allocated and implemented for a society".[269] According to Easton, the main feature of input-output approach is that inputs through demands and supports and set the political system at work while outputs through policies and decisions throwback what is not accepted as feed- back.[270]

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268 OECD *systems approach to public sector challenges preliminary version* 12.
269 Comparative Methods and Approaches *IGNOU* 50.
270 Comparative Methods and Approaches *IGNOU* 50.

The overall role of LG is to act as an input-output mechanism providing services in response to local needs and requirements according to the laws and standards of the higher level. Burnett, discussing the benefits of utilising systems analysis, states that, it enables the structuring of the dynamic process of political system in terms of inputs, conversion, outputs and feedback.[271]

Inputs include state government laws and community wants, demands, and/ or desires. The conversion combines, evaluates and inter-relates the inputs to produce a set of outputs. The conversion process mainly includes execution of these government laws and policies in the particular field. Basically, the outputs are the stakes for which the partakers in the political systems are competing; it may be in the form of provision of basic services or fulfilment of other developmental needs.

b. Structural - Functional Derivative

The structural functional analysis is the other derivative of the systems approach. The basic idea of this approach is that all systems exist to perform functions through their structures. Structural functionalism has its roots in the work of the early sociologists, especially Durkheim and Weber.[272] Among contemporary scholars, structural functionalism approach is most closely associated with the work of Parsons and Merton.[273] Sometimes, the expression structural functionalism is used interchangeably with phrases like *equilibrium theory, social systems theory* and *functionalism*.

The terms structure and function refer to two different but closely related concepts. Structures can be compared with the parts of a system and functions can be

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271 Burnett Alan 1984 The application *of alternative theories in political geography: the case of political participation* In Lyn Henderson *more than rates, roads and rubbish*: *A history of LG in action in Thuringowa Shire 1879- 1985* (PhD Thesis James Cook University1992) page 237.

272 Eshleman J R and Barbara G C *Sociology an introduction* (Little Brown and Company Limited 1983)36

273 Eshleman and Barbara 1983 *Little Brown and Company Limited* 37.

associated with the purposes of these structures.[274] Structures are the more 'static' elements of a system.[275] According to Ruth Potts, and others, this does not mean structures are immobile, rather they change at a slower rate than the functions, which tend to be more dynamic and less robust than structures.[276]

Ruth Potts, and others, contend that structural functionalism conceptualises society as a system of interacting elements that promote stability or transformation through their interactions.[277] For them, most useful assumptions underpinning structural functionalism comprise the following:

- Society consists of both structures and functions which are interconnected and interdependent, and ultimately focused on maintaining or mediating societal equilibrium[278] and or necessary transformation[279];
- Social systems contain both structures and functions that are essential for the on-going health or survival of that system[280]; structures exist to meet the functional needs of a system[281];
- Systemic functionality (i.e., how parts of the system interact and work) across and within structures serves to reinforce and maintain the stability of the system's structures in the context of an ever-changing, composite, and unpredictable system.

274 Eshleman and Barbara 1983 *Little Brown and Company Limited* 37.

275 Sewell W 1992 "A theory of structure: Duality, agency, and transformation" In Ruth P Karen V Allan D and Neil S 2014 "Exploring the usefulness of structural–functional approaches to analyse governance of planning systems" *SAGE Publication* 6. Accessed @ https://www.researchgate.net/publication/275583943 on 12/2/2019

276 Ruth P, Karen V, Allan D and Neil S 2014 "Exploring the usefulness of structural–functional approaches" *SAGE Publication* 6

277 Ruth, Karen, Allan and Neil 2014 *SAGE Publication* 7

278 Radcliffe B 1935 "On the concept of function in social science" in Ruth P Karen V Allan D and Neil S 2014 ''Exploring the usefulness of structural–functional approaches" 7.

279 Dale A, Vella K and Potts R 2013b "Governance systems analysis: A framework for reforming governance systems" in Ruth P, Karen V, Allan D and Neil S 2014 "Exploring the usefulness of structural–functional approaches" 7.

280 Chilcott J 1998 "Structural-functionalism as a Heuristic Device" in Ruth P, Karen V, Allan D and Neil S 2014 "Exploring the usefulness of structural–functional approaches" 7.

281 Merton R 1949 *Social Theory and Social Structure* Ruth P, Karen V, Allan D and Neil S 2014 "Exploring the usefulness of structural–functional approaches" 7.

Functionalists are criticised for their focus on order and stability. They have overemphasised on preservation of the status quo of the system. With the emphasis on equilibrium and the maintenance of the system, the process of change, critics say, receives little attention.[282]

Despite these criticisms, most of structural-functionalism's principles remain appropriate and suitable to planning practitioners as a theoretical grounding for systemic examination of real-world, multi-layered, complex and dynamic planning systems. Planning systems are likely to be poorly understood if practitioners only look at how individual institution is organised, or the role and activities of an individual institution within the system.

According to Ruth Potts, and others, in order to fully understand planning systems, practitioners and theorists should consider the system as a whole and the cumulative influences of:

- the broad political, social, economic and cultural contexts of the system;
- the formation of institutions around key planning tasks (e.g., goal setting);
- the internal organisation of institutions;
- the way in which institutions interact (the network); and,
- the role of institutions in the planning process.[283]

c. Cybernetics Derivative

Cybernetics or communication approach is one more derivative of the system analysis. Cybernetics is well-defined as the science of communication and control. It is a study that deals with the flow of information through a system and how this information is used by the system to control itself. The focus of cybernetics is the systematic study of communication and control in organisations of all kinds. One of the foundations of organizational cybernetics is the Ashby theorem on requisite

282 Eshleman and Barbara 1983 *Little Brown and Company Limited* 38.
283 Ruth, Karen, Allan, and Neil 2014 *SAGE Publication* 11

variety (complexity).[284] According to this theorem, simplifying complex problems does not bring us closer to workable solutions—complex problems usually also require complex action.[285]

The view of Cybernetics assumes that all organisations are comparable in certain fundamental features and that every organisation is held together by communication. Because 'governments' are organisations, it is they were information-processes are mainly represented.[286] Karl Deutsch, who is regarded as the chief exponent of the Cybernetics model, has developed some concepts in his Cybernetics system; these are, information (a patterned relationship between events), communication (the transfer of such patterned relations), and channels (the paths or associative trails through which information is transferred).[287]

Feedback constitutes a key concept in the cybernetics approach. According to Deutsch, feedback means a communications network that produces action in response to input information. Every organization, including a political system, is characterised by feedback mechanisms. It introduces dynamism into what may be otherwise a static analysis.[288]

In a nutshell, to improve any factor of a country's governmental system, we can consider how the actors and all parts affect each other, and how the larger context shapes the interactions. Cybernetics model deals with communication, control, and channels, whereas, input output model relies on interactions and interrelationships and the structural-functional analysis gives emphasis to structures and their functions, every one of these approaches seeks to explain the functioning of a system – its ability to adapt itself amidst changes and its capability to maintain itself over time. The virtues of systems theory and its derivatives cannot be ignored.

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284 Ashby W R 1956 *An introduction to cybernetics* In OECD 2017 observatory of public sector Innovation 103.

285 OECD *systems approach to public sector challenges preliminary version* 103.

286 Calicut University "Comparative Political Systems: MA Political Science Study Material" *Calicut University* 26.

287 Study material on Comparative Political Systems *Calicut University* 26.

288 Study material on Comparative Political Systems *Calicut University* 26.

2.7. The interplay between Urban Planning Laws and Local Governments: From a literary standpoint

The literature on the role of urban local governments and the execution of planning laws in Ethiopia is sparse, and it appears that academics are not particularly interested in this topic. Ethiopian study in this area is also in its early phases. This isn't to say that the country's lawfully mandated urban planning process isn't taking place at the municipal level. Thus far, the researcher combed through many sources for fragments of international literature to produce this section of the study. And this part tries to reconcile the two notions of ULG and planning law, as well as explore the experience of ULGs executing planning laws.

As a starting point, Patrick McAuslan's "Land Law Reform in Eastern Africa" is essential reading for anybody interested in law and development concerns.
In examining the reforms to urban planning laws in Eastern Africa, McAuslan discovered two distinct types of urban planning legislation: colonial patterns, which could be referred to as the conventional method, and Habitat/Cities Alliance models, which could be referred to as a fundamentally transformative approach.[289] He focused on urban planning law reforms that began in the mid-1990s in Kenya, Uganda, Tanzania, and Zanzibar. He determined on such topics as, "who plans," "how plans are developed," with a particular emphasis on public engagement, and, to a lesser extent, the substance of planning; "what were plans meant to cover".[290]

McAuslan noted that the development of urban planning laws in the nations analysed was founded on the same colonial legal and town planning principles, resulting in very similar colonial town planning laws, which influenced the evolution and reform of those laws throughout the reform era.[291] The concept of 'order' was

289 McAuslan's P 2013 "Land Law Reform in Eastern Africa: A critical review of 50 years of land law reform in Eastern Africa 1961–2011" *Routledge Taylor and Francis (A Glass House Book) London* 176.
290 McAuslan's P 2013 p.176
291 McAuslan's P 2013 p.161

a constant element in colonial planning legislation, and it was carried over into reform-era planning legislation.[292]

The overall conclusion of his study on the evolution of urban planning laws in Eastern Africa during the reform era is that all the countries have ignored and rejected UN-transformational Habitat's approach in a modest manner, which must be said, was not particularly original or path-breaking when it was agreed to at the time.[293] For example, Kenyan law considers planning to be a technical professional topic that should only be handled by qualified planners and administrators.[294] Not only are the public and CBOs excluded from the planning process, but even municipal councillors are. In a similar vein, the Tanzanian case demonstrates undemocratic planning practices, including a disdain for people' rights, technocratic, illegal, and corrupt actions, and a lack of transparency and accountability in the planning system.[295] Ugandan planning rules are quite like Tanzanian planning laws.
The second crucial reading is Stephen Berrisford's "Why It Is Difficult to Change Urban Planning Laws in African Countries?" In his paper, Berrisford disputed to some extent with McAuslan's assertion that the history of African urban planning laws was founded on the same colonial legal and town planning notions. The widely believed idea that all African planning laws are inherited from colonial legislation, he claims, is only partially correct.[296]

He noted that most countries have changed or modified such laws in the past 50 years, with the benefits appearing to be significant on paper in certain cases. Colonial legislation, on the other hand, continues to exert a strong influence on professional practise and attitudes, particularly in government organisations where administrators see themselves as a bastion against informality, illegality, and anarchy.[297] Their views are often complemented by those of their political

292 McAuslan's P 2013 p. 197
293 McAuslan's P 2013 p. 196
294 McAuslan's P 2013 p.181
295 McAuslan's P 2013 p. 186
296 Berrisford. S “Why It Is Difficult to Change Urban Planning Laws in African Countries” 2011 Urban Forum Springer Science and Business Media B.V. (2011) Published online: DOI: 10.1007/s12132-011-9121-1 accessed on 12/16/2021 216.
297 Berrisford. S (2011) 216.

principals who see the laws as serving very much the same purposes as their colonial forebears did: to protect the quality of the suburbs or enclaves in which the elite lives and to punish transgressors for failing to comply with the often-arcane prescriptions of the law.[298]

Although there have been attempts over the years to reform African planning law, a substantial body of inherited colonial planning law has remained in force to this day, in which both the reformed law and the colonial legal legacy have failed to meet the needs of African cities, governors, and citizens.

Berrisford remarked that Planning law has traditionally served two purposes, both nationally and internationally.[299] Firstly, it establishes the legal framework within which plans are created: who creates plans, what processes must be followed in plan creation, what the plan's substance is, and what the plan's legal impact is. Second, it governs the process of approving land development or change of use, including what land use changes or developments require permission, the process to be followed by a person seeking approval for a proposed land use change or land development, the factors to be considered by decision makers when considering an application for permission, including the effect of any approved plan, and much more.

However, African countries' present planning laws are not successful in producing any of the expected result. There are few current plans in place, and those that are often considered other as impractical and wishful. Development control functions are notoriously erratic and unpredictable, and it is widely acknowledged that most buildings and developments are constructed in violation of planning laws.[300]

Berrisford along with Michael Kihato in their study, "The role of planning laws in evictions in Sub-Saharan Africa," explained the justifications for the evictions from a standpoint other than that of simple breach of planning laws. He discovered

298 Berrisford. S (2011) 216.
299 Berrisford. S (2011) 216.
300 Berrisford. S (2011) 216.

three attitudinal causes for evictions which he attributes to colonial antecedents.[301] First, that African city dwellers have a right to be in rural areas; second, that African urban planning is weak because there is "no implementation," and that a show of force demonstrates a commitment to "implementation," which is a sign of "good governance"; and third, that a good city is one that is clean, with no visible signs of poverty. These attitudes, they claim, have persisted among post-independent city administrators.[302] They argue that in Africa Planning laws provide a valuable mechanism for expressing these underlying sentiments. During the colonial period, planning regulations were typically established with these beliefs in mind.[303]

Finally, the study emphasises the need of legislative change that is cognizant of the political processes that create and build attitudes.[304] It is suggested that planning laws be viewed as a more integral aspect of urban administration, entwined with political processes. For Berrisford and KIhato, laws are more than just legal prescriptions; they reflect how people feel about cities and the people who live in them. Planning has been rendered useless because it has been seen solely through the perspective of the law. Berrisford underlines that a paradigm shift is required where laws should be viewed as a reflection of citizens' rights rather than the state's control over them.[305]

Yet the other interesting scholarly reading for this topic is Wekwete's "Planning Laws for Urban and Regional Planning in Zimbabwe". Wekwete, like other scholars, acknowledged that the colonial legal system has a strong impact on planning laws. According to him, most planning laws, in former colonial developing countries, were largely plagiarised, or transmitted from the experiences of the

301 Berrisford. S and Kihato. M "The role of planning law in evictions in sub-Saharan Africa"2006 SARS available @ http://www.tandfonline.com/loi/rssr20 20 accessed on 3/22/2021.
302 Berrisford. S and Kihato. M. (2006) 20.
303 Berrisford. S and Kihato. M. (2006) 21.
304 Berrisford. S and Kihato. M. (2006) 22.
305 Berrisford. S and Kihato. M. (2006) 21-22

former 'mother countries,' and they expressed primarily colonial wishes and goals.[306]

Wekwete's article aims to assess some of the most fundamental planning laws, such as those directed at the administrative structure (administration and administrative arrangements for planning), specialised sector operations, and the Regional, Town and Country Planning Act.

According to Wekwete, planning occurs within the framework of certain governance structures. In Zimbabwe, this mostly relates to local government laws that establish local planning authorities.[307] Urban Councils Act, District Council Act, Rural Council Act, Provincial Councils and Administration Act are among the legislations. The administrative structures for subnational planning are defined by these legislations. Powers to elect councillors and create local government, responsibilities of planning and administration, and powers to collect income and deliver services are among the statutory provisions for the various kinds of local government.[308]

Local government laws, according to Wekwete, offer the enabling framework for planning from the perspective of planning law. The preparation and implementation of plans is the responsibility of local governments. The administrative authorities and arrangements of the component local government legislations are used to accomplish this. This covers plans for residential, commercial, and industrial applications, as well as development, regional, master, and local plan preparation, and other technical tasks.[309]

According to Wekwete, the Regional, Town and Country Planning Act of 1976, as amended in 1980 and 1982, is the cornerstone of the regional and urban planning system. Land use is addressed in the law, which serves as a foundation for local

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306 Wekwete. K "Planning Laws for Urban and Regional Planning in Zimbabwe - A Review" 1989 *RUP Occasional Paper* No. 20 *Department of Rural and Urban Planning University of Zimbabwe* 2.
307 Wekwete. K (1989)3.
308 Wekwete. K (1989)3.
309 Wekwete. K (1989)3.

governments to establish regional, urban, and rural plans. The Act is structured into provisions that may be categorised into three types of powers; planning powers, development control powers and the power to provide the administrative foundation for planning. Because it is intertwined with so many other acts, these powers are intimately related to sector-specific and administrative legislations. The legislation establishes a set of powers for forward planning, which are implemented by local planning bodies (urban, rural, and district councils). Physical planning is the form of planning that is being considered, and it may be divided into two categories: rural-regional and urban-regional planning. There are several overlaps that might arise between and among the various types of planning.

The link between the two conceptions of ULG and planning laws was demonstrated in Wekwete's study, which said that local governments are authorized for the preparation and implementation of plans, including master plans.[310] However, he stated that master plan preparation is a challenge for most local governments, owing to a lack of expertise and financial resources.[311] Another issue identified by Wekwete is that local governments are organized into sectors, limiting the functioning of master plans, which are frequently associated with land use and transportation. They are plans that are tied to the department of the municipality engineer. This is a primarily technical department that deals with roads, construction, and standards, among other things. As a result, master plans at the municipal level are long-term strategy documents (with a specified emphasis), but they do not bear the complete corporate weight of all departments.[312]

The relationship between the two notions of ULG and planning laws is also loosely referenced in Wekwete's other key paper, "Planning Law in Sub-Saharan Africa: A Focus on Experiences in Southern and Eastern Africa." According to Wekwete, there are five key characteristics of Sub-Saharan African town and nation planning laws:[313] First, there is a significant provision for the preparation of a wide range of

310 Wekwete. K (1989)4.
311 Wekwete. K (1989)4.
312 Wekwete. K (1989)10.
313 Wekwete. K "Planning Law in Sub-Saharan Africa: A Focus on Experiences in Southern and Eastern Africa." 1995 (Habitat International Vol. 19, No.1) *Elsevier science Ltd.* 16-17.

statutory plans, including regional plans, urban master and structural plans, local plans, action plans, and particular topic plans. Second, planning laws establish and strengthen the institutional structure within which planning is implemented. A close relationship is formed here with a wide range of administrative laws, notably those governing local government operations. Third, planning laws dictate the characteristics of various plans, including the plans that authorised authorities use to manage and control development, as well as its aims and purposes. In many cases, the focus has been on land use and infrastructure planning. Fourth, planning laws have put an emphasis on physical development control. Planning permission has been a crucial aspect, and it is considered that applications must follow forms, pay fees, and be compatible with the terms of current plans or the authorities' objectives. Finally, while town and country planning laws have a major focus on land use planning, they can only work successfully in combination with other sets of laws controlling the operation of sectoral activities: water, electricity, roads, and so on.

Wekwete contended that the creation and use of planning laws differ from country to country and have been impacted by a variety of socioeconomic and political variables.[314] However, despite differences in political and economic situations, there are certain similar threads that run across the countries examined. To begin with, spatial development law is centralised in its formulation, implementation, and administration. Second, the legislation presupposes the presence of local government, which is often where such laws are implemented. Third, planning legislation has considered the necessity for diverse types of plans as a foundation for encouraging and managing growth. Finally, there are too many laws in all countries, resulting in disagreements and duplication. The laws are usually associated with certain sectors or departments, which have jurisdiction and control over them.[315]

Even though planning laws recognise the presence of local government, which is typically where such laws are applied, Wekwete noticed that local government is frequently weak or non-existent, implying that planning laws cannot be

314 Wekwete. K (1995)17-18.
315 Wekwete. K (1995)17-18.

enforced.[316] He said that because of inadequacy or non-existent of Local government, town planning is primarily done in a vacuum. In fact, the most common barrier to the implementation of efficient legal frameworks in African nations is a lack of or poor capability. As a result, Wekwete concluded that only when urban local governments had the necessary expertise would they be capable of enacting meaningful and suitable planning laws.[317]

Vanesa Watson's "The planned city sweeps the poor away..." is another scholarly text that mentions the link between local governance and planning legislation. Watson, like Wekwete, stressed the importance of local governance in planning systems. She claims that formal urban planning systems are mostly located in the public sector, with local governments being the most competent.[318] However, urban administration in several regions of the developing World continues to be highly centralised and state led.[319] Watson contends that despite calls for planning law reform and updating to make it a better instrument for dealing with expanding urban concerns, and new laws being developed, nothing changed on the ground.[320]

2.13. Conclusion

This Chapter has attempted to discuss the major concepts and subject matter of this thesis. Mainly, it has discussed the nature and concepts of LG, ULG, and urban planning law from the perspective of various writers and practitioners as provided in literature. It has tried to bring concepts of ULG and Urban planning law together and review the implementation practice of the law. The discussion was based on the discourse of LG as a decentralised, representative public institution. The Chapter concludes that the concept of LG varies from country to country in terms of its characteristics relating mainly to decentralisation of decision-making

316 Wekwete. K (1995)26.
317 Wekwete. K (1995)26.
318 Vanesa. W “The planned city sweeps the poor away. . .’ Urban planning and 21st century urbanization” 2009 *Progress in Planning 72* available @ www.elsevier.com/locate/pplann 157 accessed on 11/25/2021.
319 Vanesa W (2009)157.
320 Vanesa W (2009)157.

process. It is also difficult to find a distinct and complete conceptualisation of the term acceptable to both the developing and developed countries of the world. It has been defined in different ways, depending on the perspectives and experience of its users.

This Chapter has also discussed some selected theories and has attempted to explain the varying dimensions of LGs. How LGs existed; why they existed and what and how they function. In this regard, the chapter concludes that *"even though there is no single and specific theory concerning this specific topic, there are bodies of theoretical work that are suitable and applicable to and explain the various major concepts and their interrelationships"*. In this connection, the Chapter has examined "efficient services theory", ''democratic participatory theory'', ''localist theory'', "theory of instrument of control", "principal-agent theory", the "Dillon's Rule" and "systems theory" and its derivatives. By the way, the Chapter also concludes that systems theory can be considered as an excellent technique for analysing the work of systems of government. It can be utilised to inform a study relating to the role of ULG in implementing urban planning laws. Despite the paucity of material on the function of ULGs and the implementation of planning laws in Ethiopia, this chapter sought to search, additionally, through various sources for pieces of foreign literature to support the findings and reconcile the two concepts of ULG and planning law.

CHAPTER 3

ULG and Urban Planning Law in Ethiopia Historical Context

3.1. Introduction

This chapter is based on two assumptions: First, an understanding of LG's evolutionary trajectories, historical status, and role aids a reader, to understand the historical development of the system and the impact this development has had on the current scheme of LG. Second, historical circumstances are decisive factors in determining the status, role and functions of LG and their evolution over time. As stated by H. Seeley, a study of LG would not be complete without at least a cursory glance at the initial phase of this vital system - the provision, operation, and maintenance of essential public services at local level.[321] To be brief, all these mean, putting too much emphasis on contemporary factors, and too little on historical ones, producing an unbalanced understanding of the evolution of LG.

A great variety of historical experience has influenced the expansion of LG structures in the Asia-Pacific region, ranging from the intermarriage of longstanding local traditions of self-governance to organizational forms imported through the colonial experience and Marxist-Leninism.[322] The state of affairs in Africa is not an exception. Traditions of community or grassroots self-governance have long existed in the region. However, it was not in the more sophisticated organizational forms of local government that exists today.[323] So was the custom in Africa.

Actually, decentralization in Africa has most often been conceived and implemented as an administrative technique.[324] According to Jesse C. Ribot, decentralisation in Africa was initially used by the colonial regimes for the purposes of managing Africans under administrative rule rather than to

321 Seeley I H. *Local Government Explained 1978 1st ed* (The Macmillan Press Ltd 1978) 1.
322 United Cities and Local Governments *First Global Report on Decentralization and Local Democracy in the World* (UCLG 2008)58
323 UCLG *First Global Report on Decentralization and Local Democracy in the World* 58.
324 UCLG *First Global Report on Decentralization and Local Democracy in the World* 58.

enfranchise them.[325] He further signifies that the system of LG was a mere tool of administrative management, and such systems were inherited by African governments at independence.[326] Indeed, when colonial powers controlled most of the region, they often sought to disrupt traditional ties in order to consolidate their centralized power.[327] There were also some instances where a colonial power tried to preserve an existing local administrative structure, but this approach, too, was adopted primarily to strengthen colonial power, rather than foster self-governance.[328] Colonial rule disrupted, destroyed or downgraded these viable pre-colonial institutions which in their own way had provided modes of democratic governance.[329] LGs in Anglophone Africa were mainly created by the British before independence as an instrument for the pursuit of colonial objectives.[330]

The historical explanation of the development of LG in Ethiopia, too, is somehow similar with other African countries, in that, traditions of communal or grassroots' self-governance have long existed in the country. They were not also in a refined organizational form and not comparable with LGs those exist today. The slight difference is that Ethiopia did not experience European colonial rule. However, as we will see in the next part, there was an analogous process of exercise of authority; the kings used regional local lords, whom they had brought under their rule through the process of expansion, to exercise control and strengthen their centralized power.

Old Ethiopia was a union of several fragmented territorial and national units which were under different traditional rules. However, it would be difficult to fully explain the fragmented situation of such units of ancient Ethiopia under the modern

325 Ribot J 2002 "African Decentralization: Local Actors, Powers and Accountability" *UNRISD* 4.
326 Ribot 2002 *UNRISD* 18.
327 UCLG *First Global Report on Decentralization and Local Democracy in the World* 58.
328 UCLG *First Global Report on Decentralization and Local Democracy in the World* 58.
329 Zewde B "Systems of Local Governance among the Gurage the Yajoka Qicha and the Gordanna Sera" in Zewde B and Pausewang S (eds) Ethiopia: The Challenge of Democracy from Below (Nordiska Afrikainstitutet, Uppsala and Forum for Social Studies, Addis Ababa, 2002)16.
330 Kjetil Børhaug ''Local Government and Decentralization in Sub-Saharan Africa: An Annotated Bibliography'' 1994 *Michelsen Institute Development Studies and Human Rights* 21.

concept of federation and decentralization. Ethiopia's origin as a state goes back to the Axumite civilisation around the 10th century BC; from that time until the 1850s decentralised rule was the dominant feature of the country's political system.[331] This system was manifested in the existence of triple authorities.[332] An emperor or a higher king served as a central authority, while regional/provincial and local nobilities exercised autonomous power within their respective realms.[333]

Until the adoption of the current Federal Constitution in 1994, Ethiopia was ruled for many years, initially as a feudal empire and then, from 1975, as a highly centralized Marxist-Leninist socialist state led by the military. The 1994 Constitution established a Federal Democratic Republic, consisting of ten Regional States, (one being recently added) the federal capital, city Addis Ababa, and the special administrative region of Dire Dawa. Now the government structure has four levels: federal, regional, Woreda (or city/municipal), and Kebele (neighbourhood).

3.2. Brief background of Ethiopian decentralisation and local government

The historical background of the LG system in Ethiopia can be explained briefly by splitting it into four broad phases: first, the LG and decentralisation system from the beginning of the state until 1931, second, the scheme under the modern monarchical constitutions (explicitly under the 1931; and 1955 revised constitution); third, the LG system under the Dergue (i.e. a socialist military government) from 1974-upto 1991, and finally, under the current regime, specifically from 1991 onwards and under the constitution of the FDRE.

3.2.1. The LG system prior to 1931AD

This period is notable as it delineates the traditional governance system. In his introductory note, to his book titled *''Ethiopia: The Challenge of Democracy from*

331 Zemelak A "Local government in Ethiopia: still an apparatus of control?" 2011 *LD and R* 2 available @ https://www.researchgate.net accessed on 20/05/2019

332 Zemelak A 2011 *LD and R* 2.

333 Gebru T "*Ethiopia: power and protest: Peasant revolts in the twentieth century* (1991)" at 36; and Teshale (2002) at 16 In Zemelak ''Local government in Ethiopia: still an apparatus of control?'' 2.

Below" Zewde B aptly stated the chronological progress of the country and its Local units as follows.

> *"The Ethiopian state has endured considerable vicissitudes since its genesis some two millennia back. At times, it has expanded; at other times, it has contracted. It has changed its loci on a number of occasions. Its component units have also altered with time. But three epochs stand out as formative periods for the evolution of the central political institution: the Aksumite (lasting roughly from the first to the eighth centuries AD), the medieval period (c. 1270–1527) and the modern (1855– 1974). All three periods saw the monarchy at the height of its power and the empire enjoying varying degrees of territorial extension".*[334]

Historians agree that Ethiopia had a decentralised governance system during much of its existence as a state. The prevailing picture, in all the three eras outlined above, has been more of a regionalized monarchy rather than a centralized one. This decentralised system was characterised by the co-existence of three-layered authorities: Autonomous kings and provincial and local nobility exercised authorities within their area while at the same time recognising the imperial throne as the central authority[335] (i.e. the king of kings). Usually, emperors recognized the prerogatives of local strongmen or regional dynasties.[336]

Scholars maintain that the colossal size of the country, its rugged and broken landscape, the economic and cultural diversity of the population, and the absence of a modern means of communication were the causes of the decentralized system and structure.[337] Some writers also regarded the poor communication system and immature political awareness as causes of decentralized systems. Mukerjee, in explaining the historical accounts of local self-government in India,

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334 Zewde B *Ethiopia: The Challenge of Democracy from Below'* 10

335 Zemelak A *Local government in Ethiopia: Adequately Empowered?* (LL.M Dissertation University of the Western Cape 2008) 20.

336 Zewde B *Ethiopia: The Challenge of Democracy from Below'* 10

337 Gebru, T1991 *"Ethiopia: Power and Protest: Peasant Revolts in the Twentieth Century*" in Zemelak A *Local government in Ethiopia: Adequately Empowered?* 36.

stated that in the ancient past, due to the absence of good communication systems, local self-government institutions were self-contained.[338] They enjoyed power and authority in resolving differentiated local issues, with minimum state interference.[339] It is remarkable in this context that in the past, when political consciousness was not sufficiently developed, people living in isolated rural areas could exercise their rights and privileges.[340]

One can easily perceive, from the above, that Ethiopia's LG and decentralisation system in ancient times has resemblance with the above assumption where certain factors such as poor communication system, vast size of the country, and immature political consciousness, to mention some, compelled the LG system of those days to exist.

Ethiopia's LG and decentralisation system also had different episode where the supremacy of imperial throne lost its influence on the lower-level kings and nobilities. The period between 1769 and 1855 is recognised in Ethiopian history as the "age of the princes" - an era dominated by political crisis and provincialism.[341] The decentralization of political power saw a significant shift in power from the monarchy into feudal, regional compartments as local warlords and traditional nobility competed for supremacy.[342] Some researchers have described the role of the emperor in the mid-nineteenth century as that of a puppet.[343]

Yet, the monarchical period specifically from 1855 to 1931 was significant as it contained elements of the process of expansion and centralisation. During this time three main rulers were exercising the supreme power to establish the modern nation-state. Emperor Tewodros, who reigned from 1855 to 1868, initiated the first

338 Mukerjee S K "Local Self-Government in West Bengal" (Calcutta: Dasgupta & Company, 1974) in Abul Kalam A K M *the impact of decentralisation on development, with special reference to the experience of Bangladesh since 1982* (Unknown Binding 1992)7.

339 Abul Kalam A K M 1992 *Unknown Binding* 7

340 Abul Kalam A K M 1992 *Unknown Binding* 7

341 Adejumobi S A. *The history of Ethiopia* (Greenwood Press, an imprint of Greenwood Publishing Group Inc. 2007)24

342 Adejumobi 2007 *Greenwood Press, an imprint of Greenwood Publishing Group Inc.* 24

343 Adejumobi 2007 *Greenwood Press, an imprint of Greenwood Publishing Group Inc.* 24

efforts to unify and modernise the Abyssinian Empire.[344] He embarked on the centralisation process by bringing an end to the autonomy of regional and local nobilities.[345] He also established the first national army, initiated a land reform, and propagated the use of Amharic language instead of Ge'ez (the old South Semetic court and church language).[346]

The second monarch was Emperor Yohnnes IV, the predecessor of Emperor Tewodros, who reigned from 1872 to1889. Unlike his predecessor, the emperor adopted a much less confrontational position towards the church and powerful principalities, devolving power to the regional nobles who recognised his status as the king of kings.[347] During his leadership local elites were left free to act in their respective localities provided that they would behave as vassal in their relations with the suzerains.[348] He pursued what was tantamount to a federal policy; where in local kings had utilised the opportunity to expand their territory. In this regard, Harold G. Marcus, writer of the Ethiopian history, said that *"Yohannes's decision to permit Menilek (next Emperor) relative freedom in the south made Shewa the center of Ethiopian expansionism".*[349]

The next Emperor, Menelik II, who ruled the country from 1889 to1913, vigorously pursued the expansionist and centralist policy that was adopted by Emperor Tewodros. During this time, Menelik II embarked on an aggressive, sometimes brutal, westward and southward expansion, conquering and incorporating Oromo, Sidama, Gurage, Wolayta, and other groups.[350] Despite their expansionist and centralist tendency, both Emperors (Tewodros and Minilik II) followed decentralised relations with the local rulers.[351] In very rare instances, they appoint their own men as provincial governors.[352] The emperor created the country's current boundary.

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344 Ethiopia: Ethinic Federalism and Its Discontents (International crises group ICG Africa Report 2009) 2.
345 Zemelak *Local government in Ethiopia: Adequately Empowered?* 20.
346 Ethiopia: Ethinic Federalism and Its Discontents page 2.
347 Zewde B ''Ethiopia: The Challenge of Democracy from Below'' 10.
348 Zewde B ''Ethiopia: The Challenge of Democracy from Below'' 10.
349 Marcus H G. *A History of Ethiopia* (University of California Press1994)77.
350 Ethiopia: Ethinic Federalism and Its Discontents page 2.
351 Zewde B ''Ethiopia: The Challenge of Democracy from Below'' 10.
352 Zewde B ''Ethiopia: The Challenge of Democracy from Below'' 10.

3.2.2. The scheme under the modern monarchical constitutions (explicitly under the 1931 and 1955 revised constitution)

Emperor Haile Selassie I (1930-1974) is best known for his use of formal constitutional and legal means to centralise power.[353] In 1931, the Emperor adopted the first written Constitution of the country. The Constitution provided the Emperor with absolute authority over the central provincial and LG. The autonomy of the nobilities and the provincial governors also got ended by this constitution. Except in Tegray and Wallaga provinces, all provincial governors became imperial appointees.[354]

During this period, the country had a four tiered local governance system. It was divided into a number of provinces. Each province was divided into zones and, districts and sub districts. Later in the year 1960, these sub districts got abolished and three tiered governance structure introduced. The criteria for the division of the provinces, the zones and districts were mostly for administrative convenience and in some cases depended on the power and influence of local landlords.[355]

In 1942 the emperor promulgated Decree No 1/1942 for bringing about provincial and local administrative reform. The Decree was later slightly amended and further supplemented by the municipalities' Proclamation No. 74/1945. The combined reading of these two pieces of legislation clearly indicated that the system of Government was highly centralized and that the central Government exercised unlimited power and control over the management of urban centres. According to the decree, the reform was designed to modernise and standardise provincial and local administrations. However, the ulterior motive of this reform, as noted by[356] Teshale, was to centralise powers.

353 Zemelak 2011 *LD and R* 6.

354 Zewde B ''Ethiopia: The Challenge of Democracy from Below'' 10.

355 Gizachew Asrat *Challenges and opportunities of local Good Governance: in Lumame Town Awabel Woreda, East Gojam ANRS* (MA thesis Addis Ababa University 2014)29.

356 Teshale T 1995 *The making of modern Ethiopia 1896-1974* in Zemelak ayele "Local government in Ethiopia: still an apparatus of control?" page 6.

The centralisation tendency of the emperor was also evidenced from the readings of some of the provisions of the decree: that the appointment of provincial and local administrators was to be made by the emperor in person;[357] and that they were to act as agents of the emperor;[358] that their function was limited to maintaining law and order and collection of taxes and;[359] that their responsibility of maintaining law and order was to be supervised by the central government security through the Security Department of the Ministry of Interior.[360]

Proclamation No. 74/1945 had identified two categories of urban areas: municipalities and townships. Six urban centres were classified as municipalities and the remaining ninety-nine urban centres were declared as first, second-, and third-class townships.[361]

In some of the cities and towns, elected municipal councils were established. However, the qualification requirement for council membership, stipulated by the Decree, was that only landowner and merchants qualified for council membership. It was clearly stated that the councillors shall be the representatives in the cities and towns of the various ministries and seven Ethiopian residents shall be elected yearly from amongst property owners and principal merchants known for their works and good conduct.[362] Ordinary city residents had no say on the management of the urban centre. Moreover, the appointment of the mayor for bigger cities and town officer for smaller towns was to be made by the emperor personally on the recommendation of the minister of Interior. Neither the city residents nor the council had any say on the appointment and presumably on the removal of this leader of the urban centres.

To sum up, during this period, the role and status of the local structures and their entities, both in rural and urban areas, were instruments of centralisation of power.

357 Imperial Government of Ethiopia “Administration Regulation Decree No.1 of 1942” article 3
358 See Article 2 of Decree 1/1942.
359 See Article 6 of Decree 1/1942.
360 See Article 6 of Decree 1/1942.
361 See ‘’Government Ownership of Urban Lands and Extra Houses Proclamation No. 74 of 1945’’ article 6.
362 See article 73 of Decree 1/1945, Proclamation 74/1945 Article 3(2), and Proclamation 92/19473(b).

The local administrators were agents of the centre.[363] And the manner of their appointment had no element of local interest as the masses were not represented.[364]

3.2.3. LG system under the Dergue (i.e. the socialist military government) from 1974-upto 1991

In 1974 members of the army constituted a committee and overthrew the Emperor from the throne and established a provisional military administration which was to be known as the "Dergue".[365] The Dergue declared Ethiopia a socialist state. Consequently, it nationalised the land both urban[366] and rural[367] and all private commercial, industrial and financial institutions and put the country under a command economy. During this period Peasants,[368] and Urban Dwellers[369] Associations were created and empowered to carry out social, economic and judicial functions in the rural and urban jurisdictions, respectively.

The Derg had no better record than its predecessor in decentralizing the Ethiopian state.[370] It adopted without modification the formal structure of local governance system from the imperial era in its entirety. For about seventeen years the state continued to follow a highly centralized and unitary polity. Indeed, the nomenclatures of the administrative units and their chiefs got changed. For example, the largest administrative jurisdictions, the imperial provinces were renamed as regional provinces and the head of each region was named as chief administrator instead of the imperial governor-general.

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363 See article 2 of Decree 1/1942.

364 See article 3 of Decree 1/1942.

365 According to Markakis J and Nega A, Dergue (Amharic for committee) means, a name given to the Coordinating Committee of the Armed Forces, the Police, and the Territorial Army In "Ethiopia: Ethinic Federalism and Its Discontents".

366 See proclamation No.47/1975.

367 See "Proclamation to provide for public ownership of rural lands No.31 of 1975".

368 See "Proclamation to provide for the establishment of the All-Peasants Association proclamation No.130 of1977".

369 See "proclamation to provide for the establishment of ''Urban Dewllers Association and Urban Administration proclamation No.206 of 1981".

370 Meheret Ayenew ''Decentralization in Ethiopia: Two case studies on Devolution of Power and Responsibilities to Local Government Authorities'' in Zewde B and Pausewang S (eds) *Ethiopia:The Challenge of Democracy from Below* page 131.

In 1975, Dergue issued two pieces of legislations.[371] As a sine qua non for socialism, by these laws, it nationalised all lands (urban and rural) and extra houses in the country. Proclamation 47/1975 declared all urban lands to be the property of the government and private ownership of urban land was outlawed. The law clearly stated that no person, family or organisation shall hold urban land in private ownership.[372] Moreover, transfer of land from person to person was prohibited. Above and beyond, it abolished the landlord-tenant relationship and freed the tenant from all obligations he owed to the landlord[373] and gave the tenant possessory right over the land he held.[374]

The proclamation had also provided for the establishment of urban dwellers' cooperative societies (UDCS) in each units of urban area. These cooperatives were grass root establishments created to perform some specific urban centre related functions. All urban inhabitants were made members of UDCS except ex-landlords who were forbidden to vote in the election of UDCS officials or from being elected themselves for a year.[375]

According to the proclamation, the functions of a UDCS included the following:[376]

- to follow and implement land use and building directives to be issued by the Ministry;
- to establish a judicial tribunal composed of three members;
- to set up, in collaboration with the Government, educational, health, market, road, and similar services necessary for the area;
- to collect urban land and house rent amounting up to Birr 100 per month per house or per piece of land, in doing so, UDCS use the receipt form issued by the Ministry and to undertake the administration and maintenances of such houses;
- to deposit the rents it collects with" Peoples' Housing and Savings Bank in an account opened by the Ministry;

371 See Proclamation No.31/1975 and Proclamation no. 47/1975, a proclamation to provide for government ownership of urban lands and extra urban houses.

372 See Proclamation No. 47/1975 article 2.

373 See Proclamation No. 47/1975 article 6(1).

374 See Proclamation No. 47/1975 article 6(2).

375 See Proclamation No. 47/1975, article 23.

376 See Proclamation No. 47/1975, article 24(1-8).

- to preserve, by establishing a public welfare committee, the whole public and Government property within the area and, particularly, to ensure, with the co-operation of Government authorities, the safety, welfare and lives of the people in the area;
- to expend, in line with directives issued by the Ministry, the rents it collects and the subsidy it obtains from the Government for the construction of economical houses and the improvement of the quality of life of urban inhabitants in the area; and
- to draw up its internal regulations, according to the requirements of this Proclamation, which shall be operative, upon the approval of the Minister.

Furthermore, depending on the size and population of the urban area, upper ranks of cooperative societies were also established at higher and central level. It, in short, means UDCSs were set at three levels: at the local or kebele, the higher, and central levels.[377] The arrangement was that in towns and cities with more than one UDCS,[378] there was a *'Higher Cooperative Societies of Urban Dwellers'*, (HCSUD) in which each '*Kebele's Cooperative Societies of Urban Dwellers' (KCSUD)* was represented.[379] For the towns with more than one HCSUD, *Central Cooperative Societies of Urban Dwellers' (CCSUD)* was established.[380] The CCSUD had a congress in which each higher HCSUD was represented by two persons. Each CSUD, recognised at any level by the Proclamation, had its own juridical personality.[381]

The main roles of HCSUD were coordinating the functions of KCSUD[382] and establishing a higher judicial tribunal composed of three members.[383] Similarly, the functions of CCSUD were coordinating the functions of HCSUD[384] and establishing a central judicial tribunal composed of three members.[385]

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377 See Proclamation No. 47/1975, articles 22, 25 & 26.
378 Note: These CSUDs are those urban units at kebele (Neighborhood) level.
379 See Proclamation No. 47/1975, article 25.
380 See Proclamation No. 47/1975, article 26.
381 See Proclamation No. 47/1975, article 38.
382 See Proclamation No. 47/1975, article 25(a).
383 See Proclamation No. 47/1975, article 25(d).
384 See Proclamation No. 47/1975, article 26(2)(a).
385 See Proclamation No. 47/1975, articles 26(2)(b)

The powers to implement the provisions of the proclamation were vested upon the 'Ministry of Public Works and Housing'.[386] Among other things, the Minister was under duty to improve the lives of urban dwellers in the country.[387] It was responsible for the overall administration of urban lands and urban lands that belonged to the government.[388] Besides, issuing development plans, building economical houses and provision of essential services were the tasks of the ministry.[389] Presumably, these responsibilities of the ministry were to attain the objectives related to urban plan preparation and implementation issue which was reflected in the preamble.[390] From this, it can also be noted that, as a unitary socialist state, planning related authorities were centrally exercised.

Then, in the year 1976 another proclamation[391] was issued and it changed the expression 'cooperative societies' by 'urban dwellers' association' (UDA). Accordingly, the kebelle UDAs, the Higher UDAs, and the central UDAs were existed. From the reading of the preamble, the main objective of the proclamation was to strengthen the foundation laid by Proclamation No. 47/1975 thereby facilitating for CSUDs to run their own affairs, resolve their own problems, and directly participate in political, economic and societal activities.

It is interesting to note the differences in focus areas, by seeing the introductory parts, of the two proclamations. Proclamation No.74/1975 elaborates how feudal lords, aristocrats, high government bureaucrats and capitalists (*the haves*) exploited the toiling masses working in industries, factories and other fields of activity (the *have notes*). It also explained how the urban dwelling workers and other toiling masses compelled to languish for a long time under the yoke of subjugation, oppression and exploitation and used as mere instruments for the furtherance of the comfort and luxury of the ruling class.[392] On the other hand, Proclamation No. 104/1976 incorporates certain good governance principles. It

386 See Proclamation No. 47/1975, article 31.
387 See Proclamation No. 47/1975, article 36.
388 See Proclamation No. 47/1975, article 36(4).
389 See Proclamation No. 47/1975, article 36(5).
390 Note: The preamble states that, "As the prime factor, it is necessary to survey and plan our cities with the need for dwelling and working purposes of the majority of city dwellers".
391 See "Proclamation to provide for Urban Dwellers Association Consolidation and Municipalities No 104 of 1976".
392 See Preamble of Proclamation No. 74/1975.

discussed local self-administration of the urban dwellers through direct participation in political, economic and social activities. It also dealt with efficiency in service provision. It alleged that UDAs would enable the urban residents to run their own affairs and prevent wastage of their time by exterminating the involved bureaucratic red tape and further facilitate the direct participation of the people in the revolutionary process there by gaining revolutionary experience.[393]

Proclamation No. 104/1976 had entrusted the UDAs with certain common powers and duties in addition to their powers and duties under Proclamation 74/1975. For that reason, they were authorised to enable the broad masses of urban dwellers to administer their own affairs[394] and to develop the ideology of the broad masses in line with the philosophy of socialism with a view to enabling them to struggle against feudalism, imperialism, bureaucratic capitalism, and their influence.[395] Furthermore, they were empowered to enhance the development of the community by allowing the people's engagement in the activities of the associations and government initiated projects.[396] Most importantly, it is also the duty of the associations to construct and rent houses in accordance with the master plan and housing policy issued by the ministry or any office or organisation delegated by the ministry.[397]

The arrangement of assignment of powers and duties seen above had mixed the socio economic functions, which were regarded as municipal functions, with political functions whereby the later undermined the former. As noted by Kifle A, the proclamation rather than consolidating the municipal functions, that should have been decentralised at lower settlement level, added other political functions at the neglect of major municipal operations.[398]

393 See Preamble of Proclamation No. 104/1976.
394 See Proclamation No. 104/1976 article 6(1).
395 See Proclamation No. 104/1976 article 6(2).
396 See Proclamation No. 104/1976 article 6(4).
397 See Proclamation No. 104/1976 article 6(6).
398 Kifle A "urban management in Ethiopia: the challenges and the prospects" (*the proceedings of the workshop on urban fields development in Ethiopia and other related issues FDRE, MWUD1998*) *165.*

Again, in the year 1981 "urban dwellers associations and urban administration proclamation, Proc No. 206/1981" was issued. From the reading of the preamble the reasons for issuing the proclamation were: to centralise the various UDAs; to use them for the cause of the revolution; and to consolidate the power and duties of associations in the different legal documents. This Proclamation, as Proclamation 104/ 1976 did, identified three hierarchies of UDAs: the KUDAs, HUDAs, and CUDA.

Proclamation 206/1981 gave the UDAs at all level to assume the authority of administering the urban centres[399] by fulfilling the requirements of registration and acquiring the necessary certificate of legal personality issued by the ministry.[400] Accordingly, it stated that any CUDA or where it is not formed any HUDA, where it is not formed, any KUDA, which has been issued with a certificate, shall administer the urban centre in accordance with this Proclamation as of the date of the issue of the certificate.[401] Any UDA which had assumed administration of the urban centre prior to the coming into force of this Proclamation shall be deemed to have assumed such administration hereunder and shall administer the urban centre in accordance with this Proclamation.[402]

Analogous to the previous two proclamations of the time, this proclamation also gave certain common powers and duties to the UDAs. It comprised:

- to enable the broad masses of the urban dwellers to administer themselves;[403]
- to create the necessary conditions for moulding the ideology of the broad masses of urban dwellers with the philosophy of Marxism-Leninism with a view to liquidating feudalism, imperialism, and bureaucratic capitalism and their influences and thereby, achieving the objectives of democratic revolution and intensifying the building of socialism;[404]

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399 See "Proclamation to provide for Urban Dwellers Associations and Urban Administration Proc. No. 206 of 1981" Article 5.

400 See Proclamation No. 206/1981 article 5.

401 See Proclamation No. 206/1981 article 5(1).

402 See Proclamation No. 206/1981 article 5(2).

403 See Proclamation No. 206/1981 article 9(1).

404 See Proclamation No. 206/1981 article 9(2).

- to mobilise the urban dwellers in development;[405]
- to establish shops and other service rendering institutions;[406] and
- to construct houses according to urban centre master plan and to administer them.[407] They were also given power to establish judicial tribunals.[408]

Yet again, this proclamation just like its predecessors mingled the socio-economic functions with politics and gave emphasis to the political function on the expense of municipal functions. It did not give due importance to the basic idea of local government and decentralisation which are usually intended for efficient, participatory and accountable provision of public services. In fact, under the above cited proclamation, the UDAs had two major aims: to equip their residents with Marxism-Leninism to struggle against feudalism, capitalism and imperialism; and to engage the urban dwellers in the socio-economic movement with the view to enabling themselves and resolving their own affairs. The practice of those days showed that the primary responsibility of the UDAs rested in defending the revolution and protecting its gains.

A brief look at the principal organs of the UDAs also reinforced the idea that the laws were ideologically motivated and intended to protect the ideals of socialism rather than providing technical support for UDAs in disposing off their municipal tasks. For example, out of the six principal organs of the CUDA, the two (the revolution defiance committee and the inspection committee) had a special responsibility to handle revolutionary affairs. One must add here that all UDA, council members being required by law to be revolutionaries it was evident that the councils, their different organs, and their members were all determined to attend to the need of the revolution and to protect its gains.[409] This greatly

405 See Proclamation No. 206/1981 article 9(4) and (5).
406 See Proclamation No. 206/1981 article 9(5).
407 See Proclamation No. 206/1981 article 9(8).
408 See Proclamation No. 206/1981 articles 13(21), 26(9), & 39 (13).
409 Endale Belay (2019)Urban Law Teaching material ECSU (Last updated and revised) page 30 See also article 4(1)(a) which stated that any Ethiopian to be elected to the policy committee of and UDAs shall satisfy the requirement that he/ she is of among the masses and shall accept the ''Ethiopia's national democratic revolutionary program''.

reduced the time the council ought to have allocated to municipal affairs and this partially explains the unsatisfactory performance of municipalities.[410]

With regard to the institutional structure, the UDAs had different organs. Each KUDA had a general assembly containing all the residents of the kebele.[411] The assembly elected a 'policy committee'.[412] The policy committee had around 15 members and was to be divided into an executive committee, financial inspection committee, and judicial tribunal.[413]

HUDA had a Council in which each KUDA was represented.[414] For the towns with more than two HUDAs a city council which was called a CUDA was established.[415] The CUDA had an assembly (congress) in which each HUDA was represented by two persons. Besides, each of the ministries and offices of the central government was also represented on the city councils, but without vote.[416] A city which had more than four HUDAs had another intermediary administrative institution above the HUDA and below the CUDA which was termed as a zone. Addis Ababa and Asmara had five and two zones respectively. In this hierarchical administrative arrangement, the zones (where they existed) supervised the HUDAs, and the HUDAs, in turn, supervised the KUDAs

However, in the year 1987, the Dergue adopted a new Constitution.[417] The Constitution made the country to be a unitary state that comprised administrative and autonomous regions. Both the Autonomous Regions and Administration Regions were to have own executive bodies as well as Shengo (literally mean Assembly), although they were subordinates of a higher level of administration.[418] Autonomous Regions and the Administrative Regions had hardly legislative power

410 Endale Belay (2019) Urban Law Teaching material ECSU (Last updated and revised) page 30
411 See Proclamation 47 (1975) article 23; Proclamation 104 (1976) article 4(2); and Proclamation 206 article 14(1) (a) read with article 15(1).
412 See Proclamation 104 (1976) article 2(8).
413 See Proclamation 104 (1976) article 2(8).
414 See Proclamation 104 (1976) article 15(1).
415 See Proclamation 104 (1976) article 19(1).
416 See Proclamation 104 (1976) article 21(2).
417 See The Constitution of the People's Democratic Republic of Ethiopia (PDRE), 1987.
418 Gizachew *Challenges and opportunities of local Good Governance:* 31.

to spend and to levy tax.[419] The Autonomous Regions were purely agents of the central government. So did the Administrative Regions to their next higher level of administration.[420]The administrative regions were units of government hierarchically established from the highest to the lowest. They were in turn divided into a number of awrajas (sub provinces).

Therefore, from the above it is understandable that, under this regime, local government's status was as agents of the centre and their role was limited to executing the policies and decisions of the centre and it was a kind of de-concentrated administration. As noted by Mihiret A, "PAs and UDAs enjoyed substantial autonomy and served as popular institutions of governance and participation, at least in the early years of military rule."[421] Later, they lost their autonomy and independence because the regime changed them into state bureaucratic accessories geared towards executing central directives.[422] In short, under the Dergue regime LG's role was limited to implementing the policies and decisions of the central government.

3.2.4. LG after1991 and under the constitution of FDRE

Following the fall of the Dergue, the Transitional Government of Ethiopia (TGE) was established in 1991 under the guidance and leadership of the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF). Then in, 1994 the current constitution,[423] which officially declared Ethiopia a federal state, got adopted. Pursuant to the Constitution, the Ethiopian state is called as the Federal Democratic Republic of Ethiopia (FDRE). It is the Federal Constitution that established the federation. The Constitution provides for division of powers

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419 Gizachew *Challenges and opportunities of local Good Governance:* 31.

420 Ghebrehiwet T (2002) ''Fiscal Decentralization in Ethiopia: The case of National State Government of Tigrai'' in Gizachew Asrat *Challenges and opportunities of local Good Governance* 31.

421 Meheret Ayenew. (1998) *Some Preliminary Observations on Institutional and Administrative Gaps in Ethiopia's Decentralization Process* in Tesfay Aberra "The extent and impacts of decentralization reforms in Ethiopia".

422 Meheret Ayenew ''Decentralization in Ethiopia:Two Case Studies on Devolution of Power and Responsibilities to Local Government Authorities''131.

423 See the constitution of Federal Democratic Republic of Ethiopia (FDRE)'' it is adopted on December 1994 and came in force on August 1995 Negarit gazette year 1st No 1.

between the federal and regional governments.[424] It established two federal houses; the House of People's Representatives and the House of Federation[425]. Moreover, it provided for an umpiring organ (a political organ, the house of federations) mandated to interpret the Constitution.[426]

More importantly, it created the constituent units of the federation by comprising nine regions they are Afar, Amhara, Benishangul-Gumuz, Gambella, Harari, Oromiya, SNNPR, Somali, and Tigray. They are officially called as regional states. Further, two city administrations (Addis Ababa and Dire Dawa) are recognised as equivalent of regions. The regions are divided into zones, Woredas/urban administrations, and kebeles (village areas, with an average population of 5,000). The city administrations have different structures.

By allocating powers between the two tiers of governments, the federal Constitution gives the mandate to the regional governments to enact and execute their own constitutions and other laws.[427] To this effect, all regional governments have made their constitutions immediately up on the coming into force of the federal Constitution.

3.3. The history of urban planning and urban planning laws in Ethiopia

3.3.1. Overview

During the ancient time, especially prior to the Italian occupation (1936-1941), narration relating to urban planning did not exist. This may be because urbanisation in the country is mainly attributed to two factors; the development of garrison towns and the construction of Addis Ababa-Djibouti railway line (1917) which established several stations. These stations later on became urban centres. However, both the military and railway stations were not developed in a planned manner. The history of formal urban planning in Ethiopia is a recent

424 See Chapter five ''structure and division of powers'' articles 50, 51 and 52 of the constitution of FDRE 1995.
425 See Constitution of FDRE 1995 article 53.
426 See Constitution of FDRE 1995 article 62(2).
427 See Constitution of FDRE 1995 article 52(b).

development.[428] Urban planning had been officially introduced during the Italian occupation. Thus, this part of the study briefly deals with those planning practices during the Italian occupation, planning practice during the reign of Emperor Haile Sellasie (1941-1974) and that of the Militry regime (Dergue (1974-1991)).

3.3.2. Planning practice during the Italian occupation ((1936-1941)

The plans during that time were based on the planning principles of western traditions and colonial interest as they did not take into account the local context of the country.[429] According to Dandena, this condition has given way to sprawl and uncontrolled growth of the cities.[430] During their occupation, the Italians had prepared plans with defined functional and ethnically segregated zones for most of the centres in the country. Le Corbusier, a French-Swiss architect and urban planner, prepared a guideline (sketch) as a master plan for Addis Ababa in 1936, which was labelled by Tufa as fascistic.[431] For example, the plan had proposed European and native train stops, separate bus stations, different localities in the city for natives and the Europeans, etc.[432]

Le Corbusier considered the city as a monumental structure crossed by a big road that divides the city from north to south. In his plan, activities were arranged in strict zoning system from north to south. The native residential area was located on the eastern side of the avenue while that of European quarter was located on the opposite side. The north and south ends of the road were allocated for the military centre and industrial areas, respectively.

Similarly, Valle and Guidi's[433] in 1936 prepared a master plan for Addis Ababa city. The objective of the plan was to establish new capital for east African Italian colonies that could reflect the greatness of the fascist empire. The plan was

428 Dandena Tufa, "Historical development of Addis Ababa: plans and realities" 2008 *Journal of Ethiopian Studies* 2.
429 Dandena, 2008 *Journal of Ethiopian Studies* 2.
430 Dandena, 2008 *Journal of Ethiopian Studies* 2.
431 Tufa D 1995 ''Historical development of Addis Ababa: plans and realities" in Mathewos A 1998 "Review of Urban Planning Practices in Addis Ababa" 23.
432 Tufa 1995 *Historical development of Addis Ababa: plans and realities* 23.
433 Guidi and C Valle are known Italian architects who were commissioned to prepare the master plan of Addis Ababa in 1936 after the rejection of the Le Corbusier master plan.

conceptualised to provide segregation between natives and the Europeans' city – a typical fascist colonial town planning experience. However, this plan too was not implemented. As noted by Dandena, the master plan did not go beyond preparation of plan volumetric as there was a conflict with the other groups to take responsibility of preparing architectural design.[434] Yet, the short-lived Italian administration in Ethiopia had significant effects on Ethiopia's urban spatial structure, then and afterwards.

3.3.3. Planning practice during the reign of Emperor Haile Sellasie (1941-1974)

After the Italians left the country, the emperor invited Sir Patrick Abercrombie, the famous planner of great London, to prepare master plan for Addis Ababa. The reason for the invitation was related to the emperor's ambition to build a beautiful capital city that would serve as a model not only for Ethiopia but also for the rest of Africa.[435] Abercrombie used three levels of development (national, regional and local), but merely for the communication network considering the city as a physical centre of the nation.[436] His planning principles were derived from what he used for London and was meant to serve for 30 years.[437]

Abercrombie's plan was more of a general guideline and lacked detail implementation tool. Thus in 1957, Bolton Hennessy and partners, another British planning team, were commissioned to refine Abercrombie's plan and to accommodate a large population size. The plan prepared by this body envisaged a large metropolitan development surrounded by satellite towns that are physically larger than the size of Addis Ababa planned by Abercrombie. Accordingly, four new satellite towns were proposed along the outlets to Jimma, Ambo, Mojo and Dessie (the four regional highways). Still this master plan was lacking proper implementation tools.

434 Tufa 1995 *Historical development of Addis Ababa: plans and realities* 14.
435 Tufa 1995 *Historical development of Addis Ababa: plans and realities* 42.
436 Tufa 1995 *Historical development of Addis Ababa: plans and realities* 23-24.
437 Tufa 1995 *Historical development of Addis Ababa: plans and realities* 24.

Both Abercrombie's and B Hennessy's plans dealt with spatial planning rather than with implementation tools.[438] Due to the difficulty of implementing the plans proposed by the two British origins, a French consulting firm, led by Luis De Marien, was invited to prepare another master plan. The plan set by this team was focused on implementation rather than spatial planning.[439] Coincidentally, the plan was prepared during the city's construction boom period and a sizable part of it was implemented. The construction activities of that period illustrated the juxtaposition of modern towers and single storey low-cost construction.[440]

3.3.4. Planning practice in the Military (Dergue) regime (1974-1991)

This period was marked by change of political system of the country. The provisional military administrative council (PMAC), the Dergue, proclaimed Ethiopia to be a socialist state and, at the same time as a follower of this ideology, it declared the nationalisation of all private properties including urban land and extra houses to be the property of the state. Now the government became the only viable entity responsible for the construction of facilities for urban services, public buildings and homes except for a few private investments for dwelling houses. Construction of houses for rental purposes which, under the previous political economy system was possible, were not allowed. The change of political system slowed down the growth of Addis Ababa.

During this era, the government commissioned C.K. Polonyi (1978), a Hungarian urban planner, to prepare a master plan for the city. Polonyi made his plan in cooperation with the then Ministry of Urban Development and Housing (MUDH). His plan included two major proposals: first, integration or linkage of the city with the surrounding towns and rural areas (megalopolis plan) and second, the development of the city's central area. Polonyi's proposal also included the development of a residential layout for self-help housing projects. However, due to lack of funds and too ambitious growth anticipation the first proposal that provided for megalopolis plan for the city had not been implemented.

438 Tufa 1995 *Historical development of Addis Ababa: plans and realities* 18.
439 Tufa 1995 *Historical development of Addis Ababa: plans and realities* 18.
440 Tufa 1995 *Historical development of Addis Ababa: plans and realities* 18.

In the year 1986 another master plan was prepared by Ethio-Italian technical cooperation. The basic idea of this plan was to develop balanced urban system and to integrate the city with its adjacent regions and have metropolitan level areas. However, this plan was not approved by the then socialist government. It got its approval in 1994. During dergue regime considerable measures were attempted to take in hand urban planning issues. For instance, in 1987 three major urban planning legal instruments, which will be discussed in later section, and that intend to take care of plan preparation and implementation issues were adopted.

3.4. The history of urban planning Law of Ethiopia

The history of formal urban planning in Ethiopia is very recent[441]so is the record with regard to urban planning laws. Town planning law[442] of Ethiopia has no more than sixty years history. Moreover, these years are divided into two planning law periods: the Emperor Hailesellasie's monarchical era and the socialist military time of the Dergue. The former period had little proportion of the planning law history as compared to the second period.

3.4.1. Planning law during Emperor Hailesellasie regime

The first formal national town planning law came into force in 1960 during Emperor Hailesselasie's regime and was applied for over 35 years. This legal instrument was provided under the Civil Code of the empire of Ethiopia. The Code devoted only 18 articles[443] to the subject. These articles dealt with such matters as creation of areas,[444] plan,[445] contents of plan,[446] carrying out of plan,[447] compensation,[448] building permits related issues,[449] and official association of land owners.[450]

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441 Tufa 1995 *Historical development of Addis Ababa: plans and realities* 28.
442 Note that the expressions 'town planning' and 'urban planning' are same except during Hailesselasie regime the former expression is used and then after, the later.
443 See Book III of chapter 4 (articles 1535-1552) of the code which deals with town planning areas and related issues.
444 See Civil Code of The Empire of Ethiopia 1960 article 1535.
445 See Civil Code of The Empire of Ethiopia 1960 article 1536.
446 See Civil Code of The Empire of Ethiopia 1960 article 1537.
447 See Civil Code of The Empire of Ethiopia 1960 article 1538.

In those days, plan was to be prepared by the municipality. However, the plan and any amendment thereto shall be of no effect unless approved by imperial decree and published in the Negarit Gazette.[451]

According to the law, the mandate to implement the plan was in the shoulder of the municipality. In carrying out the plan, the municipality might impose the necessary restrictions on the rights of the proprietors within the area.[452] It may, in particular, impose servitudes not to construct and building, rights of way or servitudes relating to municipal sewers and pipes. It may, where necessary, use expropriation proceedings.[453] The Code also provided compensation for those persons whose rights are restricted or whose land is expropriated. The compensation shall be fixed by appraisement arbitration committee.[454]

Furthermore, the code provided with issues related with building construction. It was provided that no person may be allowed to construct a building inside a town-planning area unless he has given notice of his intention to build and has been granted a building permit.[455] An application for a permit to build a house was expected to specify whether such house shall be used as a residence only or whether it shall be used for commercial or industrial purposes. An application for a permit to build a factory, a shop or commercial or industrial buildings shall stipulate the nature of the contemplated commerce or industry.

Likewise, the application shall indicate the time when the work should begin and the cost of the contemplated construction. The permit shall be deemed to be granted where the municipality fails to notify the applicant of its refusal or of the conditions imposed for the issuing of the permit within three months from the application having been made. Where the construction of a building is undertaken

448 See Civil Code of The Empire of Ethiopia 1960 article 1539.
449 See Civil Code of The Empire of Ethiopia 1960 articles 1540-1548.
450 See Civil Code of The Empire of Ethiopia 1960 article 1550.
451 See Civil Code of The Empire of Ethiopia 1960 articles 1536(1) & (2).
452 See Civil Code of The Empire of Ethiopia 1960 article 1538(1).
453 See Civil Code of The Empire of Ethiopia 1960 article 1538(2).
454 See Civil Code of The Empire of Ethiopia 1960 articles 1539(1) & (2).
455 See Civil Code of The Empire of Ethiopia 1960 article 1540.

without a valid permit, the municipality may order that the construction of the building be stopped forthwith.

During this time, land, be it rural or urban, was owned by few individuals (land lords). These landlords had official landowners' association of their own. According to the law, the association of landowners within town planning areas had the privilege, though it is a consultative duty,[456] to examine the plans submitted to them by the municipality and to forward any observation or criticism they think fit. The ordinary residents of the town planning area had no immovable property as they could not be a member in the landowners' association. Consequently, they had no honour and right to participate in the affairs of the area where they lived. From this, it can be seen that, during the reign of the emperor, the residents of towns were not given any opportunity to participate in the preparation and implementation of a plan.

3.4.2. Planning law during the Dergue Regime

It is remembered that in 1974 a revolution led by the Dergue resulted in profound social and political transformation. Dergue had introduced a series of major reforms such as nationalization of all rural and urban land; prohibition of tenancy; abolition of the monarchy; nationalization of extra houses; and reordering of the structure and functions of local governments were among the major reforms that have largely impacted the urban areas.

Yet, the planning law of the monarchical rule was not changed automatically. Some part of the law continued until 1987. In fact, those parts with vested power of approval of plans and provisions relating to land owners' association were obsolete by this time. During the Dergue regime, Ethiopia was ruled by a military socialist government which was guided by the principle of Marxism-Leninism. And as part of such system, and as we see later on, the legislation and mode of operation that governed the town planning matter reflected the centralist socialist principles.

456 See Civil Code of The Empire of Ethiopia 1960 article 1552.

In the year 1987, the Dergue issued three proclamations that dealt with such matters as: 'preparation and implementation of urban plans';[457] 'urban zoning and building permit';[458] and National Urban Planning Institute (NUPI) establishment[459] issues. The contents of the proclamations can be briefly discussed as follows;

3.4.2.1. The preparation and Implementation of Urban Plans Proclamation No. 315/1987

The objectives of Proclamation No. 315/1987 as set out in the preamble of the document were threefold. *first,* to create favourable conditions for the development of urban centres; *second,* to prescribe procedures for public participation and; *third,* to define in clear terms the powers and duties of government organs which implement approved plans. The proclamation identified four types of plans namely:

1. Regional urbanization plan,
2. The metropolitan area plan,
3. The master plan; and,
4. The detailed plan.

It then dealt at some length with the preparation,[460] content,[461] approval,[462] revision[463] and implementation[464] of the plan. Furthermore, it discussed, in detailed manner, the study required to be made for the preparation of each plan.

According to the Proclamation, NUPI shall prepare regional urbanization plans, metropolitan area plans and urban centre plans.[465] A detail plan of urban centres was to be prepared by city councils.[466] The proclamation empowered the ministry of urban development and housing to issue general policy and directives on the preparation and implementation of the plans.[467] The ministry was also authorised

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457 The Preparation and Implementation of Urban plans Proclamation No. 315 of 1987.
458 The ''Urban Zoning and Building Permit'' Proclamation No. 316 of 1987.
459 The National Urban Planning Institute's (NUPI) Establishment Proclamation No. 317 of 1987.
460 Proclamation No. 315/1987 article 3-12 dealt with preparation of Regional Urbanization Plan, the Metropolitan area plan, and the Master plan and article 13-16 provides the preparation of detailed plans.
461 See Proclamation No. 315/1987 article 11.
462 See Proclamation No. 315/1987 article s 17, 18, and 19.
463 See Proclamation No. 315/1987 article 21.
464 See Proclamation No. 315/1987 articles 22, 23, and 24.
465 See Proclamation No. 315/1987 article 3(1).
466 See Proclamation No. 315/1987 article 3(2).
467 See Proclamation No. 315/1987 articles 33(1)-(4).

to make regulations that are necessary for the implementation of the proclamation. Therefore, both the institute and the city council were expected to observe the general policy guideline issued by the ministry while preparing a plan. Moreover, the law obligated them to conduct appropriate study before preparing the plans of their respective jurisdiction.[468]

With regard to approval, revision and publication of plans, the law stated that, urban centre plans, i.e., the master and detailed plans of an urban centre shall be approved by the metropolitan area council or regional planning council as the case may be.[469] Master plans, detailed plans and drawings, diagrams and explanatory texts were prepared in connection therewith, were to be effective after their publication on Negarit gazette. The only requirement for publication was that both the plans must ascertain that they are in conformity with their immediate superior plans.[470] It means the master plan shall be in compliance with the metropolitan or regional urbanisation plan and the detailed plan must agree with the master plan of the urban centre.

Proclamation 315/ 1987 provided that the procedure of preparation of urban plan should be followed, in a similar manner, for revising approved plans which might necessitate certain changes, modifications, and revision at the end of their period.

The Proclamation also set responsibilities and powers, relating to the implementation of plans, upon the different levels of councils.[471] It stated that every regional planning council shall, in accordance with directives issued by the minister, be responsible for the implementation of urbanisation plan approved for the region. Analogous responsibilities were given to the metropolitan council and the city council to implement metropolitan area plan and urban centres plan respectively. For implementation purpose, the proclamation also dealt with hierarchy of plans, and it provided as follows;

468 See Proclamation No. 315/1987 article 4(1).
469 See Proclamation No. 315/1987 articles 17, 18, and 19.
470 See Proclamation No. 315/1987 articles 19(3) (a) and (b).
471 See Proclamation No. 315/1987 articles 22, 23, 24 and 25.

> *"With regard to matters relating to the implementation of plans, detailed urban centre shall be governed by urban centre master plan, urban centre master plan by metropolitan area plan or by regional urbanization plan as the case may be, and metropolitan area plan by regional urbanization plan".*[472]

Plan implementation powers were also conferred upon the regional planning councils, metropolitan area councils, and the city councils.[473] While implementing the plan, they had the power to enter during working hours, any premises with in the area covered by the plan;[474] to give order to a proprietor to alter, remove or demolish property;[475] to expropriate any house or building, whose expropriation is necessary for the implementation of the plan;[476] to establish and issue work directives to technical and other committees that are necessary for the implementation of the plan;[477] to coordinate the activities of government offices to the extent necessary for the implementation of the plan;[478] and to take other similar measures that are necessary for the implementation of approved plan.

The proclamation also had a provision with regard to payment of compensation and provided that, any property owner whose property is expropriated or who has suffered damages as a result of the alteration, removal or demolition of his property to implement plans in accordance with this proclamation shall be paid compensation upon proof that such property was constructed with legal permit.[479]

3.4.2.2. The Urban Zoning and Building Permit Proclamation No. 316/1987

Proclamation No. 316/1987 devised a land use scheme considered to be suitable for healthy and accelerated urban development. The proclamation also laid down such matters as building permit and inspection regulations. Indeed, the title of the

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472 See Proclamation No. 315/1987 article 23.
473 See Proclamation No. 315/1987 article 24.
474 See Proclamation No. 315/1987 article 24(1).
475 See Proclamation No. 315/1987 article 24(2).
476 See Proclamation No. 315/1987 article 24(3).
477 See Proclamation No. 315/1987 article 24(4).
478 See Proclamation No. 315/1987 article 24(5).
479 See Proclamation No. 315/1987 article 25.

proclamation contained two major matters: the ‘urban zoning’ and ‘building permit and inspection’.

The proclamation assigned the authority of preparing urban zoning plan to the city council. It stated that every city council shall, in accordance with the plans approved for the urban centre, prepare an urban zoning plan in cooperation with the NUPI.[480] In a similar fashion with urban centre plans, urban zoning plans were to be approved and revised by regional urbanisation council or metropolitan area council.[481]

With regard to building permit, the law says no person may, except with a permit granted in accordance with this proclamation, construct or modify a building or alter its use.[482] And any person desiring to construct or modify a building or to alter its use shall submit an application to the city council.[483] The application shall contain the following particulars.

- use of the building,[484]
- block plan.[485]
- site plan,[486]
- detail plan,[487]
- structural plan of the building where necessary,[488] and
- additional particulars required in the case of a multi-storey building or one of a special nature or intended for a special purpose.[489]

According to the proclamation, the city council shall grant the applicant a written permission to construct or modify a building after ascertaining that the application is complete and that the construction or the modification is in compliance with the plan for the urban centre. The permit shall be deemed granted where the city

480 See Proclamation No. 316/1987 article 3.
481 See Proclamation No. 316/1987 article 6.
482 See Proclamation No. 316/1987 article 8.
483 See Proclamation No. 316/1987 article 9.
484 See Proclamation No. 316/1987 article 9(2)(a).
485 See Proclamation No. 316/1987 article 9(2)(b).
486 See Proclamation No. 316/1987 article 9(2)(c).
487 See Proclamation No. 316/1987 articles 9(2)(d).
488 See Proclamation No. 316/1987 article 9(2)(e).
489 See Proclamation No. 316/1987 article 9(2)(f).

council fails to decide on the application, which is submitted to it as per the provision of this proclamation within one month from the application having been made, in the case of a dwelling house[490] and three months from the same having been made, in the case of other buildings.[491]

"Where the work on the building is not undertaken within a year from the permit having been granted or is interrupted for a consecutive period of more than one year, a new permit shall be required to commence on or to continue with the work, as the case may be."[492]

The city council may, through duly authorized officers, make entry of inspection, during working hours, with a view to ascertaining whether permit has been granted for a building under construction or for one that is already completed and whether the construction is carried out in compliance with the permit.[493] The inspecting officer, if s/he found a defect on the part of the builder, s/he can take such measures as, writing notice to rectify the problem, suspending the building of the construction, ordering removal or demolishing of the defective construction or rectifying the same with the expense of the owner.[494]

The proclamation also put that a newly constructed or modified building shall not be put to use without obtaining a certificate of occupancy from the city council.

3.4.2.3. National Urban Planning Institute Establishment Proclamation No. 317/1987

Proclamation No. 317/1987 established National Urban Planning Institute (NUPI), autonomous government office, having its own juridical personality, responsible for the perpetration of plans. The Institute shall be accountable to the Ministry of Urban Development and Housing (MUDH). It shall carry on research on urban planning process and prepare and submit urban plans. Article 5 and the preamble

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490 See Proclamation No. 316/1987 article 10(2)(a).
491 See Proclamation No. 316/1987 article 10(2)(b).
492 See Proclamation No. 316/1987 article 10(5).
493 See Proclamation No. 316/1987 article 11.
494 See Proclamation No. 316/1987 article 11(2).

of the proclamation[495] set out the objectives of the Institute. According to this preamble the Institute shall have the following objectives:

- To carry out appropriate study and research for the preparation of plans for urban centres;
- To prepare plans for regional urbanization, metropolitan areas and urban centres; and,
- To train the manpower necessary for the preparation and implementation of plans for urban centres.

Proclamation 317/1987 conferred upon the Institute the following powers and duties which were necessary for the fulfilment of its objectives as follows;[496]

- to conduct studies and research necessary for the preparation of plans for regional urbanisation, metropolitan area, and urban centres, and to submit the results of the report to the MUDH;
- to prepare, in accordance with general policy directives issued by the minister, plans for regional urbanisation, metropolitan areas and urban centres and submit the same to appropriate organs;
- to prepare and submit to the appropriate organs, detailed plans for urban centres pursuant to directives issued to it by the minister or upon the request of city councils;
- to carryout follow-up studies and research as to the fact that approved plans are properly implemented by organs concerned;
- to conduct studies on ways of revising approved plans from time to time; and submit proposals to organs concerned;
- to carryout housing and building project studies that would help the implementation of approved plans of urban centres;
- to conduct h studies that would help in the standardisation of urban houses and buildings;

495 See Proclamation No. 317/1987, See articles 5 (2), (2) and (3). See also preamble of Proclamation No. 317/1987.
496 See Proclamation No. 317/1987 articles 6(1)-(15).

- to give consultancy services in the preparation of plans for urban centres and in other related fields;
- to establish and administer, in cooperation with, and in accordance with the directives issued by, the commission for higher education, training institutions which carry out leading to the awarding of diplomas, degrees and other qualifications;
- to serve as centre for documentation and dissemination of information in matters relating to the plans of urban centres;
- to charge service fees in accordance with directives issued by the government;
- to own property inasmuch as is necessary for the attainment of its objectives;
- to enter into contracts;
- to sue and be sued in its own name; and,
- to perform such other similar functions as may be necessary for the attainment of its objectives.

Since its establishment, NUPI has successfully completed urban plans for 105 cities and towns. [497]At that time Master Plans prepared by the NUPI were for Addis Ababa, Asela, Awasa, Bahirdar, Debrebirhan, Diredawa, Gonder, Jinca, Nazreth, Negeleborena and Ziway.[498]

During 15 years of its existence, NUPI had completed 11 master plans, 62 development plans, and 16 action plans all of which were officially handed over to regional government concerned.[499] The NUPI had played as a focal point for practitioners and researchers in the urban planning related fields. It had undertaken various urban related studies in collaboration with national and international professionals in urban development and associated fields.[500] NUPI's

497 Ministry of Federal Affairs "National Urban Planning Institute Urban Development Policy Design Report of Project Office'' *(MoFA 2005)* 3.

498 Ministry of Federal Affairs *National Urban Planning Institute Urban Development Policy Design Report of Project Office* 3.

499 Ministry of Federal Affairs *National Urban Planning Institute Urban Development Policy Design Report of Project Office* 3.

500 Ministry of Federal Affairs *National Urban Planning Institute Urban Development Policy Design Report of Project Office* 3.

research and planning interest, were urbanization processes, housing and settlement planning, urban planning & implementation, urban policies and strategies, and general urban development issues.[501]

3.4.3. The ULGs or the City Council's role regarding preparation and implementation of urban centre plans during the Dergue Regime

As discussed in the preceding part, Dergue adopted socialist polity and, as a consequence to this, the state continued to be unitary socialist government which was guided by the principle of Marxism- Leninism. The governance system was guided by the Leninist principle of democratic centralism. This theory pervaded throughout the working relations in the country. Here, the expression 'democratic' implied that higher organs were to be elected by lower organs and the word 'centralism' indicated that decisions were to be made at the centre or the higher organs whose decisions were to be obeyed by lower organs. The main feature of the philosophy of 'democratic centralism' is that public policies and plans were to be formulated through a top-down process rather than on the basis of local initiatives.

The implication of the theory of democratic centralism on urban planning was reflected as early in 1975 when the Dergue authority declared Proclamation 47/1975. Later on, it was firmly anchored by Proclamation 104/ 1976.[502] With these laws the central government was entrusted with the role of plan preparation. It was put that, the ministry was empowered to issue urban development plans; to build economical houses and to provide essential services.[503] It was also authorised to issue standards relating to urban houses.[504] These powers were declared to continue as powers of the ministry in later proclamations.[505]

The government slightly changed the situation in 1981 by issuing Proclamation 206/1981. By this legal instrument, the CUDAs were given the power to prepare

501 Ministry of Federal Affairs *National Urban Planning Institute Urban Development Policy Design Report of Project Office* 3.
502 See Proclamation No. 104/1976 articles 7(1)(a),(b) and (c).
503 See Proclamation No. 47/1975 articles 36 (2) and (5).
504 See Proclamation No. 47/1975 article 36(7).
505 See Proclamation No. 104/1976 article 40(g).

and submit (to the minister in case of chartered cities and to the government in case of non-chartered cities), urban centre master plans for approval. Upon approval they were allowed to implement the same.[506] The CUDAs were also authorised to administer urban land in accordance with the approved plan.

However, the urban plan laws of 1987[507] had brought back the centralist approach to the preparation, approval, revision and implementation of urban centre plans (i.e. master plan and detailed plans of any urban centre). The combined readings of those laws depicted that the authority of preparing and revising urban centre plans was entrusted to a strong central government institution, i.e. NUPI, which was accountable to the MUDH. The ULGs or the city councils had no role in this regard. As can be seen under the following section, during this period, the preparation, approval, and revision of the urban centre plans was the sole responsibility of the central state.

3.4.3.1. Regarding Master Plan

The city council played a very limited role in the preparation, approval, and revision of the master plan. In the first place, the city did not have any role to play in the initiation and preparation of the master plan. NUPI would follow the guidelines issued by the minister and would simply conduct the study required to prepare the plan and process with the preparation.[508] This would be so irrespective of whether or not the city had the felt need for such a plan. Moreover, even after the decision to prepare the plan has been made, there is nothing in the legislation to suggest that the process was participatory. No clear role had been assigned either to the council or to the city residents in the plan preparation process.

506 See Proclamation No. 206/1981 article 39(1)(c) and 39(2)(b).
507 See Proclamation No. 315/1987, Proclamation 316/1987, and Proclamation 317/1987.
508 See Proclamation No. 315/1987 articles 3, 10, 11, and 12.

Yet again, the power to approve the plan was allocated to either the metropolitan council or the Regional Planning Council as the case may be.[509] The proclamation clearly stated that master and detail plans shall be approved by:

a) By the metropolitan area council where the urban centre falls within the boundaries of a metropolitan area; or

b) The regional planning council where the urban centre does not fall within the boundaries of a metropolitan area.

The approval of master plans and detail plans, along with their drawings, diagrams and explanatory texts, after ascertaining their hierarchical conformity, shall be published in the official gazette and would have a legal force.[510] In the same way, the city councils' role in this regard was non-existent.

Once more, the role of the city council was highly limited, in matters related to the revision of approved master plans. NUPI was given the task of preparing revised urban centre master plans for the approval of the appropriate body.[511] The institute was to follow the directives issued by the ministry and conduct a study before embarking on the revision process.[512] Again neither the city council nor the residents had any role with respect to plan revision.

One of the aims of Proclamation 315/1987, as stated in its preamble, was to prescribe procedures whereby broad participation of the people can be combined with scientific practice for the preparation and adoption of urban plans. However, careful reading of the legislation showed that it did not seek the participation of the city residents at any stage, leave alone, at the early stage of the planning process, which might be a requirement of scientific planning practice. The public would be familiarized with the plans only after they have been approved.[513] The institute was given the mandate to widely familiarise the public with 'approved' urban centre master plans by means of any media which it considered appropriate.[514]

509 See Proclamation No. 315/1987 articles 19 (1) (a) and (b).
510 See Proclamation No. 315/1987 articles 19 (2) and (3).
511 See Proclamation No. 315/1987 article 21(1).
512 See Proclamation No. 315/1987 article 21(1) and Proclamation 317/1987 article 6(5).
513 See Proclamation No. 315/1987 article 20.
514 See Proclamation No. 315/1987 article 20(1).

Yet, the plan in its completed form was to be submitted to the city council for implementation. Every city council, in accordance with directives issued by the metropolitan council or regional planning council, as the case may be, was responsible for the implementation of urban centre master plans and detail plans approved for the urban centres.

Probably, one of the explanations for poor performance of plans could be attributed to the fact that both the city councils and residents did not participate in the planning process; that is in the preparation, approval, and revision of the plan.

3.4.3.2. Detailed Plans

The proclamation assigned a greater role to city councils in the preparation of detailed plans. Accordingly, a city could either prepare and revise the plan by itself[515] or ask NUPI to prepare it for the city.[516] But still in those cases where it was deemed necessary, the minister could, without consulting the concerned city, instruct NUPI to prepare a detailed plan.[517] However, the general principle is for cities to prepare and revise their detailed plans. Again, the law was not adequately clear on the role of the residents in the planning process.

Approval of the prepared and revised detailed plan was still the power of the metropolitan council or of the Regional Planning Council as the case may be. Detailed plans being a local plan, city councils ought to have been authorized either to approve the plans themselves or take part in the approval process.

3.5. Federal Urban Planning Institute

The National Institute of Urban Planning needs to have a structure, which is in line with the federal structure of the state. This resulted in the passing of a federal proclamation, which established the Federal Urban Planning Institute (FUPI) (Establishment of Federal Urban Planning Institute Proclamation No. 450/ 2005).

515 See Proclamation No. 315/1987 article 14.
516 See Proclamation No. 317/1987 article 6(3).
517 See Proclamation No. 317/1987 article 6(3).

the proclamation defines the powers and responsibilities of the Institute. One of the objectives of the Proclamation, as stated in the preamble, was to re-establish the organ of the federal government that is going to be assigned with urban planning mandates in line with the decentralized system put in place in the country.

According to the proclamation, the institute shall have the following objectives:

- To provide capacity building support to regions, urban centres, and the private sectors on matters relating to urban plan preparation and implementation;
- To provide urban related consultancy and advisory services;
- To serve as an information centre on urban planning and other basic urban related information; and
- To achieve balanced urban system by way of preparing integrated urban plans that encompass socioeconomic and land use dimension and that ensure planned development of urban centres that have strong linkages with their rural hinterlands and serve as centres of rapid development.[518]

The proclamation had also assigned the institute four categories of powers and duties: in the area of capacity building; in the area of research and consultancy; in the area of information support services; and in the area of urban plan preparation.[519]

These categories were further classified as follows:

- In the area of capacity building:
    - To provide advice to regions and ULGs on changes to be introduced in terms of organizational structures and working systems and procedures with a view to increasing their urban plan preparation and implementation capacity;
    - To provide short and on the job training to employees working in regional government and urban centres;

518 Federal Urban Planning Institute Establishment Proclamation No. 450/2005 article 5.
519 See Proclamation No. 450/2005 article 6.

    - To formulate best practices by studying local and international applied knowledge in urban planning and disseminate the same.
- In the area of research and consultancy:
    - To undertake monitoring and evaluation studies in collaboration with regions and urban administrations, on the application of approved plans with a view to improving urban planning approaches and working procedures and to formulate best practices in urban planning;
    - To undertake multi-disciplinary studies and researches that serve as the basis for the preparation of urban plans;
    - To advise the federal government on matters that have relations to urban planning;
    - To provide consultancy services on matters pertaining to urban planning to persons seeking such services.
- In the area of information support services
    - To serve as information centre for urban planning as well as other basic urban related information;
    - To collect and collate basic urban associated information from the concerned governmental and non-governmental institutions and disseminate the same to interested public and private persons; and
- In the area of urban plan preparation:
    - To prepare urban plans only if they are requested by regions and/ or urban centres;
    - To prepare base maps to be used in the preparation of urban plans by using ground survey, aerial photography and other pertinent techniques;

Regarding the cost of services, the institute renders to regions and urban centres, it would be resolved in a cost sharing arrangement to be determined by the minister whereby they cover up to half of the total cost of service provision.[520]

As seen above, and as compared to NUPI, FUPI had limited plan preparation, revision or approval role. Unlike NUPI, FUPI could not assume such role by its

520 See Proclamation No. 450/2005 article 6(4)(d).

own initiation. It could undertake such functions only if the regional governments or concerned urban centres requested it.[521] The proclamation assigned FUPI to play advisory role;[522] to serve as information hub;[523] and to provide consultancy services[524] on matters related to urban planning to persons looking for such services.

However, in the year 2008, proclamation 450/2005 got repealed by proclamation No. 558/2008. Consequently, the powers and duties of the FUPI, which were mentioned under article 6 of Proclamation No. 450/ 2005, were transferred to the ministry of works and urban development.

As a result, the Ministry established the "Federal Urban Planning Coordinating Bureau" (FUPCB), to deal with issues relating to urban plan. The bureau constituted three departments: namely, Research and Capacity Building, Urban Information, and Integrated Urban Plan Preparation Department. FUPCB had the following four broad objectives.

i. Providing capacity building support to regions, urban centres and the private sector on matters relating to urban plan preparation and implementation;
ii. Providing consultancy services on matters relating to urban planning;
iii. Serving as an information centre on urban planning and other basic urban related information; and;
iv. Assisting regions, urban centres, and the private partakers in planning in the preparation of urban plans; and preparing plans, if required, to realise a balanced urban system by way of preparing urban plans that cover socio-economic and land-use dimensions and that ensure plan-led development of urban centres that have strong linkages with their rural neighbourhoods and serve as centres of rapid development.

521 See Proclamation No. 450/2005 article 6(4)(a).
522 See for example, Proclamation No. 450/2005 article 6(2) (c).
523 See for example, Proclamation No. 450/2005 article 6(3) (a).
524 See for example, Proclamation No. 450/2005 article 6(2) (d).

3.6. Conclusion

This Chapter has provided with the description of the historical background of ULGs and planning law of Ethiopia. It sets out the brief background of Ethiopian decentralisation and LG during four phases: prior to 1931 AD; under the 1931 and 1955 revised Constitutions; during the socialist military government regime (1974-1991); and LG after 1991 and under the FDRE Constitution. The first phase was regarded as a decentralized monarchy that characterised by the co-existence of triple authorities wherein autonomous kings and provincial and local nobility exercised powers within their area while at the same time recognising the emperor as the central authority. The second phase (1931-1974) had modern monarchical Constitutions of the 1931 and the 1955 revised Constitution. During this period, the country had a four-tiered local governance system. It was divided into a number of provinces. Each province was divided into zones and, districts and sub districts. The criteria for the division of the provinces, the zones and districts were mostly for administrative convenience and in some cases depended on the power and influence of local landlords. The Constitutions and related legislations had provided a highly centralized system of Government where the central Government exercised unlimited power and control over the management local areas including urban centres. The third phase was the era of socialist militaristic government. In a similar fashion with that of its predecessor, this regime had adopted a highly centralized and unitary polity. Indeed, the nomenclatures of the administrative units and their chiefs got changed. For example, the largest administrative jurisdictions, the imperial provinces were renamed as regional provinces and the head of each region was named as chief administrator instead of the imperial governor-general. The Chapter concludes that during all these periods the role and status of the local structures and their entities, both in rural and urban areas, were instruments of centralisation of power. The local administrators were agents of the centre. The fourth phase, the stage after 1991, is different from the earlier periods as it guides the issue of LGs by Federal constitution.

This Chapter has also discussed the history of planning practice and laws of Ethiopia. During the ancient time, especially prior to the Italian occupation, no

commentary was found relating to urban planning. Urban planning had been officially introduced during the Italian occupation. The Chapter has captured planning practices during the Italian occupation, planning practice during the reign of Emperor Haile Sellasie (1941-1974) and that of the Military regime (Dergue (1974-1991)). In this regard, the Chapter concludes that in all these periods plans were prepared by foreign nationals and plans dealt with spatial planning rather than with implementation tools. With regard to the urban planning laws, the socialist militaristic regime had adopted a more comprehensive law than the monarchical government. In the year 1987, it issued three proclamations that dealt with such matters as: ‘preparation and implementation of urban plans’, ‘urban zoning and building permit’ and the establishment of the NUPI.

CHAPTER 4

Legal status of ULG in the broader Ethiopian political and legal context

4.1. Introduction

The main purpose of this chapter is to look at how ULGs are treated legally in Ethiopia's political system. The following analysis is divided into five parts to achieve this goal. The first section is devoted to introductory statements. The second section discusses the ULG's status under the FDRE's Constitution. The third part discusses ULG's powers and responsibilities. The fourth section addresses their governance system, while the fifth section discusses their multilevel government interactions.

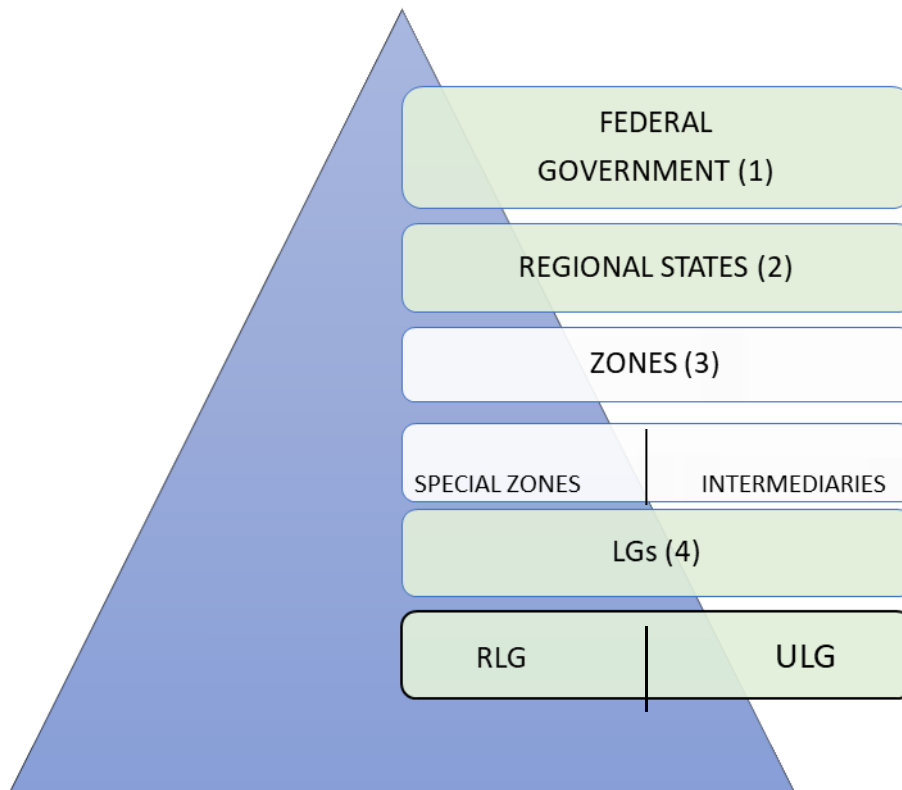
4.2. General Remark

Contemporary Ethiopia follows a Federal Democratic state polity. The Constitution names the state as "The Federal Democratic Republic of Ethiopia."[525] As a federal state, the Constitution has set two orders of government: the federal and regional or the national and sub national levels of government. Moreover, it assigns powers, functions, and revenues between the federal government and the regional states. Furthermore, two cities (Addis Ababa and Dire Dawa), each chartered by federal proclamations, are treated similarly to state-level governments in some respects, are established. Each level of government exercises legislative, executive and judicial powers within its area of jurisdiction.[526] Regional states are given the authority to adopt their own constitutions[527] and are typically subdivided into administrative zones, which is a de-concentrated territorial level.

Although, the Constitution recognizes and assigns powers, functions, and revenues between the first two tiers, the Ethiopian governance structure has four tiers; federal, regional, zonal and local. (See picture 4.1) Regional states have their own constitutions and are normally subdivided into administrative zones. The

525 See FDRE Constitution 1995: article 1.
526 See FDRE Constitution 1995: 1995 article 50(2).
527 See FDRE Constitution 1995: article 50(5).

powers and functions of zones differ from regions to regions. In the SNNPR and some special ethnic zones in ANRS, Zonal administration is formally recognised as levels of government having elected councils and legally defined powers and authorities. In other regions, zones are coordinating and supervisory administrative structure with no executive or policy making power. In this later case, zone administrators are appointed by regional government.[528] It is at this level that we observe some degree of de-concentration of authority from the regions to the zones.[529]



Source: own construction Note: 1, 2, & 4 signify government jurisdictions with their own budget source; 3 indicate de-concentrated entity with the exception of zones in SNNPR and some zones in the ANRS in which, in both cases they have elected councils. .

Describing the place and role of LGs in federal systems, Nico Styller stated that there are three-level government: federal, state/provincial and LG, which is common to all federal systems; however, the place and role of LGs in those

528 Kumlachew G S ''An Overview of Local Governance and Decentralisation in Ethiopia'' 2016 available @ www.academia.edu 12 accessed on 04/06/2018

529 Kumlachew *An Overview of Local Governance* 12.

systems vary markedly.[530] In some, LG is a constitutionally recognised sphere of government, while in others it is simply a competence of the state/provincial government.[531] Reiterating the above idea, Y.A. Kapur also said that the status of LG varies by country.[532] In some federations, LGs have constitutionally entrenched authority; in others, they are creations of provinces or states and subordinate to their authority in many or most areas.[533] In the opinion of George Mathew, the constitutional status and legislative standing of LG determines the nature of its relationships with the other orders of government in most polities, which in turn explains their fiscal relations, inter dependence, dependencies, interventions, and one-sided bargaining.[534] Constitutional entrenchment of LGs in federal constitutions and statutes might make this relationship easier and more functional.[535]

As seen in the preceding chapters and which will be discussed further in this section, in Ethiopia LGs have not been established by federal constitution but they have been instituted by regional states based on their own constitutions and governance structures. The prevailing LGs structures in the country are Woredas in rural areas (RLGs), and ULGs in urban areas. The RLGs are established based on regional constitutions. The RLG has a council, a law-making organ whose members are directly elected by the people. The executive bodies of RLGs originate from their respective councils on the basis of elections by council members. The chief administrator, elected by the council from among members of the council, heads the executive.

Pertaining to the establishment of ULGs, each regional government has enacted city proclamations to create them. The Proclamations also spell out the powers and responsibilities of ULGs. For instance, the ANRS Revised Constitution

530 Nico Steytler ''Local government in federal systems'' (*Konard-Adenauer-Stiftung* Johanesberg 2005)1.
531 Steytler 2005 *KASJ* 1.
532 Kapur Y A ''The Functioning of Local Governments in Federal Systems'' in John Kincaid and Rupak Chattopadhyay (eds) *Unity in Diversity: Learning from Each Other* (a conference held in New Delhi 2007)105.
533 Kapur *The Functioning of Local Governments in Federal Systems* 105.
534 George Mathew 2008 ''Subtheme Paper: The Functioning of Local Governments and their Relationship with Upper Levels of Government'' 39 & 40 available @ https://www.forumfed.org/ accessed on 01/10/2018.
535 George Mathew *The Functioning of Local Governments* 40.

describes the organisation,[536] powers and functions of the regional state, the Woreda (district) and the kebele (neighbourhood) administrative units.[537] The ANRS Constitution also vests the power upon the RS to form other level of administration units whenever it is found necessary.[538] Accordingly, the regional council proclaimed a law for the establishment of urban centres, and for the definition of their powers and duties.[539]

ULG, the central subject matter under this study, is a vast topic and its examination requires thoughtful analysis of the number of components. Some of these may include: ULGs' legal status, institutional set up and organizational structure, constitution and governance, powers, duties and functions, staff composition, ULGs' relation with other order of government, and conduct of business, i.e., municipal management and financial practices. Therefore, it is amenable to use these components as subtopics for this Chapter.

Besides, it is to be noted that, the ULGs in Ethiopia may be categorised into three; the federal cities (Addis Ababa and Diredawa), city accorded with regional power (Harar) and ULGs created under Article 50(4) of the FDRE Constitution. As the ANRS ULGs are being selected for this study, the first two categories of ULGs are not part of this Chapter. Moreover, the ULGs of other regions than the ANRS, except for incidental comparison, would not take major position.

4.3. The legal status of ULG in the structure of government under the FDRE Constitution

While establishing a federal state and drawing a clear division of powers between the two levels of government, the FDRE Constitution did not do the same on the status and role of LGs in the federal scheme. However, the constitution makes recognition by inserting certain provisions, albeit implicitly, to deal with matters relating to LGs. For example, the constitution provides that "State governments shall be established at state and other administrative levels that they find

536 See revised ANRS Constitution articles 45(1), 83, 84, 96, and 98.
537 See revised ANRS Constitution articles 45(2), 47, and 73(1).
538 See Revised ANRS Constitution articles 45(3).
539 See Revised ANRS Proclamation No 91/2003.

necessary. Adequate power shall be granted to the lowest units of government to enable the people to participate directly in the administration of such units."[540]

Zemelak Ayele and Yonatan Fessha examined this provision by dividing it into two parts. For the first part of their investigation they picked the expression "*administrative levels*" as a point of analysis. According to them, the expression "*administrative levels*" suggests the establishment of local authority as administrative structure rather than a "government".[541] They further argue that the establishment of an administrative local unit is an option that is left to the regional states.[542] For them the Constitution's failure to sketch out even the basic structure of LG that the regional states are supposed to establish is a convincing point in that this part of the provision leaves the option of establishing an administrative local unit to the regional states.[543]

In analysing the second part, Zemelak Ayele and Yonatan Fesseha, looked at the whole phrase - "*adequate power shall be granted to the lowest units of government to enable the people to participate directly in the administration of such units."* According to them, the reference to "*the lowest units of government*" is obviously an indication to local government.[544] Yet, opposing their previous idea that the creation of LGs is optional to regional states, they again contend that the constitution enjoins the regional states to create a local government which has "*adequate powers*."[545] As stated by them, the Constitution is mandating the establishment of not a mere administrative local authority but an autonomous LG.[546] It is to be noted that there are also provisions in the Constitution which require a combined reading with article 50(4) for enhanced understanding of the issue at hand. For example, regional states have been granted with powers and functions "*to establish a state administration that best advances (promotes) self-government, a democratic order based on the rule of law*". Again, in its political objectives part, the Constitution provides, "*government shall promote and support*

540 See FDRE Constitution 1995: 1995 article 50(4).
541 Zemelak A and Yonatan T ''The constitutional status of local government'' 94.
542 Zemelak A and Yonatan T ''The constitutional status of local government'' 94.
543 Zemelak and Yonatan, 2012 *IUP* 94.
544 Zemelak and Yonatan, 2012 *IUP* 94.
545 Zemelak and Yonatan, 2012 *IUP* 94.
546 Zemelak and Yonatan, 2012 *IUP* 94.

the peoples self-rule at all levels". The combined readings of these provisions show that the creation of LGs is an obligatory task of the regional states. The states are required to establish a kind of LG with the appropriate power of administration, where in the people participate democratically to deliberate on their own affairs.

Therefore, it is hard to uphold the position that the creation of LGs as discretionary power is left to the RSs. In addition, in this context, LGs cannot be regarded as mere administrative wings of the regional government. It is also clear that the Constitution has not provided independent status of LGs. Specially the ULGs have no recognition even by regional constitutions as their rural counterpart instead, they are creatures of regional proclamation. While the Constitution falls short of recognizing the LG level, or providing constitutional rights or protections to ULGs, each regional government has ratified city proclamations that specify the cities' powers and responsibilities.[547]

The legislation made ULGs as semi-autonomous LG entities, with legal status as corporate bodies with their own political leadership (council) and their own budget. Like a legal entity, they shall have their own name and legal personality the capacity to enter into contract including the power to borrow money from local financial institutions; to own and manage property; to sue and be sued. Definitely, this is an expression of self-administration. However, as they derive their existence and power from the law enacted by superior level of government, their status is on a subordinate level.

As discussed above, in federations where their federal constitutions do not recognize the powers and functions of LGs, usually in two-tiered federations like the USA, Canada and Australia, it is the regional state that holds the power of establishing and determining the autonomy of LGs. Likewise, the constitution does not spell out the organizations, powers and functions of LGs. Therefore, in such federations LGs are under state control and direction. State legislations determine which powers and functions shall be devolved to the lower levels of government.

547 Ethiopia Urbanization Review "urban institutions for middle income Ethiopia" (*A report made in collaboration with World Bank and Cities alliance 2015*) 63.

On the other hand, LGs in three-tiered federations, such as RSA, India, and Brazil, enjoy a separate existence and autonomy. They exist not as an appendage of the other order of government but established as an autonomous entity in a sense of being able to exercise its own affairs dispensed by the constitutional order of the country.

In the Ethiopian case, the cryptic recognition of local autonomy under the Federal Constitution only implies that the ULGs have certain powers relating to self-government. Impliedly it subordinates their existence to the state government. Yet, all city proclamations empower ULGs to issue policies, formulate and execute plan of actions that help direct execute and support the urban development. Moreover, they have the authority to cause the study and revision of master plan; approve and supervise the implementation of same. ULGS are also empowered to issue regulations and directives on other matters which fall under the jurisdiction of the city administration.

ULGs are administered by their respective councils, whose members are directly elected by the people to represent each kebele (ward) within their jurisdiction. They have the right to collect municipal taxes and revenues and the mandate to perform an extensive list of municipal and state functions, the latter under delegation from the higher level of governments, i.e. their respective regional government.

4.4. Powers, duties and functions of ULGs

The significance of LGs cannot be exaggerated when we consider the variety, the character, and the impact upon the day-to-day life of the citizen, of the functions which they carry out. They provide large amount of diversified public services which are required for the convenience, healthful living, and welfare of the individual and the community. LGs provide a range of services and facilities which support us literally from cradle to grave.[548] Their births, and those of their children,

548 Kerley R *Managing in Local Government*(The Macmillan Press Ltd.1994)29.

are registered with the local authority officer; if they die without means or relatives their local council will bury them and seek to trace any relatives.[549]

In a passage which uses the diverse repetition to highlight the importance of LG in the life of the community, Sydney Webb underlined the way in which a councillor could progress through the municipality and:

> *"Walk along the municipal pavement, lit by municipal gas and cleaned by municipal brooms, with the municipal water and seeing by the municipal clock in the municipal market place that he is too early to meet his children coming from the municipal school hard by the county lunatic asylum and municipal hospital, will use the national telegraph system to tell them not to walk through the municipal park but to come by the municipal tram to meet him in the municipal reading room by the municipal art gallery, museum and library" (quoted in Fraser, 2979,p171).*[550]

If LGs are expected to assume responsibilities to provide a broad spectrum of public services and amenities, then they need to have suitable working environment which guarantees management, administrative and financial autonomy. For this, a legal regime which provides adequate powers and duties for discharging their responsibilities effectively is required. As discussed earlier, in Ethiopia, neither the federal nor the regional constitutions recognise and assign powers, functions, and revenues for ULGs. However, each regional government has enacted city proclamations that stipulate the cities' powers and responsibilities. Although, the states adopt their own city proclamations, the various provisions contained in these proclamations are more or less the same.[551]

549 Kerley *Managing in Local Government* 29
550 Kerley *Managing in Local Government* 26
551 See for example SNNPR, ONRS and ANRS City Proclamations.

These proclamations recognised the ULGs self-rule by incorporating provisions with respect to managerial, administrative and financial autonomy.[552] The residents are given the right to elect and be elected in the council membership. The council shall have the power to elect the mayor, to organise the city administration. The city is empowered to hire, fire, promote and demote its own management staffs according to the relevant federal and regional laws. ULGs are also given financial autonomy, provided that, they are authorised to borrow money from domestic financial institutions and based on the decisions of the regional state.

All in all, the proclamations empowered ULGs' councils to issue local policies and to make decisions which confirm to their powers and responsibilities. They are also empowered to make regulations and guidelines which are necessary for the execution of the policies and plans made by them. They shall also have the executive and judicial powers they need to administer their locality. According to these proclamations, any city administration at any level shall have the powers and functions to decide on the social, economic and political activities in a way that allow to participate the population of the city and make them the beneficiaries from the development achieved.[553] The ANRS city proclamation, which may be used as a prototype, enumerates the powers and duties of city administrations at any level. (See Box 4.1)

552 See for example SNNPR City Proclamation No. 103/2006 Article 12 and ONRS city Proclamation No. 195/2015 Article 11.

553 See for example SNNPR, ONRS and ANRS City Proclamations.

Box 4.1: Powers and Duties of ULGs under the ANRS city proclamation.

"A city administration established at any level shall have the power to issue local policies and regulations and the executive and judicial powers it needs to administer the city in accordance with the national and regional constitution and other laws. This shall include powers given by the constitution and other laws, and powers not plainly prohibited by such laws. All city administration shall have all such powers as fully and completely as though they were specifically enumerated in this proclamation and no enumeration of powers herein shall be deemed exclusive or restrictive thereof. The proclamation enumerated twenty-nine powers and duties in addition to the above generally described powers and duties.

The proclamation also states that all powers of the city administration shall be vested in the city council, and the council shall provide for the appropriate exercise of the powers and duties of the city administration. The city council shall have the following specific powers and responsibilities.

a) Issues local policies and makes decisions which conform to its powers and responsibilities, and issues regulations and guidelines for the implementation of the same;
b) Elects the city mayor, a speaker and a deputy speaker from among its members;
c) Establishes various committees to the extent deemed necessary and follows up their activities;
d) Approves the city plan and ensures its implementation;
e) Examines and approves the annual work program and the budget proposal execution of the city administration; and thereby ensures the proper implementation of the same;
f) Examines and approves agreements made with regional and country-wide sister cities;
g) Calls for questioning the mayor, the mayor's committee and other officials, and thereby examines their performance;
h) Appoints upon their presentation by the mayor, members of the mayor's committee and the president as well as judges of the city courts;
i) Causes the auditing of the finance and property of the city administration with the view to ascertaining whether or not that has been utilised for purposes designated by law; act on the audit report thereof;
j) Establishes the executive organs of the city."

The city proclamations also grant every city the power[554] to prepare, cause to be prepared, approve, amend, and implement its city plan. During the preparation and implementation of such plan, the city shall observe the principles, guidelines,

554 According to the City proclamation of TNRS Article 57, it is a duty of the city to initiate the idea, prepare, revise, approve and implement city plan.

standards, and parameters of the Regional State pertaining to the preparation of plan.

About their functions, ULGs in Ethiopia have dual responsibilities, state and municipal functions. State functions comprise most social services such as education, health; justice and security are among others. Municipal functions consist of preparation, approval, and implementation of development plans. Assessment and collection of allowable municipal revenues is also a municipal function. It also includes provision and maintenance of internal roads and bridges; solid waste management and disposal services; delivery of water, sewerage, and drainage amenities; provision of markets, slaughter houses, terminals, recreational space and public gardens; regulation of cleanliness; management of urban land and provision of urban land services; and delivery of miscellaneous services, including fire protection, libraries, street lighting, public toilets, nursery schools, and ambulance services.

In urban areas, both state and municipal functions are administered by ULGs. State functions are delegated from RGs to ULGs, but municipal functions are considered as the exclusive functions of ULGs. State functions are funded through regional block grants. All municipal functions are expected to be financed from own local revenues. They are financed wholly from local revenues (through taxes, including land lease income, fees, and user charges on service rendered) (See Box 4.3).[555] Municipal functions receive no systematic financial support from higher levels of government.

See Box 4.3. Municipal Revenue Sources

"The basic revenue sources of municipalities, defined primarily in Proclamation No. 74 of 1945, include:

- Property taxes collected in the form of land rents, lease income and building taxes
- Business income taxes

555 Tegene G and Kassahun B ''A literature review of Decentralization in Ethiopia'' in Taye a and Tegene G (eds) *Decentralization in Ethiopia (*FSS Addis Ababa2007)31.

- Market fees (for stalls and use of markets)
- Fees for municipal services, including: sanitary services, slaughter houses, fire brigade services, mortuary and burial services, registration of births and marriages, building plan approval, property registration and surveying, and use of municipal equipment, transport or employees"

Regions provide the basic legal framework for allocating these functions to the city administrations. For example, in prescribing the powers and duties of city manager, the ANRS city proclamation provides long list of functions: concurrent state functions as municipal services (See Box 4.2). Subject to the approval of the council of the regional government, more functions may also be added. These functions are generally placed under four categories: namely,

a) Provision of environment and social services,
b) Economic services and hastening the supply of urban land,
c) Protective and regulatory services, and
d) Technical and engineering services.

Box 4.2 Municipal functions under the ANRS city proclamation

1. "Regarding the provision of environmental and social services, engages in the construction of roads, except inter-city roads, the provision of road lights, construction of drainages and sewerages; carrying out supportive tasks for the security of traffic safety; setting up of solid waste disposal systems; establishment of recreation centers and gardens; improving and causing the improvement and supply of houses; care for the aged, the handicapped, the abandoned and the orphaned children; causing the provision of ambulance services to the city residents; establishing and administering cemeteries; participating in anti-HIV AIDS campaign; contributing to the realisation of the poverty reduction strategy; maintaining basic vital statistics; the provision of marriage, birth and death certificate; establishment of abattoirs; bus terminals; and market places; causing the construction of and care for libraries, museums, squares, monuments, sport frequenting sites; youth centres and theatre halls; protecting and controlling fire accident; combating soil erosion and land slide disasters and environmental pollution;
2. Regarding economic services, hasten the supply of land, and provide the technical

support required thereto; cause the expansion and ensure the adequacy of the supply of water, electricity, telephone and transport services; engage in environmental protection and the care for natural resource development;

3. Regarding protective and regulatory services, establish fire protection and control system and ensure the observance of weights, measures, and standards in coordination with appropriate regional and federal organs;
4. Regarding technical and engineering services, parcel and supply appropriately plots of land to the users for the construction of residential houses and development establishments, ensure the observance in the city of design and construction work standards; cause the preparation of designs and construction agreements for construction works to be undertaken by city administration budget, put in place a supervision arrangement which enables the city to ensure that the city construction works undertaken by city administration budgets are in accordance with the quality standards, time and cost limit stipulated by the agreement; issue holding certificates as well as title deeds and construction permits and register transfer of titles within the limits of the city; cause the maintenance and renewal of houses under the management of the city administration; conduct or cause to be conducted studies supportive for the preparation of the city plans; prepare cause the preparation of follow up and supervise the implementation of detail, partial and block plans which facilitates the execution of the city plan; study urban land grades in accordance with criteria and measures to be issued and on approval follow up their implementation."

Any government, be it federal, regional or local, cannot discharge its responsibilities and exercise the powers vested in it without raising some revenue. The basic revenue sources of ULGs are defined in city proclamations of RS. The sources of revenue can be tax and non tax sources, and grants. Usually, they are categorized under five sources such as, (i) tax based, (ii) rent, (iii) service charges, (iv) property and service sales and, (v) other capital receipts. (See table 4.3)

S/N	Revenue item	A/c. No.
1	Tax Revenues from Municipal Services	1701-19
1.1	Business and professional services taxes	1701
1.2	Assurance	1702
1.3	Entertainment tax	1703
1.4	Other taxes	1719
2	Municipal Rent Revenues and Investment Income	1720-31
2	Municipal Rent Revenues excluding land lease *	1720-30

2.1	Urban land rent	1721
2.2	Residential houses rent	1722
2.3	Business building rent	1723
2.4	Market stall rent	1724
2.5	Market place rent	1725
2.6	Stable rent and livestock tax	1726
2.7	Funeral service vehicle rent	1727
2.8	Rent from machinery	1728
2.9	Other rent	1729
2.10	Municipal investment income	1730
2.11	Land lease (total)	1731
2.11.1	Land lease (10%)	1731
2.11.2	Land lease (90%)	1731
3	Municipal Service Charges	1740-49
3.1	Business and professional services registration and	1741
3.2	Building and Fence Construction Permit License	1742
3.3	Soil dumping space license	1743
3.4	Permission for driving on prohibited roads	1744
3.5	Traffic fines for violation of traffic rules and regulations	1745
3.6	Fines for violation of rules and regulation	1746
3.7	Bus terminal services	1747
3.8	Environmental protection fee	1748
3.9	Other charges	1749
4	Property and Services Sales of Goods and Services	1750-89
4.1	Sanitation services	1751
4.2	Technical services fee	1752
4.3	Supervision of building and construction works	1753
4.4	Design and tender document preparation	1754
4.5	Contract registration and confirmation	1755
4.6	Road services fee	1756
4.7	Water service	1757
4.8	Sewer service	1758
4.9	Fire brigade and emergency services	1759
4.10	Vital statistics service	1761
4.11	Driving licenses fee	1762
4.12	Garage services	1763
4.13	Annual vehicle inspection agencies fee	1764
4.14	Driving instructor and vehicle title deed	1765
4.15	Valuation of vehicle	1766
4.16	Registration of driving instructors	1767
4.17	Vehicle plate sales and rent	1768
4.18	Vehicle parking fees	1769
4.19	Permission for change of type of vehicle services	1771
4.20	Transfer of title deed fee	1772
4.21	Registration fee for land acquisition	1773
4.22	Renewal of land, building title deed, plan maintenance & houses	1774
4.23	Debt suspension, cancellation of registration foreclosure of service	1775
4.24	Funeral service	1776
4.25	Abattoir service	1777
4.26	Loading and unloading charges	1778
4.27	Provision of cart and chariot service	1779
4.28	Provision of park services	1781
4.29	Emblems and sign board and any advertising service fee	1782
4.30	Other sales of property and services	1789
5	Other capital receipts	1791-92
5.1	Sales of movable and immovable property	1791
5.2	Community contribution & other capital receipts	1792

Source: Revenue Enhancement Plan Guide for Ethiopian City Administrations Working Manual (This publication is supported by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH on behalf of the German Government.)

4.4. Administrative organs and governance structure of ULGs

As stated in the preceding chapters, the ULGs are governed by city proclamations of RSs. According to these proclamations, the governance and administrative structure of ULGs consist of legislative, executive and judicial organs. Most of the ULGs follow the council-mayor system. The Council-Mayor system provides executive leadership in the mayor who is often elected and serves as a chair and political heavy weight.[556] The governance organ includes the city council and the speaker of the council, the mayors and the mayor's committee, the city manager or the manager of municipal services, a city court and other executive offices and commissions. The council assumes the legislative power and the mayor in whom executive leadership is vested exercises executive authority. All these organs, their composition and function, can be briefly discussed as follows.

4.4.1. The City Council (CC)

The CC is composed of members elected by the voters of a city in a free, direct, fair and secret election for a period of five years. In all regions the CC election shall be carried out in accordance with the national electoral law. The size of the CC membership shall be determined by the number of voting districts with in the city or as necessary by the sum of representatives from the adjacent satellite towns. Every voting district shall have representatives whose members shall be determined on the basis of the size of its population. However, the size of membership of the council is determined differently in different RSs. For example the ANRS city proclamation provides that the size of membership of the council should not to be less than eleven. While in TRS and SNNPRS it shall be determined, by the federal election laws and the regional government respectively.

Regions also make an arrangement to ensure that members of an ethnic group of the area take the majority seats in the CC. For example, the Oromiya city proclamations provide that if the number of Oromo nations residing in the city

556 Minas H (2003) cited in Tegene and Kassahun *A literature review of Decentralization in Ethiopia* 31.

administrations, having their own councils is less, the Oromia regional state council may make that 51% of the seats in the city council to be reserved for them through comparing the number of the Oromo people with the number of other people in the city. This provision shall also apply on the kebele level city councils. In addition, the Proclamation provides that 20% of the seats in a CC will be reserved for the rural kebeles which are found in the vicinity of a city.

In the same way, Benishangul-Gumuz City Proclamation provides that 55% of a CC membership seat in the region is reserved for the ethnic communities. The Proclamation allows the regional council to increase the percentage of a CC's seats that can be reserved for the ethnic communities. Likewise, the executive council of SNNPR also has the power to reserve up to 30% seats for indigenous residents. The ANRS and TRS city proclamations do not incorporate such matter. Such special arrangement of reserve seats, as noted by Zemelak, completely disenfranchises the ethnic migrants in many urban areas.[557]

CC plays an important role in the administration of the urban centre. The city proclamations of RGs vested all the powers of the ULG upon CC. The proclamations authorised CC with the legislative power. As a law making organ, it issues local policies, and makes decisions which conform to its powers and responsibilities. It approves the city plan and ensures its implementation. Likewise, it makes regulations and guidelines for the implementation of its decisions and policies. As representatives of the people, CC has the power to elect the city mayor, a speaker and deputy speaker from among its members. It appoints, upon the presentation by the mayor, members of the mayors committee, the president and the judges of the city court. It also has the authority to establish the executive organs of the city. CC has also over sighting function. It can call the mayor, the mayor's committee, and other officials, for questions and can examine their performance.

The CC runs its activities under the leadership of the speaker of the CC, who shall be elected from among the council members and be accountable to the council.

557 Zemelak and Yonatan, 2012 *IUP* 94.

The city proclamations of the RS entrusted the speaker with leadership and coordinating functions. The speaker prepares meeting agendas, chairs council meetings and coordinates its activities. It also organises the council with standing and, where necessary, with ad-hoc committees. It represents the council in all its dealings with third parties as well.

4.4.2. Mayor and the mayor's committee

The mayor is the chief executive, chairman of the mayor's committee and the representatives of the city administration. In principle and as provided by law, the mayor shall be elected from among the members of the city council on the recommendation of the political party or coalition of parties that constitutes a majority seat in the CC. Yet, the practice is that mayors are appointed by higher levels of administration rather than elected by council members.[558] In ONRS, the city proclamation has been amended in 2006 to allow the regional president to appoint the mayor. Although this happened only in one region, if other regions follow, the shift may point to a possible trend toward recentralization of authority with regional governments.[559]

In the ANRS, a mayor of a city has dual accountability: to the city council and to the regional chief administrator.[560] The accountability to the CC is natural, as it facilitates democracy and as it ensures answerability and representativeness to the local people. But, it seems, the mayor's accountability to the regional government is intended not to facilitate democracy but is devised to control the city administration. Moreover, it is to be noted that the mayor's accountability to the regional government coupled with the control of the executive leadership by the ruling party undermines the autonomy of the city. All these show prioritisations of upward accountability to zonal and regional politics at the cost of community needs and concerns.

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558 World Bank 2000 "Ethiopia Regionalization Study Report: Macroeconomics 2 Country Department 6: Ethiopia, Eritrea, Somalia, Sudan Africa Region" (*Report No. 1 8898-ET*) 48.

559 Ethiopia Urbanization Review 2015 *A report made in collaboration with World Bank and Cities alliance* 83.

560 See Revised ANRS Proclamation article 18(2).

The term of office of the mayor is the term of office of the CC.[561] As aforesaid, mayors are appointed by higher levels of government (i.e., the ruling political party/ EPRDF/) rather than elected by council members. They are appointed on the basis of their political commitment and loyalty to the ruling party. Thus, the mayor vacates his/ her mayoral position or council membership not by the CC but by the decision of EPRDF.

The mayor's powers and duties includes such matters as, appointment and removal of manager and deputy manager of city services,[562] appointment of heads of the executive organs other than the members of the mayor's committee,[563] and selection, designation, and removal when necessary, of up to three members of the mayor's committee from outside the executive organs of the city administration.[564] The appointment and removal of the managers and deputy mayors is not the mayor's exclusive power where in a similar fashion, the ruling political party plays the significant role.

A city has a mayor's committee as its highest executive organ. The committee is a collection of a mayor and the heads of the executive organs of the city.[565] In this regard, the mayor exercises wide powers and duties. It is his/ her power and duty to chair, direct, coordinate and to represent the mayor's committee.[566] S/He shall execute the federal and regional laws, policies, guidelines, and decisions issued by the CC.[567] S/He shall also follow up the execution of these laws and policies by others. The mayor has also the power to nominate city court president and deputy president and present them to the CC for appointment.[568] Likewise, the mayor submits to the approval of CC those executive bodies who become members of the mayor's committee and the deputy mayor. S/He can even appoint them on a temporary basis where the CC cannot hold its meeting due to some reasons.

561 See Revised ANRS Proclamation article 18(3).
562 See Revised ANRS Proclamation article 19(i).
563 See Revised ANRS Proclamation article 19(f).
564 See Revised ANRS Proclamation article 19(h).
565 See Revised ANRS Proclamation article 21(2).
566 See Revised ANRS Proclamation article 19(a).
567 See Revised ANRS Proclamation article 19(b).
568 See Revised ANRS Proclamation article 19(c).

City proclamations of RS state that the highest executive power in the city administration is vested in the mayor and mayor's committee. The proclamations entrust varying powers and functions on the mayor and its committees. The mayor and the mayors' committee are charged with the implementation of, within the limits of the city, laws issued, and decisions made by the CC, by the regional councils and by the federal government. The mayors' committee determines the organisation of the executive bodies of the city administration and other institutions; follows up their activities, coordinates and directs them. Preparation of annual plan and budget of the city; submitting to the CC for approval and implementing it on approval is also one of the powers entrusted to the mayor's committee. Moreover, formulation of economic and social development policies and strategies of the city, submitting the same to the CC for approval, and following up its implementation is the duty of the committee.

Except for the mayor, members of the mayor's committee need not be members of the city council.[569] The mayor's committee also has dual accountability; to the CC and the mayor. They shall be equally responsible for the decisions they make and functions they perform jointly in their power of city administration.

4.4.3. Manager of the city services

Manager of city services and mayor are two of the most important positions in ULG. In describing the importance of local leadership in America, an article in politico magazine of 2017, noted that *"it's easy to forget how much political energy—and important new thinking—emanates not from the nation's capital but from city hall"*.[570] Manager of city services, sometimes known as city administrator, is usually appointed by mayors or councils considering their education, administrative background and experience in local government. In order for the cities to benefit from professional management, council elects a city manager on merit basis.[571] The ANRS city proclamation provides that the city manager shall be appointed by the mayor based on his or her professional competence and accumulated

569 See Revised ANRS Proclamation article 21(4).
570 America's 11 Most Interesting Mayors (And 7 rising stars.) By Politico Magazine June 25, 2017, page 1.
571 Tegene and Kassahun, 2007 *FSS Addis Ababa* 31.

experience.[572] Even so, in case of loss of confidence, the mayor may remove the manager from his post. Generally, a manager of city services is directly accountable to the mayor of the ULG.

In Ethiopia, all city proclamations of the RS provide for the powers and duties of the manager of city services. The administrative aspects of the municipal services of ULGs are undertaken by a manager of city services and other municipal service structures which are established under his office. According to the ANRS city proclamation, the manager of city services being accountable to the mayor, shall act as chief of city services. S/He, in addition to this generally granted power, has specific powers and duties enumerated under the city proclamation (See Box 4.2 above).

Managers of city services, who are generally full-time workers, are expected to be professional and politically impartial and independent as they carry out the decisions of the council or mayor. But the practice of various urban centres in the region shows that in selecting the manager, professional competence is not important. Rather, political affiliation and commitment are the key criteria for filling the position. Moreover, the managers are usually appointed only if they are members of the ruling party and their selection or removal is based on their loyalty to the party. They are often selected owing to their political stand, background, and personality. In some urban centres, non-professionals are appointed as managers as a reward to their loyalty.

City leaders should be equipped with required knowledge and skill not only to deliver services required but also to better position and guide their respective cities in the urbanizing world.[573] Yet, in this country, there are instances, where managers who have no experience and skill in urban bureaucracy and who come from other profession take the position. In many cities the manager's educational background is from physics, chemistry, mathematics, chemical engineering, geography and financial management.

572 See Revised ANRS Proclamation No 91/2003 articles 24(4) & 21(i).

573 It is Opening Speech by Mr Abdulkedir Hussein the Vice- President of ONRS and Bureau Head for Industry and Urban Development.

In a training[574] provided by the UN HABITAT for city leaders of Oromia Region, nineteen mayors and twelve city managers were participated. The purposes of the training were twofold: first, to enhance the leadership skills of mayors and senior officials in the areas of urban governance, management, economy and legislation; and second, to equip them with basic knowledge on urban planning, urban legislation and urban economy instruments that help them to address key challenges related to sustainable urban development. Participants were asked to express their opinion whether they have a strong background and experience in urban management, urban economy and finance, and sound understanding of urban planning instruments and whether they have many years of work experience in land use instruments. All the participants have replied that they had no background and experience in these areas. And subsequently, the participants requested capacity-building training on issues such as urban management, leadership and good governance, urban challenges, community participation, and strategic management.

In addition to their deficiency in profession and experience, all city managers in the various cities of RS are required to be party members and take active role in politics. According to the International City/ County Managers Association (ICMA)[575] code of conduct, such political engagement is unethical practice for city managers. For example, a principle in the ICMA code of ethics provides that managers should avoid political activities.[576] In studying the urban problems in Ethiopia, Mihiret noted that the modus operandi of municipal government (ULGs) and cities are run by amateurish politicians rather than a competent cadre of professional managers.[577]

574 Although the training is given to the ONRS city leaders the situation in other regions, including the ANRS is similar.

575 The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in October 2019. The mission of ICMA is to advance professional local government through leadership, management, innovation, and ethics.

576 The ICMA Code of Ethics (2019) Principle 7 states that professional managers shall "refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body".

577 Endale Haile Gizaw *Urban Governance with respect to cities' competitiveness in Ethiopia: the cases of Dire Dawa and Hawasa cities* (PhD Dissertation AAU 2017)17.

It is to be noted that the political aspect of manager's activity has relation with security of tenure. Manager's security of tenure is not determined based on his/ her performance but based on his/ her political allegiance and commitment. Moreover, as seen in the ANRS city proclamation, in case of loss of confidence, the mayor may remove the manager from his/ her post.[578] In this connection, some studies illustrate that managers who serve under a system of government with an elected mayor are regarded as more likely to experience short tenure than those who give service under the traditional council-manager form.[579] The belief is that the presence of another city executive with practical formal authority will intensify potential for conflict and yield an environment that is less conducive to long-term policy management. Managers require longer term of office to ensure security of tenure. Yet, as their service is not made by employment contract, but, by appointment made by politicians, their duration is unknown and not fixed, and usually short. Short period of service does not enable a manger to have long term planning and strategic thinking. Moreover, such situation compels him/ her to exert more of the energy to political activity rather than taking on measures to improve service delivery to citizens.

4.4.4. The city courts

Ethiopia follows dual system of courts: a Federal Judiciary with the Supreme Court at its apex, and a separate and parallel judicial system in each RS. According to the FDRE Constitution, there are three levels of Federal and State Courts' structure. The Federal Supreme Court, the Federal High Court and the Federal First Instance Court constitute a on its own the Federal Judiciary. The Federal judiciary has jurisdiction over all cases pertaining to federal matters. In the same way, there is a similar judicial system in each RS that has jurisdiction over all regional matters. At the state level, the court system is State Supreme Court, State High Courts (Zonal Courts), and State First Instance Courts (Woreda Courts).

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578 See Revised ANRS Proclamation article 25(3).

579 Richard C. Feiock and Christopher S ''Explaining the Tenure of Local Government Managers'' *1998J-PART* 117-130 @ https://www.jstor.org / accessed on 17-02-2020

In addition to these state and federal courts, other organs exercise judicial power. In Dire Dawa and Addis Ababa, there are municipal courts with their own first-instance authority and appellate courts recognized by the corresponding charters of the cities. Similarly, RSs through their city proclamations provide for the establishment of city courts.

All city proclamations of the RSs provide for the organization of ULGs at different levels with legislative, executive and judicial powers. The ANRS city proclamation clearly states that a city administration established at any level shall have the power to issue local policies and regulations and the executive and judicial power it needs to administer the city in accordance with the national regional constitution and other laws. The proclamation also provides the organisation of the city courts, their powers and functions, mode of operation and the manner of appointments of the judges thereof.

According to the ANRS, TRS and SNNPR city proclamations, ULGs shall have the power to establish and determine the organisation of city judicial organs. For that reason, the proclamations provide for any city court to have two levels; city first instance court and city appellate court. The court shall have a president, the required number of judges and other supporting staff. The president and the judges of the city court are to be appointed by the CC on the recommendation of the Mayor in the case of Amhara and SNNPR and by the president of the RS in Tigrai region. The ONRS city proclamation follows, to some extent, different approach in creating and organising the city courts. According to it, the city court to be established shall be realised with the request of the Oromia Supreme Court depending on the research. Furthermore, the structure of these courts shall be in accordance with the structure and practices of the regional state courts.

With regard to jurisdiction of these courts, most of the city proclamations grant selected and analogous authorities over urban cases. For instance, according to the ANRS city proclamation, a city court shall have exclusive jurisdiction over urban cases which may arise from or are related to the following:[580]

580 See Revised ANRS Proclamation article 57(1)-(6).

- Implementation of city plan, building construction as well as housing and land management laws;
- Issues of whether or not houses and urban lands have been utilised for prescribed purposes;
- Cases pertaining to city taxes, dues and service charges;
- Health and environmental sanitation;
- Cases relating to municipal services;
- Cases of traffic violation;
- Other similar petty offences.

The decisions of the City Court of First Instance are open to appeal to the City Appellate Court. Where a matter decided by the City Appellate Court contains a fundamental error of law, an application for hearing in cassation may be submitted to the Regional Supreme Court. This means, a party whose case is reversed has no chance to appeal on the substance of the case except applying for cassation for fundamental error of law. Normally, the court uses national procedural laws in adjudicating the cases which fall within its jurisdiction.

The city court judges, their ethical practice and judicial administration issues are governed by regional legislations. Accordingly, the council of ANRS adopted two regulations. The first regulation[581] deals with matters governing discipline and code of conduct of City Court Judges' and the second legislation[582] establishes and provides the powers and functions of the City Court Judicial Administration Council.

Although, it is acceptable that one of the institutions necessary for the exercise of the right to self-rule of ULGs is the creation of an independent judicial system, so far the practice of ULGs is not satisfactory. In the ANRS only Bahir Dar, Gondar and Dessie city administrations are established city courts. From this point, it can be argued that ULGs are restricted from exercising their self-rule right which is wished-for in the federal and regional constitutions and provided in the city

581 See The ANRS City Court Judges' Administration, Discipline and Code of Conduct Regulation No. 60/2008.
582 See The ANRS Regulation No. 60/2008.

proclamation. The regulation grants a power to the council to select judges who are efficient for the judiciary in order to be appointed by the city council and submit the same to the mayor.[583] While doing so, it shall include the recommendation of the Regional Supreme Court Judicial Administration Council and its own recommendation thereto.

At this juncture, it would be worthwhile to examine the criteria for the appointment of city court judges. The above-mentioned regulation states that any person who meets any of these as specified herein below may be appointed as a judge of city court and serve therein; where he:[584]

A. is an Ethiopian National and is above and /or twenty one years of age;
B. is willing to serve in judiciary;
C. is loyal to Federal and Regional Constitutions;
D. has a good reputation for honesty, integrity and good conduct;
E. has acquired basic knowledge on policies and strategies of trade, industry, investment and urban development of which the country follows therein; and
F. has LL.B/ Fist Degree/in law profession regarding his educational qualification.

Any person may not exercise judicial functions, in combination, while he is serving as legislative or executive capacity or as a membership in any political party.[585]

As aforesaid, it is the duty of the judicial administration council to evaluate, select and present the candidates to the city council for their appointment through the mayor. In doing so, it shall consider the professional competence and ethical conditions as per the above-mentioned criteria. Except one criterion, which requires loyalty of candidate to Federal and Regional Constitutions, most of the criteria are naturally amenable for practicing a judicial career. However, the loyalty related condition is ambiguous, subjective and a politically motivated supplement. Maybe it is appropriate to say loyalty not to the constitutional order but to the ruling

583 See The ANRS Regulation No. 60/2008 article 6(1).
584 See The ANRS Regulation No. 60/2008 article 6(1)(a-f).
585 See The ANRS Regulation No. 60/2008 article 6(2).

party. It’s ambiguous because it is difficult to determine whether a person is loyal to a constitution or not. It is also subjective.

4.5. Relations of multilevel government

ULGs are important grass roots institutions of service delivery and efficient instrument of local governance. These days, most governments around the world have already realised that the delivery of effective services to the people, requires alliance, cooperation and coordinated effort among different orders of government. But such synergistic approach, in turn, necessitates the setting of a strong organisational structure and institutional framework (intergovernmental relations) to control, monitor and evaluate various activities.

Literally, an intergovernmental relation (IGR) or “*relations of multilevel government”* means a relationship that may exist among different levels and arms of government. IGR implies two major dimensions: vertical and horizontal. The vertical aspect deals with the relationship between and among different levels of government. In the Ethiopian context these levels are the federal, regional, zonal and LGs. On the other hand, the horizontal feature of IGR connotes the relations that exist between the LGs, the RSs, sector offices etc. It may be inters-state, inter-local or, inter-sectoral offices. In the context of this study, IGR can be used as interactions occurring between/ among ULGs, Federal and RS governments within urban governance system and in relation to ULGs’ planning role.

George Mathew, in discussing the relational issues between local governments and the other orders of government in federal systems, noted as follows.

> *“Some federal systems have not risen above the level of mere decentralization, thereby not proclaiming LG as one of their constitutional features. Some have proclaimed LGs as constitutionally assigned institutions with substantial powers and responsibilities. Some have made them dependent on the federal government and constituent units. Some have merely talked of LGs without adhering to operative principles. Not all relevant powers have*

been transferred, but many now rest with local government institutions. The nature of the assignment of the tasks to be performed by local government determines its pattern of relationships with the regional and national orders of government." [586]

As remarked by Negussie, IGR focuses on how different levels of government in federal political systems communicate and collaborate with each other.[587] According to him, IGR encompasses the entire complex and interdependent relations among various spheres of government with respect to co-ordination of public policies.[588] It is significant in that it installs the culture of negotiation, checking the centralization of government power, and enhancing the bargaining power of the regional states and local governments.[589]

In the Ethiopian federal arrangement, an IGR is one of the areas in which little attention is given. According to Jaap de Viser and Nico Steytler, Ethiopia's Constitution, which emphasises on ethnic federalism, does not explicitly call for or recognize IGR between or among levels of government.[590] The Constitution provides for two sets of governmental structure along with separate jurisdiction to each level of government.[591] Although, the constitution provides division of powers and functions between these two levels of government, it does not adequately deal with IGR that should exist between them. Likewise, the regional constitutions fall short of providing any guide which may determine the relations between the higher orders of government and the LGs.

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586 John Kincaid and Rupak Chattopadhyay (subtheme paper) ''Local Government in Federal Systems'' in George Mathew (eds) The Functioning of Local Governments and their Relationship with Upper Levels of Government 54.

587 Nigussie Afesha ''The Federal-state Intergovernmental Relationship in Ethiopia: Institutional Framework and its Implication on State Autonomy'' 2015 *MLR* 2

588 Mitullah Winnie V. (2012) ''Intergovernmental Relations Act 2012: Reflection and Proposals on Principles, Opportunities and Gaps'', *FES* Kenya Occasional Paper, No. 6, p. cited in Nigussie Afesha 2015 *MLR* 2.

589 Mustefa Aman *IGR and Interregional Conflict Management in the Ethiopian Federation: The case of Oromia and SNNP Regional Governments* (M.A Thesis AAU College of Law and Governance Center for Federalism and Governance Studies 2018) 1.

590 Jaap De Viser and Nico Styller ''Multi level government in South Africa, Ethiopia and Kenya observations from the practice of designing and implementing multilevel government systems'' *Forum of Federations (*Occasional Paper Series No.20) page18.

591 See FDRE Constitution article 50(2).

As noted by Mustefa Aman, a deep reading through the constitution of Ethiopia proves the absence of formal IGRs and cooperation among federal government and regional states vertically, between regional states and within local governments horizontally.[592] However, such deficiency of formal vertical and horizontal relationships does not mean that there is no relation at all.[593] Relations through sector- based, party channels and through institutions are held informally.[594] As stated above, in this study the concern is IGR which occurs between/ among ULGs, Federal and RS governments within urban governance system and in relation to the ULGs planning role in the ANRS. Therefore, the revised constitution, the city proclamation, and other legislations of the ANRS can be utilised to determine these relationships.

The revised constitution of ANRS, supposed to be the first instrument to govern the issue at hand, has not provided any guidance on regulating the IGR that may exist between the RS and LGs and between/ among LGs. Yet there is constitutional division of power among the levels of government which requires coordination, integration, and collaboration. Unlike the regional Constitution, the city proclamation of the ANRS, that established ULGs, has dealt, at least in generic terms, with IGR at regional level. The proclamation attempted to incorporate explicit provisions for regulating IGR issues. It provides the relations of ULGs with three entities: *first,* with the federal or regional governments and with other organisations; *secondly*, with the residents; and *thirdly*, with the neighbouring rural districts. However, these provisions are generic in their form and content.

For example, with regard to relations with government bodies, the ANRS city proclamation states that *"any ULG may exercise its powers under this proclamation or perform any of its duties and may participate in the financing thereof, jointly or in cooperation, by contract or partnership with the regional and*

592 Mustefa Aman ''IGR and Interregional Conflict Management in the Ethiopian Federation'' p. 58.

593 Mustefa Aman ''IGR and Interregional Conflict Management in the Ethiopian Federation'' p. 58.

594 Mustefa Aman ''IGR and Interregional Conflict Management in the Ethiopian Federation'' p. 58.

federal governments or with other organisations or agencies operating within the city or town limits".[595] The proclamation also provides that *"a CC established within a city having the status of city administration shall be accountable to the electorate and to the regional council"*. [596] These provisions show a deficiency in managing the IGR which may exist between the ULGs and the RSs. The provisions do neither clearly state the guiding principles nor provide establishment of institutions and processes to facilitate IGR in governing such relations.

Relatively, the city proclamations of ONRS, SNNPR and TRS are better in incorporating explicit provisions regarding IGR. All these proclamations provide general principles which guide the relationship between the ULGs and RS. According to the ONRS city proclamation, the relationship between the cities and regional government shall be guided by the spirit of cooperation, partnership, collaboration and the rule of law.[597] Moreover, it states that the relations shall facilitate favourable condition for coordinated planning and flow of information.[598] All the above-mentioned proclamations, except the ANRS city proclamation, deal with certain matters relating to the relation of ULGs with the RS. They include issues such as.

- Regional government and cities partnership,
- Enactments and enforcements of laws and standards,
- How the regional government assists the cities,
- Establishment of joint committees and
- How cities submit their reports

Fairly, the inter-local relations, the relationships between the ULG with the neighbouring rural district, is treated in all proclamations in a similar manner and entails the establishment of urban-rural consensual joint committee. According to the ANRS city proclamation, the task of the committee is to receive and examine joint issues which intertwine the urban and rural areas in development and social

595 See Revised ANRS Proclamation No 91/2003 article 44(1).
596 See Revised ANRS Proclamation No. 91/2003 article 44(2).
597 See ONRS Cities Establishment Proclamation No. 195/2015 article 44(1).
598 See ONRS city Proclamation No. 195/2015 Article 44(2).

respects; and to seek solution by presenting its recommendations to the concerned councils.[599]

In Ethiopia, preparation of urban plan usually involves delineating of expansion areas for future development. Such practice implies the taking of rural lands from neighbouring districts and this in turn requires a forum with and among RLGs or RSs. However, in ANRS, where cases involving the adjustment of urban-rural borders exist, usually for expansion purposes, the same shall be decided by the council of regional government where the concerned RLGs do not take part. Such unilateral decision of the regional council undermines the autonomy of the neighbouring RLGs; in that; they have no say or suggestion in deciding the matter or they lose their territory for the growth which is going to be under the control of the city administration. Yet in other regions such as TRS, demarcation of city's border shall be made by the agreement made between the city administration and the neighbouring RLG or by the regional government. Here it can be presumed that the decision of the regional government comes only if the two parties disagreed with the matter. In TRS case, the issue of autonomy is better addressed.

The other issue, which may be considered at this point is, the autonomy of ULGs is also challenged due to the existence of overlaps of functions made by some legal instruments. Plus, in such cases there is no regional or federal IGR mechanism to settle the conflict which may arise from overlaps of functions. For example, the ANRS "Urban Planning Institute Establishment Proclamation" adopted by the regional council, grants the power of plan preparation to the ANRS Urban Plan Institute (UPI). The proclamation provides that the ANRS UPI shall have the powers and duties to prepare urban plans being integrated, as deemed necessary with private or government institutions in its initiative or upon request submitted to it by urban centres.[600] This provision is in contradiction with the federal and regional city proclamations. In other words, there exists overlap of plan preparation authority. The Federal urban plan proclamation and the city proclamation of the ANRS grant the plan preparation authority upon the urban

599 See Revised ANRS Proclamation No. 91/2003 article 46.
600 Urban Planning Institute Establishment Proclamation No.147/2007 Article 6(1)

centres at all levels. According to them, any urban administration shall in as much as its capacity allows, have the authority to prepare or cause to be prepared its own city plan.[601] Again, in such cases there is no regional or federal IGR apparatus to resolve the conflict which may arise from this type of overlap. In fact, it may be difficult in the process of achieving the national goals, to avoid overlaps of functions and authorities, on the one hand, and to maintain the values of self-administration. However, as we see henceforth under this study, such situation has its own implication on ULGs legal roles and mandate in the implementation of planning laws.

4.6. Conclusion

This Chapter considered ULG as a huge topic which requires examination and thoughtful analysis of number of components. For this reason, the Chapter has captured "ULGs' legal status", "institutional set up and organizational structure", "constitution and governance", "powers, duties and functions", "staff composition", "ULGs' relation with other order of government", and conduct of business, i.e., "municipal management and financial practices'" as subtopics.

The chapter discussed that in Ethiopia LGs have not been established by Federal Constitution, but they have been instituted by regional states according to their own Constitutions and governance structures. The prevailing LGs structures in the country are Woredas in rural areas (RLGs), and ULGs in urban areas. The RLGs are established based on regional constitutions whereas; ULGs are the creature of regional governments' proclamations. The Proclamations also spell out the powers and responsibilities of ULGs. They provide that ULGs are administered by their own councils, whose members are elected by direct vote to represent each kebele (ward) within their jurisdiction. Regarding the status of ULGs, the Chapter concludes that although ULGs are formed as autonomous entity by regional legislation, the Federal Constitution impliedly subordinates their existence to the state government. About their power, the Chapter concludes that the city

601 See Revised ANRS Proclamation No. 91/2003 article 60(1) and Urban plan Proclamation No. 574/2008 Article 14.

proclamations provided wide range of powers to the ULGs. Through their CC, ULGs are empowered to issue local policies and to make decisions which confirm to their powers and responsibilities. They are also empowered to make regulation and guidelines which are necessary for the execution of the policies and plans made by them. They shall also have the executive and judicial powers they need to administer their locality. According to these proclamations, any city administration at any level shall have the powers and functions to decide on the social, economic, and political activities in a way that allow to participate the population of the city and make them the beneficiaries from the development achieved.

ULGs in Ethiopia have dual responsibilities, state and municipal functions. State functions are delegated from RGs to ULGs, but municipal functions are regarded to be the exclusive functions of ULGs. State functions are funded through regional block grants. All municipal functions are expected to be financed from own local revenues.

According to city proclamations of the regions, the governance and administrative structure of ULGs consist of legislative, executive and judicial organs. Most of the ULGs follow the council-mayor system. The governance organ includes the CC and the speaker of the council, the mayors and the mayor’s committee, the city manager or the manager of municipal services, a city court and other executive offices and commissions. The council assumes the legislative power and the mayor in whom executive leadership is vested exercises executive authority. The Chapter concludes that mayors are appointed by higher levels of administration (i.e., the ruling political party/ EPRDF/) rather than elected by council members. They are appointed based on their political commitment and loyalty to the ruling party. Thus, the mayor vacates his/ her mayoral position or council membership not by the CC but by the decision of EPRDF. Moreover, it is seen that the mostly mayor’s accountability is to the regional government not to the community. The chapter concludes that the control of the executive leadership by the ruling party undermines the autonomy of the city.

Manager of city services and mayor are two of the most important positions in ULG. Managers of city services, who are generally full-time workers, are expected to be professional and politically neutral as they carry out the decisions of the council or mayor. But, as seen in this Chapter, the practice shows that in selecting the manager, professional competence is not important. Rather, political affiliation and commitment are the key criteria for filling the position. They are often selected owing to their political stand (party membership), background, and personality. In some urban centres, non-professionals are appointed as managers as a reward to their loyalty. The Chapter concludes that the appointment, removal, and accountability of the mayoral and managerial positions show prioritisation of party politics at the cost of community needs and concerns.

This Chapter has also discussed that city proclamations of RSs provide for the establishment and organisation of the city courts. The proclamations set out their powers and functions, mode of operation and the manner of appointments of the judges thereof. The Chapter concludes that although, ULGs are authorised to create an independent judicial system, so far, their practice is not satisfactory. In the ANRS only Bahir Dar, Gondar and Dessie city administrations are established city courts.

Finally, this Chapter has discussed the issue of IGR. In this connection, the chapter concludes that although the constitution provides division of powers and functions between the higher two levels of government; it does not adequately deal with intergovernmental relations that should exist between them. In the same way, it concludes that the regional constitutions fall short of providing any guide which may determine the relations between the higher orders of government and the LGs.

CHAPTER 5

Ethiopian planning laws and legislations

5.1. Introduction

Before entering the discussion of roles and mandate of the ULGs, the theme of planning laws need to be clearly presented. As stated in Chapter Two, the expression planning law directly or indirectly includes certain national and regional legislation within its ambit. In addition to the urban plan proclamation, as a major legislation for this study, planning law comprises some proclamations and regulations relating to urban planning. As a result, the primary purpose of this chapter is to examine key urban planning-related laws. The chapter is organised into six parts to achieve this purpose. The first section is on the proclamation 574/2008 on urban planning. The building proclamation 624/2009 is discussed in the second half. The third section focuses on the issuance of urban land leases. The fifth section delves into the expropriation and payment of compensation proclamation, while the last section covers environmental regulations.

In this study, I use the term planning law to include these entire sets of instruments, along with the implementing regulations and directives issued at different levels. Thus, it is important to briefly highlight the content and significance of each one of them. Furthermore, all of them would be utilised wherever their provision is relevant to this study.

5.2. Urban Plan Proclamation No. 574/2008

Proclamation 574/2008 is the foremost planning law adopted to regulate and guide the country's urban development endeavour. It came into being to substitute the previous laws on urban planning which were enacted based on the unitary system of government and which were inconsistent with the prevailing spirit of decentralization. The traditional approach to urban planning in Ethiopia was

centralized and inflexible, even although it generated professionally good quality city plans. Plans were produced for all cities by the National Urban Planning Institute, and they could not be amended.

Proclamation 574/2008 is aimed to establish a legal framework to promote planned and well-developed urban centres.[602] Furthermore, it intended to regulate and facilitate development activities in urban centres and thereby enhancing economic development of the country. It is a comprehensive legislation which considers the federal scheme of government and the central and dominant role of urban centres in urban plan preparation and implementation.

According to Mc Auslan, two clear models of urban planning laws have existed in Eastern Africa; the colonial models, which may be seen as the traditional approach; and the Habitat/Cities Alliance model which might be seen as a distinctly transformative model. Under the later model the words ‘people’, ‘consultation’, ‘enabling’, ‘transparency’ and concepts such as the rights of the people, are key elements.[603] These concepts are useful to define issues such as who plans, how plans are made with special reference to public involvement and to some extent, on the elements of planning. In this regard proclamation 574/2008 deals with several matters. Initiation, preparation, revision, modification, approval, and implementation of urban plans; public participation and publicity of approved plan; development authorization, land information, urban redevelopment, and its dimensions; development freeze, land acquisition and reserve, etc. are issues included in the proclamation. Although, the proclamation deals with many matters, in this part of the study, some of the provisions only are highlighted. This is so because the whole provisions of the proclamation are widespread all over the study and dealing with them at this point results into unnecessary repetition and inappropriate location.

The main features of the Proclamation are:

602 Proclamation 574/2008 article 4(1).

603 McAuslan P “Land Law Reform in Eastern Africa: Traditional or Transformative? A critical review of 50 years of land law reform in Eastern Africa 1961–2011” (Law, development and globalization Series Editor: Julio Faundez University of Warwick 2013)176.

- It provides a hierarchy of plans, and prescribes the content of each
- It requires the ULGs to prepare, approve and implement urban plans
- It makes it a requirement for clear strategy, regulations, directives and organized executive organs to take on the implementation of urban plans
- It provides a comprehensive legal definition of development
- It makes it a requirement to obtain planning permission for undertaking any such kind of development
- It provides for the suspension and rejection of development permit
- It provides for the consideration of environmental impacts for rejection of development permit
- It provides for the respect of the right of any interested party to land information and its scope
- It determines for the scope and components of urban redevelopment and their execution and administration
- It prescribes for the power of ULGs for development freeze and land acquisition and the conditions for exercising such powers
- It sets for the role of the federal government: to oversee and follow-up as to whether urban plans are prepared and executed in accordance with this Proclamation and thereby ensure balanced and integrated urban development in the country; and provide technical and capacity building assistance with respect to urban plans for regional urban centres and urban centres accountable to the federal government and
- Role of the RSs: follow up, evaluate, and ensure the proper application of urban plans.
- It prescribes for public hearing in the planning process.

The proclamation sets out a hierarchy of plans. According to it, supreme in the hierarchy of plans is the National Urban Development Scheme (NUDS),[604] which is to cover the country. The next to NUDS is the Regional Urban Development

604 See Proclamation No. 574/2008 article 7(1).

Plan (RUDP)[605] which is to be prepared at regional level. Urban plans[606] are to be prepared at urban centre level and are of two types: city wide structure plan (SP) and local development plan (LDP). LDP provide a mechanism for bringing the planning process to the smallest spatial units within the city. SP facilitate, among others, rural-urban coordination that takes advantage of socioeconomic and physical synergies and aims to minimize conflicts due to urban encroachment in rural hinterlands.[607] The NUDS takes precedence over all the other plans. The LDP is the last in the hierarchy.

Regarding its scope, the Proclamation is to apply to all urban centres throughout the country. According to the Proclamation, "Urban Centre" means any locality with established municipality, or which have a population size of 2000 or above inhabitants, of which 50% of its labour force, is primarily engaged in non-agricultural activities.[608]

The Proclamation provides for physical boundaries of urban centres and states that urban centres shall have their own defined boundaries. SP is a tool for implementing development policies, strategies, programs, and laws of federal and regional governments, which are mostly reflections of global agendas, and development issues at an urban level.[609] The demarcation of boundaries between urban centres shall be done, where necessary, by the concerned regional governments. The boundaries of chartered cities shall be indicated in their respective charters. Such provision is significant as it confers clarity and specificity to urban administrators in making and realizing their plans. It determines what belongs to the urban centre and what does not, where to act and where not to. For example, the failure to expand the boundary of any urban centre in a predictable manner and accommodate the dynamism can result in changes of land use patterns and demands.[610]

605 See Proclamation No. 574/2008 article 7(2).
606 See Proclamation No. 574/2008 articles 7(3) and 8.
607 Options for Strengthening Land Administration: FDRE (Document of the World Bank Report No, 61631-ET) https://www.google.com/ 40 accessed on 24/4/2020
608 See Proclamation No. 574/2008 article 2(8).
609 Yohannes Dukale Jillo Assesment *of Urban Plan and Design Implementation and Management in Ethiopian Secondary TTowns* (The Case of Dilla Town) (MSc Thesis Addis Ababa University Submitted to the Urban Design and Development Department 2012)24.
610 Zbelo Haileslasie "Unsustainable Land Use due to „Catching Up" Investment Pursuits in Ethiopia: The Need for Planning, Zoning and other Regulations" http://dx.doi.org/10.4314/mlr.v12i1.7 213 accessed on 10/05/ 2021

As stated above, Proclamation 574/2008 recognizes only two types of urban plans namely, SP and LDP. The Proclamation provides for definition and contents of SP and LDP. (See Box 5.1.)

Box 5.1. DEFINITION AND CONTENT OF STRUCTURE PLAN

"A structure plan is a legally binding plan along with its explanatory texts formulated and drawn at the level of an entire urban boundary that sets out the basic requirements regarding physical development the fulfilment of which could produce a coherent urban development in social, economic and spatial spheres. Any structure plan shall indicate mainly the following:

a. the magnitude and direction of growth of the urban centre;
b. principal land use classes;
c. housing development;
d. the layout and organization of major physical and social infrastructure;
e. urban redevelopment intervention areas of the urban centre;
f. environmental aspects;
g. Industry zone.

Structure plan shall have an implementation scheme, which comprises the institutional setup, resource and legal framework. Period of Validity: Structure plans shall be valid for a period of 10 years from the date of approval.

DEFINITION AND CONTENT OF LDP

A local development plan is a legally binding plan depicting medium term, phased and integrated urban upgrading, renewal and expansion activities of an urban area with the view to facilitating the implementation of the structure plan by focusing on strategic areas.

A local development plan shall prescribe the functions, development objectives, implementation strategies, role of implementing bodies, required institutions, local economic dynamism, urban design principles, concrete standards, spatial framework, budget and time of the implementation of a structure plan.

Any local development plan shall state, as may be appropriate:

a. Zoning of use type, building height and density;
b. Local streets and layout of basic infrastructure;
c. Organization of transport system;
d. Housing typology and neighbourhood organization;
e. Urban renewal, upgrading and reallocation intervention areas;
f. Green areas, open spaces, water bodies, and places that might be utilized for common benefits;
g. Any other locally relevant planning issues.

A local development plan shall have a detailed implementation scheme which specifies the institutional setup, resource and regulatory prescriptions needed for its implementation in a concerned area. A local development plan shall be implemented within the validity period of the structure plan."

Source: Urban Plan Proclamation No. 574/2008

The proclamation grants the authority to initiate, prepare, revise, modify, approve, and implement urban plans to the ULGs. (All these stages of planning will be discussed in more detail later in the subsequent Chapter). While exercising their power, the ULGs shall observe certain principles set by the Federal and regional laws. The Urban Plan Proclamation, for example, declares that any process of urban plan initiation and preparation shall contain the following basic principles.[611]
Any process of urban plan initiation and preparation shall,

- Adhere to the conformity principle relating to the hierarchy of plans;
- Consider the input to the national vision and standard as well as its implementable capability;
- Take into account inter-urban and urban-rural linkages; delineation of spatial frame for urban centres in view of efficient land utilization;
- Consider that the satisfaction of the needs of the society is guaranteed through public participation, transparency and accountability;
- Be applied for the promotion of balanced and mixed population distribution;
- Consider the protection and safeguarding the community and the environment;
- Pay attention for preservation and restoration of historical and cultural heritages;
- Give due regard in balancing public and private interests; and,
- Ensure sustainable development.

Proclamation 574/2008 also deals with urban redevelopment intervention practices. As stated by the Proclamation, the expression urban redevelopment encompasses measures such as urban renewal, upgrading and land reallocation. These actions may be undertaken with the view to alleviating urban problems, improving living standards and bringing about urban dynamism and efficient land utilization. All urban renewal, upgrading and land reallocation actions are conducted with the view to facilitating the implementation of the structure plan by

611 See Proclamation No. 574/2008 article 5.

focusing on strategic areas.[612] They shall be planned and executed depending on a definite spatial frame specified in the structure and local development plans with sufficient justification. The residents of the area where urban redevelopment activities[613] (especially in case of urban renewal) are intended to be carried out shall be informed and consulted prior to its implementation. Moreover, such redevelopment plan shall be executed and administered by the appropriate chartered cities or urban administrations (ULGs) with due care and the necessary assistance from the regional and federal governments.[614]

Proclamation 574/2008 also deals with the rights and duties of urban centres in relation to 'Land Acquisition and Reserve'. It states that urban centres at all levels shall, have the rights and duties to acquire land to be used or reserved for development activities of public purpose.[615] With the intention of reducing expropriation and demolition of buildings during plan preparation, urban centres are authorised to acquire and reserve lands. According to the law, the reason behind reserving land is twofold: first, to meet the future demands which may arise due to the uncertainty of urban planning and the implementation process; second, land to be used or reserved for development activities of public purpose. The right of ULGs to dispossess the land holders in case of land acquisition and reserve for public purpose is to be exercised in accordance with relevant laws.[616]

5.3. Building proclamation No.624/ 2009

The term "planning law" comprises varying set of instruments, including the control of development through the process of granting (or rejecting) building permits, mainly, by implementing building codes. The Ethiopian building code includes the provisions of building proclamation, and its derivatives like the building regulation, and building directives. All these instruments are legally binding and they are enforced by local government. Their function, in addition to controlling

612 See Proclamation No. 574/2008 article 11(1).
613 See Proclamation No. 574/2008 article 42(2).
614 See Proclamation No. 574/2008 article 42(3).
615 See Proclamation No. 574/2008 article 52(1) and (2).
616 See Proclamation No. 574/2008 article 54.

development, is to guide, control and regulate standards, planning, design and requirement of building in general. The codes are only used and implemented in constructions built in the formal system.

Generally, the goals of building codes are to build a conducive, safe and satisfying environment. In Ethiopia, the objective is reflected in the preamble of Proclamation 624/2009, and it is to determine the minimum national standard for the construction or modification of buildings or alteration of their use so as to ensure public health and safety. However, the Proclamation applies mainly to urban centres that have 10,000 or more residents.[617] Other urban centres that have less than 10,000 dwellers been subject to this Proclamation only when the Regional State concerned makes a decision in this regard.[618] The proclamation also applies to public buildings, or buildings which could be used for commercial scale agricultural occupancy or for industrial purposes or real-estate outside of urban centres.[619]

The Code (the proclamation, regulation and directives) addresses all aspects of private and public buildings, including architectural designs of structural elements, installations of electrical, water supply and sanitation, firefighting and protection, electrical designs and installations, designs and disposal requirements of sewerage system and industrial effluents as well as the overall construction elements of the sector. The codes deal with matters relating to submission of application and plans. The Proclamation requires that any person intending to carry out construction shall formally apply to the urban administration or designated organ and shall secure a building permit.[620] The application shall be made on a form prepared by the ULG or designated organ and shall include a design and its report according to the category of building in question.[621] And the applicant shall submit proof of possession rights to the land or property on which the construction will take place.[622]

617 Ethiopian Building Proclamation No. 624/2009 article 3(1)(a).
618 See Proclamation No. 624/2009 article 3(1)(b).
619 See Proclamation No. 624/2009 article 3(1)(c).
620 See Proclamation No. 624/2009 article 4(1).
621 See Proclamation No. 624/2009 article 4(2).
622 See Proclamation No. 624/2009 article 4(4).

The proclamation categorizes buildings into ‘A’, ‘B’ and ‘C’ types. In view of that, category ‘A’ building is a one storey house with a span of seven meters or any residential building not exceeding two storeys. Under Category ‘B’ buildings with a span of more than seven meters or more storeys not covered in category ‘C’ or a real estate development of category ‘A’ are covered. category ‘C’ building includes any public or institutional building, factory, workshop building or any building with a height of more than twelve meters. As all categories of construction must adhere to comprehensive building codes, developers shall obtain building permit for constructing any of the structure under each category.[623]

Granting or refusing building permits are the domain of the ULGs. A building officer (BO), on behalf of the city administration, is responsible to approve building permits applications. Proclamation 624/2009 requires every urban administration or designated organ to appoint BO, with the required educational and professional credentials to carry out, on its behalf, the provisions of the Proclamation and other laws.

According to the Proclamation, any person intending to construct a building shall secure a planning consent prior to submitting application for construction permit.[624] In effect any permit request passes two steps: first, a permit that ensures the provisions of the urban plan law (the requirements under the structure plan), second, a permit relating to the requirements of the building code. The two permits are given as one permit but embodied in two laws. The combined significance of the two laws is explained in the SECR final report. It is noted that the existence of building codes (that regulate the soundness of structures, electrical installations, fire safety, etc.) is important, but their effectiveness largely depends on their rigorous implementation in conjunction with urban planning laws (that regulate the setbacks, height and use of buildings).[625]

623 See Proclamation No. 624/2009 article 6 and 9.
624 See Proclamation No. 624/2009 article 5.
625 MUDHCo and ECSU 2015 ‘‘State of Ethiopian Cities Report (SECR)’’ (*MUDHCo and ECSU 2015*)166.

Before issuing building permit, the BO is required to ascertain whether the application is sufficiently supported with the appropriate documents and plans and whether they are in compliance with the requirement under the building proclamation and other laws.[626] The application to construct a building shall be made on an application form prepared by the urban administration and it shall contain the following:[627]

- a plan and the report as per the category of building in question;
- certificate of planning consent (which is obtained after ascertaining the possession right to the land of the applicant and which contains a plan information describing the height and the acceptable type of service);
- the names, address, signature and a copy of registration; certificate of professionals who designed the plan of the building; and
- a form prepared by the urban administration and filled by neighbours.

Building plans that do not fulfil or comply with the provisions of the Building Proclamation and other laws shall be rejected by BO.[628] Conversely, a plan which has been approved in accordance with the provisions the Proclamation shall constitute a construction permit.[629] For that reason, BO has the power to order a building constructed without approved plans and permit to be demolished or s/he may order rectification works on portions of a building executed without approved plans, and may suspend the works altogether on such building until the owner complies with the order.[630] For this, every ULG is required to appoint its BO with the essential educational and professional qualifications to enforce, on its behalf, the provisions of the building laws.[631]

In addition to the provision of building permits, the law empowers the BOs to grant occupancy and demolition permits. Accordingly, the proclamation states that a newly constructed category "C" building shall not be used before it has been

626 Proclamation No. 624/2009 Article 4(5)
627 Proclamation No. 624/2009 Article 4(2)
628 Proclamation No. 624/2009 Article 8(1)
629 See Proclamation No. 624/2009 article 9.
630 See Proclamation No. 624/2009 article 14(1).
631 See Proclamation No. 624/2009 article 11.

inspected for compliance with the law.[632] The BO issues a certificate of occupancy after ascertaining that the building is ready and safe for the intended use.[633] However, a BO may issue occupancy permit for partially completed building as long as safety is ensured.[634] Similarly, BO is authorised to issue a permit for alteration of service, extension, repair or demolition of a building only if it complies with the provisions of the Building Proclamation. In the case of major alteration, extension, repair or demolition works, a BO may request for plans, and any other analyses or evidence required to verify compliance with the law.[635] All precautionary measures which should be taken for a new building shall also be taken in any alteration, repair, extension or demolition work carried on an old building.[636]

BO is also empowered to inspect and decide on the quality of construction material. If a building material used or intended for construction made subject to sample testing is found to be defective or substandard, the BO may order its removal or adjustment in its use. Use of improper or unsuitable materials or in exceptional cases of poor workmanship may be used as grounds for rejection of certain items or work.[637]

The proclamation requires that the designing and construction activities of an undertaking are to be carried out by registered professionals and contractors respectively. It states that a person intending to construct a building shall hire a qualified registered professional to each type of design required for the category of the building and retain their services for the purpose of supervising the erection thereof.[638] Likewise, s/he shall employ a registered contractor with the necessary qualification, for the category of building in question, for erecting the same.[639]

632 See Proclamation No. 624/2009 article 18(1).
633 See Proclamation No. 624/2009 article 18(2).
634 See Proclamation No. 624/2009 article 18(2).
635 See Proclamation No. 624/2009 article 25(1).
636 See Proclamation No. 624/2009 article 25(3).
637 See Proclamation No. 624/2009 articles 17(1-3).
638 See Proclamation No. 624/2009 article 26.
639 See Proclamation No. 624/2009 article 27.

Proclamation 624/2009 provides for such matters as design requirements, site operations, and precautionary measures during construction, architecture, structure, electrical installations, water supply, sewerage, industrial effluents, firefighting installation etc. It also provides for facilities for physically impaired persons. It states that any public building shall have a means of access convenient for use by physically impaired persons, it shall also be suitable for those persons who are obliged to use wheelchairs and those who are able to walk but unable to negotiate steps.[640] It further states that where toilet facilities are required in any building, as adequate number of such facilities shall be made suitable for use by physically impaired persons and shall be assessable to them.[641]

Remarkably, the Proclamation incorporates various punishments for infringement of its provisions. If any of the BOs, public servants, registered professionals, contractors, or building owners, breaches the provision of the law, they will be punished. As stated by the proclamation, offences committed by government officials and other government employees who are assigned with the authority of issuing building permits for construction works is punishable. Likewise, if registered professionals, contractors or owners of a building committed offences in violation of the provisions of this Proclamation, they shall be punishable in accordance with the provisions specified under this law.

Improper granting of work permit,[642] undue delay of matters,[643] breach of duty to supervise,[644] concealment of facts and making false statement,[645] unauthorised practice,[646] use of improper material and defective workmanship,[647] and breaching the duty proper consultancy[648] are grounds for an offence which entail punishment under the proclamation. For example, if a BO, or any other person who is vested with the authority of issuing permit for construction works intentionally issues

640 See Proclamation No. 624/2009 article 36(1).
641 See Proclamation No. 624/2009 article 36(2).
642 See Proclamation No. 624/2009 article 49.
643 See Proclamation No. 624/2009 article 50.
644 See Proclamation No. 624/2009 article 49.
645 See Proclamation No. 624/2009 article 51.
646 See Proclamation No. 624/2009 article 52.
647 See Proclamation No. 624/2009 article 53.
648 See Proclamation No. 624/2009 article 54.

construction work permit to a person who has no legal possessory right on the land on which the building is to be constructed;[649] or grants the permit to a person whose documents supporting the application are illegal or falsified;[650] or grants an occupancy permit to a person whose construction design or its erection is not in compliance with the relevant plan of the urban centre in which such a building is to be erected; is punishable with rigorous imprisonment from five years to ten years. Besides, such offender is penalised with a fine not less than birr ten thousand and not exceeding fifty thousand birr.[651] But, if the above offence is committed negligently the punishment will be simple imprisonment from one year to five years and monetary penalty not less than one thousand birr and not exceeding birr five thousand.

The punishment includes monetary penalty, imprisonment, suspension and cancellation of licenses of the registered professionals and contractors as the case may be. It is stated that the work permit or the licence of a registered professional or contractor who is found guilty is to be suspended for a period from five years up to the maximum period provided under the contravened provision.[652]

5.4. Urban land lease holding proclamation

The inter-linkage between urban planning and urban land management cannot be undervalued, particularly when it is seen in the light of the process-based nature of urban planning and the dynamic nature of urban land governance system. According to R Alterman, by affecting the use of most types of land and space, planning laws and specifically development control can intensely affect the existing socio-cultural and economic order.[653] Modern-day Ethiopia has passed through three stages of state polities: the monarchical, the socialist militaristic government and the current federal arrangement which followed market oriented land policy. All these government systems and their corresponding ideologies

649 See Proclamation No. 624/2009 article 48 (1)(a).
650 See Proclamation No. 624/2009 article 48 (1)(b).
651 See Proclamation No. 624/2009 article 48 (1)(c).
652 See Proclamation No. 624/2009 article 56.
653 Alterman 2013 *WBLR* 1.

have determined the tenure system as free hold, state ownership and lease hold, respectively.

Among the monarchical eras, Emperor Haile Sellasie's regime can be taken as a point of discussion for this study. This is so because it is under this regime fairly modern urban land management system had begun. During the early stage of this period, the Emperor had a monopoly of political and economic power over land and other tangible properties. Land was an important means for governing the subjects. Until the 1940's all lands were regarded as the property of the emperor. However, after the Italian occupation (1936-1941) landlords were granted their possessions as a freehold with royal favor. In case where there appeared any patriotic act or wrongdoing, the crown had the power to take back any land and assign it to others, as a royal favor or disfavor. Those who fought against the Italians and those who suffered from the occupation, whether they were soldiers or civilians, were also granted land as a reward for their contribution.

Yet, most of the high value lands were owned by few feudal nobilities and royal family members. Few emerging owners of capital and limited number of middle class educated Ethiopian managed to buy some urban land. During this time rural and urban land were categorized as freehold and public land. All unused lands were public land particularly the crown's land. The public land was allocated by administrative decisions for residential housing, for factory or service work or by concession for commercial farm. The freehold land was with full ownership rights. It can be sold and bought, inherited, collateralized, given as gift etc. There was some kind of crude titling legalizing ownership and land tax was imposed which differed based on the quality and grading of land. Building tax was also levied. Both land and building taxes were negligible, and it was paid annually and not progressive which favored the landowners.

This phase was characterised by arbitrary and disorganized land management as was dependent on the will of the emperor and the land lords. The whole situation of urban land administration during this period was briefly described in 2006, at Windhoek Land Administration Decisions Makers Meeting, as follows:

"...Urban land was widely idle and misused. The landlords and royal family who had immunity from the law in practice violated town plan. They built houses that did not abide by the plan and occupied public land whenever they needed it regardless of its being reserved for public use. The bureaucrats violated the plan by abusing their power. Hence, no plan was enforceable. All such bottlenecks of development created by the feudal system called for a radical land reform."[654]

The second stage of modern Ethiopian history in point is the adoption of socialist militaristic government in the year 1974 and which was marked by a series of nationalisation measures. As a result, the government enacted, among others, two land related proclamations. Proclamation 31/1975[655] declared all rural lands to be public property and proclamation 47/1975[656] made all urban land and extra houses to be state property. These legislations abolished all private land holding rights without compensations and attempted to achieve socialistic policy of equalization of wealth. It seems the government had realised that the majority of land is under the control of the nobility and landlords. As noted by Zelalem Y, state ownership to land has been introduced as a reaction to the undesirable consequences of unrestricted private ownership to land by only a few.[657]

Prior to the nationalization proclamation of urban land in 1975, owners could sell, rent, lease, inherit, mortgage or transfer as a gift, their urban lands. However, Proclamation 47/1975, which introduced the control of land ownership by the state, abolished private ownership right to land and banned any kind of transaction in land. It clearly stated that as of the effective date of the Proclamation, all urban lands shall be the property of the Government[658] and that no person, family or

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654 Abuye Aneley "Synoptic Reflection on Urban Land Administration Issues in Ethiopia" (presented on Land Administration Decisions Makers Meeting (Windhoek 2006)3.
655 See Public Ownership of Rural Lands Proclamation No. 31/1975.
656 See Government Ownership of Urban Lands and Extra Houses Proclamation No. 47/1975.
657 Zelalem Yirga ''Critical Analysis of Ethiopian Urban Land Lease Policy Reform: Since Early 1990s'' 2014 *FIG Congress USA* page 5.
658 See Proclamation No. 47/ 1975 article 3(1).

organization shall hold urban land in private ownership.[659] It also prohibited transfer of urban land by way of sale, antichresis, mortgage, succession or otherwise.[660] Any person or family was allowed to possess urban land up to 500 square meters for the purpose of building a residential house, upon the death of the holder, the living spouse or the children shall have the right to use the land. However, if a person fails to utilize the urban land within the specified period, the Ministry may take back such land and put it to appropriate use.[661] The law also provided for expropriation of urban land after payment of compensation in kind for any person who lost urban land for the reason of public interest.[662] Any person, family or organization which possesses urban land shall pay rent to be fixed by the Government.[663] So, providing, developing, and controlling of urban land became state's responsibility.

During this period there was no idea of land marketing in urban areas. Land was obtained only by way of state allocation or by way of inheritance of a building. Such allocation scheme of land use helped program of housing supply by some self-help housing associations to build a large stock of new houses in some urban centres. The government also constructed many houses for offices, hospitals, state enterprises, and residential apartments. However, there were no policy of renewal and upgrading. There were no real estate developers to develop land for residence, for industry and services. All these led to scarce housing in urban areas and informal and haphazard horizontal expansion of urban centres with no infrastructure.

The urban land management situation in the country during the socialist regime was well described by a research team who studied urban land lease policy in Addis Ababa as follows.

> *"The development of urban land had been largely neglected as municipalities were deprived of their revenue basis and the*

659 See Proclamation No. 47/ 1975 article 3(2).
660 See Proclamation No. 47/ 1975 article 4(1).
661 See Proclamation No. 47/ 1975 article 8(1).
662 See Proclamation No. 47/ 1975 article 8(2).
663 See Proclamation No. 47/ 1975 article 9.

government was preoccupied with the drive for the socialization of the whole economy, heavily investing on state enterprises. In more general terms, a workable cost recovery system that could have otherwise ensured sustainability in land provision was not in place. This had invariably led to an ever-increasing gap between the supply and demand for developed land, which, in turn, gave rise to speculation in illicit transaction of land".[664]

The third stage of land tenure of Ethiopia, the tenure system at hand, commenced immediately after the downfall of the socialist government in 1991. Since then, Ethiopia has been following free market economy. The transitional Government of Ethiopia recognized government ownership of land as it was reflected in its economic policy. Accordingly, the government had issued urban Land Lease Holding Proclamation No. 80/1993. Yet, it had declared that the issue of private versus public ownership would be settled in the process of making the new federal constitution.

When the 1995 FDRE constitution came out, the ownership issue on lad was settled in favor of public ownership and government ownership of land is absolutely recognized. Accordingly, the right to own rural and urban land, as well as of all-natural resources belongs only to the state and the people of Ethiopia. The constitution declared that land is an inalienable common property of the nations, Nationalities and peoples of Ethiopia and shall not be subject to sale or to other means of transfer.[665] It asserted that land, be it rural or urban, cannot be sold or exchanged. In this land tenure system individuals can have only a use right or possessory right of land.[666] So, under this legal system, land is not transferred but it's the use right which is abstract right on land that is transferred.

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664 Bacry Yusuf, Sileshi Tefera and Admit Zerihun (2009) ''Land lease policy in Addis Ababa: by Private Sector Development Hub'' *Addis Ababa Chamber of Commerce and Sectoral Associations* 47.

665 See FDRE Constitution 1995 article 40(3).

666 Endale Belay (2018) ''Ethiopian land policy and legislations study material'' *ECSU, College of Urban Development and Engineering* 52.

According to the constitution, peasants have a right to obtain land free of any payment.[667] Moreover, they are protected against eviction from their possession. It is declared that peasants could be evicted or displaced only with advance payment of compensation including relocation with state assistance, as the case may be.[668] This could happen where urban areas are needed to expand due to growth of urban centres.

In urban areas, leasehold system became the key land holding scheme to govern urban land. As aforesaid, the leasehold system was first introduced in 1993 through the urban lease proclamation No. 80, 1993. This legislation declared that all urban land is owned by government[669] and transfer will only be carried out through the lease system with competitive public tendering.[670] However, in exceptional circumstances, the government may provide freely or without public tendering urban land which is to be used for investment that the government encourages or for social services which directly benefit the public.[671] Since then, this proclamation has been revised two times; in 2002 and in 2011.

The Urban Land lease holding Proclamation No. 721/2011, along with its regional regulations, is the current operating legal instrument which governs the urban land issues. The proclamation recognises two types of urban land tenure systems: lease holding and old possessions. It defines 'Lease' as a system of land tenure by which the right of use of urban land is acquired under a contract of a defined period.[672] "Old possession", according to the proclamation, means a plot of land legally acquired before the urban centres entered into the leasehold scheme or a land given as compensation in kind to individuals evicted from old possession.[673]

Constitutionally,[674] the authority to make laws and policies on land management and distribution is vested up on the Federal government. Accordingly, the

667 See FDRE Constitution 1995 article 40(4).
668 See FDRE Constitution 1995 article 40(8).
669 See Preamble of Urban Land Lease Holding Proclamation No. 80/ 1993.
670 See Proclamation No. 80/ 1993 article 5(b).
671 See Proclamation No. 80/ 1993 article 13.
672 Urban Land Lease Holding Proclamation No. 721/ 2011 Article 2(1).
673 See Proclamation No. 721/ 2011 Article 2(18).
674 See FDRE Constitution 1995 article 55(2).

constitution empowers the Federal Parliament to ‘enact specific laws on the utilization and conservation of land and other natural resources.[675] It also clearly specifies the role of the states concerning the management of land.[676] For that reason, states shall have powers and functions to administer land and other natural resources in line with the Federal laws. Therefore, urban land administration and management including the power to acquire, develop and transfer land, consistent with the lease system, to the end users is the power of the states (usually ULGs). It means the ULGs have authority to determine the lease period; to establish the benchmark lease price for every plot of urban land and to grant title deed (lease holding certificate) to the lease holder within the legal frameworks that were provided by the federal government.

As stated earlier, Urban Land Lease Holding Proclamation No. 721/2011, along with its regional regulations, is the current operating legal instrument which governs the urban land issues. The proclamation deals with matters relating to the following:

- it provides for the prohibition of land possession other than lease holding. i.e. possessory right is acquired only through lease system.
- The condition with regard to conversion of old possession to lease holding system
- How to permit urban land lease holding
- How to prepare urban land for tendering
- How urban land information is provided/ publicised and the tender process
- Application for and Provision of urban land by way of allotment
- Lease price, lease period, grace period, period of payment, renewal of lease, lease holding certificate etc.
- Utilisation of urban land lease holding, commencement and completion of construction
- Transferring and pledging of lease hold right
- Termination of lease hold and payment of compensation etc.

675 See FDRE Constitution 1995 article 51(5).
676 See FDRE Constitution 1995 article 52(2)(d).

The Proclamation requires that any allocation of plots under lease arrangement has to be based on urban plans. In this connection, Proclamation 721/ 2011, provides that an urban land shall be permitted to be held by the lease hold if its use is in conformity with the urban plan guideline. Moreover, ULGs must ascertain those urban lands prepared for tender must conform to the urban plans before advertising the lands for lease. According to the proclamation, a lessee of an urban land shall utilise the land for the agreed purpose within the time limit stated in the lease contract. However, on application made in writing, the appropriate body may authorise to convert the use of the land if it is found that the requested use is in conformity with the land use plan of the urban centre. The ULG has the power, without paying compensation, to take over urban land held by lease holder, if the use of the land is incompatible with the urban plan. Indeed, if the use of land is as per the urban plan and if the land is required for public interest, a lease holder has the right to appropriate compensation.

The above cited provisions show that the relation between urban planning law and land administration processes is well-built. In fact, if there is no reasonable interface between these two sets of laws (planning and land laws) the result would be shortage of formally allocated land and hence significant informality and inadequacy in housing and basic infrastructure provisions. Therefore, it can be reiterated that the inter-linkage between urban planning and urban land management is significant especially when it is seen in the light of the process-based nature of urban planning and the dynamic nature of urban land governance system.

5.5. Expropriation of land holdings for Public Purposes, Payment of Compensation and Re Settlement Proclamation

One of the important urban plan implementation tools is the power to expropriate land for public purposes. Although, in Ethiopia, land is considered public property, it has current or original holders. Moreover, there may be structures and other properties on the land owned by the land holders. Hence, it requires advance plan preparation to acquire land for development from original holders through proper

legal means by paying compensation. Such act of taking privately held property (especially land) by a governmental entity and converting it into public use, subject to reasonable compensation for the taking, is usually termed as expropriation. All countries of the modern world, including Ethiopia, have laws that authorise the state or its organs to take (expropriate) private property (land or buildings) for public purposes under a set of conditions.

Expropriation and payment of compensation law is a complementary law to urban plan law. Understanding of such laws helps the ULGs to implement urban plans and govern urban redevelopment and expansion activities. For example, in dealing with urban development issues, ULGs are usually encountered with two options: first, urban redevelopment of the centre of a city usually, by demolishing old and dilapidated buildings, and second, by developing expansion areas. Their choice of redeveloping the central areas of their city requires a clear mechanism for compensation, resettlement, and local development plan implementation strategy. And their second strategy requires vast area of land owned by the state for development and/ or considerable number of financial resources for compensation to farmlands and relocation. Hence, in such cases, ULGs must be practically equipped with laws conducive to the situation.

The primary legal base of expropriation in Ethiopia is found in the 1995 constitution. It provides for the exercise of expropriation action by the government. According to it, the government may, without affecting the right to private property, exercise expropriation action and take private property (land or buildings), for public purposes after making payment of appropriate compensation to the person who lose the property. The compensation shall be commensurate to the value of the property and ought to be paid in advance.[677] To realize this constitutional provision, the federal government issued two proclamations, in 2005 and 2019, to provide for expropriation of land holdings for public purposes and payment of compensation. The earliest expropriation and compensation law, Proclamation No. 455/ 2005, served for about 16 years and replaced recently by “Expropriation of land holdings for Public Purposes, Payment of Compensation and Re Settlement

677 See FDRE Constitution 1995 article 40(8).

Proclamation No. 1161/ 2019". In their aim, both legislations are alike: to facilitate redevelopment activities and provision of services. This is stated in their preamble as follows.

> *"...urban centres of the country have, from time to time, been growing and the number of urban dwellers has been increasing and thereby land redevelopment for the construction of dwelling houses, infrastructure, investment and other services has become necessary in accordance with their respective plans as well as preparation and provision of land for development works in rural areas has become necessary;"*

As aforesaid there happened a replacement of earlier expropriation proclamation. The reason for replacing the earlier legislation, as stated in Proclamation No. 1161/ 2019, is to rectify and fill the gaps envisaged in the former law and to involve other provisions to make the system of expropriation of landholdings and payment of compensation more effective. Accordingly, the proclamation incorporated more additional provisions. For instance, the title of the earlier proclamation did not contain the expression "*Resettlement".* Moreover, under Proclamation No. 455/2005 only seven expressions were defined while in the new Proclamation No. 1161/ 2019 twenty-four terms and phrases are defined with seventeen additions and the remaining modifications. Terms like resettlement, resettlement package, permanent improvement, communal landholding. Infrastructure, displaced people, recognised evaluator, urgent development, complex infrastructure, development of national or regional significance, valuation, etc. are added and defined plainly. The term *"public purpose"*, on a pretext of lack of clarity, is redefined.

When seen above in the constitutional provision, the government is authorised to expropriate private property for public purposes after making payment in advance of compensation commensurate to the value of the property. This means, the only justification available for the government entity to take private property is that the land must be needed for public purpose. According to the Black's Law Dictionary,

the phrase *"public purpose"* is defined in general terms as "an action by or at the direction of a government for the benefit of the community as a whole".[678] Such definition is not explicit and difficult to employ it as it is not stated in precise terms.

Similarly, Proclamation No 455/ 2005 defined the phrase as "the use of land defined as such by the decision of the appropriate body in accordance with urban structure plan or development plan so as to ensure the interest of the public to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development".[679] According to this definition, any possible direct or indirect benefit to the public may justify expropriation action of the government. It is quite possible and easy for the government to show at least indirect public interest in almost all cases. Moreover, the Proclamation does not include any provisions that set out a formal decision-making process or procedure for each specific case as to whether a project is in line with the public purpose criteria. The definition does not also restrict the taking of the property for private purpose which is not aligned with the intention of the laws. As noted by Belachew Yirsaw, "allowing government exercise of expropriation power for private investment purpose extremely distorts the land market, resulting in government interference in land transactions that could be otherwise achieved through private negotiation".[680]

Proclamation 1161/ 2019 also defines the phrase public purpose as "a decision that is made by the cabinet of a Regional State, Addis Ababa, Diredawa or the relevant federal authority on the basis of approved land use plan or; development plan or; structural plan under the belief that the land use (land use scheme outlined in these plans) will directly or indirectly bring better economic and social development and benefit to the public".[681] The definition given under this proclamation does not contain substantive difference from its predecessor. Still, if any project is going to bring about *"direct or indirect benefit to the public"* then the

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678 Bryan. A. Black's *Law Dictionary 7th ed* (Garner West Group St. Paul Min.1999)1263.

679 Expropriation of Land holdings for Public Purposes and Payment of Compensation Proclamation No.455/ 2005 article 2(5).

680 Belachew Yirsaw Alemu *Expropriation Valuation and Compensation in Ethiopia* (PhD Dissertation Royal Institute of Technology (KTH) Stockholm Sweden 2013)138

681 Expropriation of Land holdings for Public Purposes, Payments of Compensation and Resetlement of Displaced People Proclamation No. 1161/ 2019 Article 2(1).

government has good justification for expropriation action. Therefore, the possibility for the government to show at least indirect public interest in almost all cases is still open. Moreover, the government's power to expropriate any property for private investment purpose is not restricted.

Proclamation 1161/ 2019 is new, and it is too immature to evaluate its application and Proclamation 455/ 2005 is also out of use at this point of discussion. However, as the ultimate purpose of urban plan is its implementation and as plan implementation is directly related to issues such as expropriation, it is remarkable to have a general idea about the legal frameworks governing the subject. At least, it is appropriate to see the issue relating with the role and legal status of ULGs.

Proclamation 1161/ 2019 has incorporated certain principles of expropriation and payment of compensation. The basic principle is that expropriation shall be made only on the basis of approved land use plan or; master plan (which must have detailed action plan) or; structural plan.[682] The other rule is that compensation and resettlement assistance compensation shall be to sustainably restore and improve the livelihood of the displaced person.[683] As a standard, the amount of compensation paid at federal, regional or city administration level for similar properties and economic losses in the same area shall be similar.[684] The expropriation procedure shall also observe criteria relating to transparency, participation, fairness and must entail accountability.[685]

As remarked by Belachew Yirsaw, many developing countries suffer from old and outdated expropriation legislation, which makes expropriation process very expensive and time-consuming that it is, for many purposes, almost useless.[686] Sensing such remark, the Federal Government has issued Proclamation 1161/ 2019 to address the shortcomings of Proclamation 455/ 2005. The feeling of the federal government is not without reason. Many studies and previous practices of

682 See Proclamation 1161/ 2019 article 4(1).
683 See Proclamation 1161/ 2019 article 4(2).
684 See Proclamation 1161/ 2019 article 4(3).
685 See Proclamation 1161/ 2019 article 4(4).
686 Belachew Yirsaw ''Urban Land Lease Policy of Ethiopia: Case Study on Addis Ababa and Lease Towns of Amhara National Regional State'' 2010 *FIG Congress Facing the Challenges – Building the Capacity Sydney, Australia,* 22.

expropriation in the country confirm that Proclamation 455/ 2005 had problems relating to expropriation procedure, ambiguity of the concept of public purpose and inconsistency and inadequacy of compensation. For example, Proclamation No. 455 of 2005 had provided broad definition for the concept of public purpose. Yet, it does not contain any provisions that explain a formal decision-making process for each specific case as to whether a project meets the public purpose requirement. These all-cause ambiguity in implementation of the law. According to Belachew Y, absence of such formal process may favour a state of affairs where citizens' rights to property can be invaded upon any time and any place without any limit or boundary at which the decision makers must deny approval to expropriation requests.

There are also instances where problem with regard to inconsistency and inadequacy of compensation were observed. For instance, a research team, that studied urban land lease policy in Addis Ababa in the year 2009, observed that compensation schemes that had been executed in different locations and that applied to dispossessed families from their holdings to give way for new investments depended on how well resourced the incoming projects were.[687] The diversity in terms of ad-hoc methodologies, procedures and processes that had been used to determine and pay compensation has been a source of dissatisfaction to those who are to be dispossessed as well as new investors.[688] Moreover, the law provides property valuation committees with wide discretionary powers. The committees usually determine varying compensation amounts paid for land based on the status and connection of land occupants. The legal orientation that only buildings and improvements are marketable because they are capable of private ownership and that land has no market value also leads to property values being ascertained without reference to the underlying land values.

It is a constitutional and statutory obligation that compensation in cases of expropriation is to be made in advance of dispossessing the landholder.[689]

687 Bacry, Sileshi and Admit 2009 *Private Sector Development Hub: Addis Ababa Chamber of Commerce and Sectoral Associations,* 59.

688 Bacry, Sileshi and Admit 2009 *Private Sector Development Hub: Addis Ababa Chamber of Commerce and Sectoral Associations,* 59.

689 See FDRE Constitution 1995 Article 40(8) and Proclamation No. 1161/ 2019 Article 8(g).

However, there were several instances of non-observance of these legal provisions by the concerned authorities. Cases of partial payment, non-payment or delayed payment of compensation were many. A focus group discussion made with affected landholders during field visits by Belachew Yirsaw, exposed several instances of defective compensation process. In some cases, compensation is neither paid nor is replacement of land given in advance of surrender of landholdings. Sometimes, replacement of land is given in advance and cash payment is made after surrendering the landholdings. And in some cases, partial payment of cash is made in advance of surrender and the remaining paid after surrender.[690] The important point to note at this juncture is that there is no legal provision in the laws to make accountable the relevant authority for such violations.

All these few legal and practical instances caused the adoption of Proclamation No. 1161/ 2019. This new proclamation, whose scope of application covers urban and rural centres of the whole country underscores the importance of redevelopment of urban slums, the construction of dwelling houses and infrastructure, and invigorating investment and other services. As aforesaid, the proclamation also provides the basic principles relating to payment of compensation and settlement compensation, their adequacy, uniformity and sustainability as well as principles relating to transparency, participatory, accountability and fairness of expropriation procedure.

5.6. Environment Pollution Control, Impact Assessment and Solid Waste Management Proclamations

Now a day's environmental concerns are the vanguard of any development.[691] Therefore, it is suggested that conscious efforts be made to put environmental issues at the front of planning and management of urban centres. It is also appropriate to mention that to attain the aims of urban development in a sustainable manner integrating urban planning with environmental policy

690 Belachew Yirsaw 2010 *FIG Congress Facing the Challenges: Building the Capacity Sydney, Australia* 22.

691 Endale Belay (2019) "Urban Law Study material'' (*ECSU College of Urban Development and Engineering,* (Last updated and revised))48.

instruments is a requirement. The integration of urban planning with that of environmental policies has been described by members of International Institute for Environment and Development (IIED) as under.

> *"Activities in urban areas can affect the environment locally, regionally, and globally – cities need to integrate responses to all of these in their urban planning and management. ...Cities which are clean and green are more attractive: integrating the environment in urban planning and management not only contributes to global environmental goals, but also generates substantial economic and social co-benefits"*.[692]

In this context, integrated urban planning can be seen as a method which may combine together multiple urban issues and looking for planning solutions that take into account efficient utilisation of natural resources, enhancement of economic development, and improvement of quality of life of urban residents, and the impact of man-made structures such as infrastructure, shelter and community facilities on the environment. In legal terms, integration of environmental issues into urban planning means, the governing laws must visibly state that preparation and implementation of urban plan must not result into adverse environmental consequences.

The 1995 FDRE constitution is the basic law of the land from which all laws in the country, including environmental laws, derive their sanctity and validity. The constitution empowers the federal government to make laws for the protection of environment.[693] Besides, it contains provisions, which recognize the importance of safeguarding the environment and the need for its proper management. These provisions act as a major facilitator for subsequent legislation in the environmental protection and management, and for mainstreaming environmental sustainability notions in the political, social and economic development sectors.

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692 David Dodman, Gordon McGranahan and Barry Dalal-Clayton ''message from Integrating the Environment in Urban Planning and Management: Key principles and approaches for Cities in The 21st century'' (*International Institute for Environment and Development* 2013) 20.

693 See FDRE Constitution 1995 articles 51(5) and 55(2)(a).

The constitution declares that “all persons have the right to clean and healthy environment”.[694] The people’s right to clean and healthy environment is also a state policy. It provides that “The government is duty bound to ensure that all Ethiopians live in a clean and healthy environment.”[695] The constitution further provides for the protection of the rights of displaced persons. According to it, “persons displaced from their place or whose livelihood have been adversely affected as a result of state programs have the right to adequate monetary or alternative means of compensation, including resettlement with adequate state assistance”.[696] The constitution also asserts that any implementation and design of projects of development should not to the destruction of the environment.[697] Moreover, the citizens shall be consulted whenever there is a design and implementation of development project.[698] They shall forward their view for protection of their environment. The citizens along with the government are under duty to protect their environment.[699]

The other legal instrument which contains environmental issues is the Urban Plan Proclamation of the FDRE. The Proclamation states that the carrying out of development undertakings in urban centres, planned both by public and private actors should not be harmful to the general wellbeing of the community as well as the protection of natural environment.[700] Further, it requires that any processes of urban plan preparations and initiations shall contain principles for the protection of the community and the environment along with preservation and restoration of historical and cultural heritage and shall ensure sustainable development.[701] The proclamation also provides for rejection of an application of a development permit where the development is likely to have an adverse impact on the environment and generally to the public in the area.[702]

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694 See FDRE Constitution 1995 article 44(1).
695 See FDRE Constitution 1995 article 92(1).
696 See FDRE Constitution of1995 article 44(2).
697 See FDRE Constitution 1995 article 92(2).
698 See FDRE Constitution 1995 article 43(2) & 92(3).
699 See FDRE Constitution of, 1995 article 92(4).
700 See the preamble of Proclamation No. 574/ 2008.
701 See Proclamation No. 574/ 2008 article 5.
702 See Proclamation No. 574/ 2008 article 29(2).

In addition to the Constitution of the FDRE and the Urban Plan Proclamation, there are certain laws in Ethiopia's legal system for controlling and directing environmental issues and which complement the urban planning practice. The main laws which are relevant for this study include environmental impact assessment proclamation, environment pollution control proclamation, and solid waste management proclamation. Here, it is to be noted that the scope of the discussion under this part is not to cover the entire environmental law issues. The focus is only on certain provisions of the proclamations which are incidental to the topic of the study.

5.6.1. The Environment Impact Assessment (EIA) Proclamation

The goal of Environmental Policy of Ethiopia is twofold: first, it meant to improve and enhance the wellbeing and quality of life of all Ethiopians, and second, it intended to promote sustainable social and economic development through the sound management and use of natural, human-made and cultural resources and the environment as a whole with the intention of meeting the needs of the present generation without compromising the ability of future generations to meet their own needs.[703] And as seen above, the 1995 Constitution of FDRE affirms that every Ethiopian citizen shall have the right to clean and healthy environment. Moreover, any implementation and design of projects of development should not lead to the destruction of the environment. These constitutional provisions and the environment policy of Ethiopia are the basis for adopting the EIA Proclamation No. 299/2002.

According to the Proclamation, EIA is used to predict and manage the environmental impacts which a projected development activity as a result of its design, siting, construction, operation, or an on-going one on account of its modification or termination, entails and thus, helps to bring about intended development.[704] Furthermore, assessment of possible effects on the environment before the approval of a public instrument provides an effective means of harmonious and integrative environmental, social, economic and cultural

703 See Environmental Policy of The Federal Democratic Republic of Ethiopia, 1997.
704 See preamble of Proclamation No. 299/2002.

considerations into a decision making process in a manner that promotes sustainable development. The proclamation states that the implementation of the environmental rights and objectives protected under the Constitution would be fostered by the prediction and management of likely negative environmental impacts, and the maximization of their socioeconomic benefits.[705]

Proclamation 299/2002 obliges an EIA process for any proposed development project or public instrument which is likely to have an adverse impact on the environment.[706] With regard to development projects, the law requires that no person shall begin implementation of a proposed project, identified by directive as requiring EIA, without first undertaking EIA process and obtaining authorization from the competent environmental agency.[707] In line with this, investors or developers must undertake EIA and submit the report to the relevant environmental body, and, when implementing the project, must adhere to the terms and conditions of the EIA authorization given to them.[708] Similarly, a public instrument included in any category of a directive issued pursuant to this proclamation, shall, prior to approval, be subject to EIA.[709]

The proclamation also requires licensing agencies, prior to issuing an investment permit or a trade or an operating authorisation for any project, to be certain that the relevant environmental authority has authorized its implementation.[710] In addition, it requires such licensing institutions to suspend or revoke the license they have issued for projects where the relevant environmental authority suspends or withdraws the authorization given for the implementation of the project.[711] Yet, approval of an environmental impact study report or the issuing of authorization by the authority or the concerned regional environmental agency does not exonerate the developer from liability for damage.[712]

705 See Preamble of EIA Proclamation No. 299/2002.
706 See Proclamation No. 299/2002 article 5.
707 See Proclamation No. 299/2002 article 3(1).
708 See Proclamation No. 299/2002 article 7.
709 See Proclamation No. 299/2002 article 13.
710 See Proclamation No. 299/2002 article 3(3).
711 See Proclamation No. 299/2002 article 12.
712 See Proclamation No. 299/2002 article 3(4).

The proclamation also provides for public participation in the EIA process. It necessitates environmental authorities to make any EIA study report accessible to the people in the area and to solicit comments thereon. It necessitates environmental bodies to ensure that the comments expressed by the public and, in particular, the comments by the communities likely to be affected by the implementation of a project, shall be incorporated into the EIA report as well as into its evaluation.[713]

The Proclamation empowered both the Federal and Regional Governments to assess and approve EIA reports in their respective jurisdictions. The Authority, which is the federal responsible body, shall be in charge for the evaluation of an environmental impact study report and the monitoring of its implementation when the project requires the licensing, execution or supervision actions by a federal agency or when it is likely to cause trans-regional impact.[714] The regional environmental agency in each region shall be responsible for the evaluation and permission or any environmental impact study report and the monitoring and follow up of its implementation if the project is not subject to permission, execution and supervision by a federal agency and if it is unlikely to cause trans-regional impact.[715]

5.6.2. Environment Pollution Control Proclamation No. 300/2002

Proclamation 300/2002 aims to eliminate or, when not possible to mitigate, pollution which may arise from social or economic developmental activities and which entail undesirable consequence to the environment. For that reason, the Proclamation provides for the formulation of workable environmental standards and environmental inspection. Therefore, the chief cause of the proclamation is to ensure the agreement of ongoing activities with the standards and regulations of the country by means of an environmental inspection.

713 See Proclamation No. 299/2002 article 15.
714 See Proclamation No. 299/2002 article 14(1).
715 See Proclamation No. 299/2002 article 14(2).

The Proclamation provides for control of pollution. It stipulates that no person shall pollute the environment or cause any other person to pollute the same by violating the relevant environmental standard[716] and if any person violates the law and releases any pollutant to the environment, an administrative or legal measure may be taken by the federal or regional authorities.[717] The polluter shall also be required to clean up or pay the cost of cleaning up the contaminated environment in such a manner and within such a period as shall be set by the Authority or by the relevant regional environmental agency.[718] This way the proclamation follows the polluter pays principle.

The Proclamation also deals with the management of hazardous waste, chemical and radioactive substance. According to this proclamation, the management of the any hazardous waste from its generation to its disposal must be undertaken with a permit from the FEPA or the appropriate Regional State Environmental Agencies.[719] In addition, it underlines that any person natural and/or legal, who is engaged in the collection, transportation, recycling, treatment or disposal of any hazardous waste must take appropriate safety measures to prevent any damage to the environment or to human health or well-being.[720] The mining, importation, processing, keeping, storing, transportation, distribution, or use of radioactive substances shall also have a permission from the competent agency.[721] Similarly, undertaking activities related to a chemical categorized as hazardous or/ of restricted use, shall be subject to a licence from the Authority or the appropriate regional environmental agency or from any other competent agency.[722] Any person involved in the preparation, production or manufacturing, transportation or in trading in any hazardous or restricted chemical may confirm that the chemical is registered, packed and labeled as per the applicable standards.[723]

Proclamation 300/2002 also provides for environmental standards and assigns the formulation of such standards to the federal authority. It states that the Authority,

716 See Environment Pollution Control Proclamation No. 300/2002 article 3(1).
717 See Proclamation No. 300/2002 article 3(2).
718 See Proclamation No. 300/2002 article 3(4).
719 See Proclamation No. 300/2002 article 4(1).
720 See Proclamation No. 300/2002 article 4(2).
721 See Proclamation No. 300/2002 article 4(3).
722 See Proclamation No. 300/2002 article 4(4).
723 See Proclamation No. 300/2002 article 4(5).

in consultation with competent agencies, shall frame practicable environmental standards based on scientific and environmental principles.[724] The proclamation identified certain sectors which necessitate standards. Accordingly, the sectors that require standards shall include at least the following:[725]

(a) Standards for the discharge of wastes into water bodies, such as rivers, ponds, reservoirs, etc. and sewage systems.

(b) Air quality standards that specify the surrounding air quality and give the permissible amounts of emission for stationary as well as mobile air pollution sources.

(c) regarding soil contamination, standards for the types and amounts of substances that can be applied to the soil or be disposed of on or in it.

(d) Standards relating to noise pollution, the maximum allowable noise level considering the settlement patterns and the availability of scientific and technological capacity in the country.

(e) Waste management standards specifying the levels tolerable and the procedures to be followed in the generation, storage, handling, treatment, transport and disposal of the various types of waste.

The Authority may propose different environmental standards for different areas as it may find necessary to protect, safeguard or rehabilitate the environment.[726] Besides, regional states may, based on their specific situation, prescribe environmental standards that are more rigorous than those determined at the Federal level.[727] However, they shall not assume standards which are less rigorous than those determined at the Federal level.[728]

Proclamation No.300/2002 also deals with the functioning of environmental inspectors. These inspectors, who shall be assigned by the Authority or by the appropriate regional environmental agency, have the following powers and duties.[729] a) to ensure adherence with environmental standards b)to enter any land or premises at any time which appears to be appropriate to them without prior

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724 See Proclamation No. 300/2002 article 6.
725 See Proclamation No. 300/2002 article 6(1)(a-e).
726 See Proclamation No. 300/2002 article 6(3).
727 See Proclamation No. 300/2002 article 6(4).
728 See Proclamation No. 300/2002 article 6(5).
729 See Proclamation No. 300/2002 article 8(1)(a-g).

notice or court order; c) to question any person unaccompanied or in the presence of witnesses; (d) to check, copy or extract any paper or document, file etc. related to pollution; (e) to take, without paying for it, samples of any material as required and carry out or cause to be carried out tests to see whether or not it causes harm to the environment or to life; (f) to take photographs, measure, draw, or examine any product, process or facility in order to ensure adherence with this Proclamation and with any other relevant law; (g) to seize any equipment, material or any other object which is believed to have been used in the commission of an offence under this Proclamation or any other relevant law.

5.6.3. Solid Waste Management Proclamation No. 513/ 2007

Proclamation 513/2007 is applicable mostly to non-hazardous solid waste. For example, glass containers and tin cans, plastic bags, used tyres, food related solid waste, and construction debris and other general house hold solid wastes are regarded by the law as non-hazardous. The proclamation lays general obligation upon the ULGs to create enabling conditions and to promote investment on the delivery of solid waste management services.[730] It also requires that any person, legal and/or natural, should get a licence from concerned bodies of an urban administration to engage in activities related to the collection, transport, use or disposal of solid waste.[731]

The common solid waste disposal practices in almost all urban centres of the country are an open dump which has been creating problems such as air, land, and water pollution. Moreover, such practice requires spacious urban land in areas that will not cause significant displacement of inhabitants, and which are not located near to residential areas. However, for the ULGs to solve the problem, they usually negotiate for land with the neighbouring rural district, which leads to displacement of farmers, and which raises compensation issues. Even, sometimes, the non-availability of urban land for solid waste disposal may call for interregional cooperation. In this regard, Proclamation 513/2007 provides that each RS shall keep the shipment of solid waste to other regions for final dumping

730 See Solid Waste Management Proclamation No. 513/ 2007 article 4(1).
731 See Proclamation No. 513/2007 article 4(2).

at the minimum possible.[732] RSs may require any transit of solid waste through their region to be packed and transported in accordance with the directives, standards and requirements issued by the concerned environmental agency.[733] Furthermore, the proclamation stipulates that solid waste may be carried from one RS or urban administration to another RS or urban administration only if the receiver RS or urban administration has notified the sender in writing of its capacity and competence to recycle or dispose of it in an environmentally sound manner.[734]

The most important mandate assigned by Proclamation 513/2007 to the ULGs is the construction of solid waste disposal sites. According to this proclamation, each ULG shall, in accordance with the applicable federal environmental standard, confirm that solid waste disposal sites are built and properly used.[735] They shall also ensure that a solid waste disposal place that was under construction or was constructed earlier than the coming into force of this proclamation is subjected to environmental auditing as per the relevant law.[736] The Proclamation also requires an EIA study for newly constructed or an existing solid waste disposal which undergoes a modification. Each ULG is also responsible for ensuring that an environmental audit is carried out on all existing solid waste disposal site.[737] During the audit, if the site poses any risk to public health or to the environment, necessary modifications shall be made by the owner to avert the problem.[738]

As seen above, and as provided by the Proclamation, the duties and responsibilities of solid waste management services are commissioned to the ULGs. They give permission for those persons who intend to involve in collection, transportation, use, or disposal of solid waste. To that extent, they are mandated to ascertain the conformity of any vehicle or equipment before it gets licence for solid waste disposal activity.[739] They can even set standards to determine the skill

732 See Proclamation No. 513/2007 article 6(1).
733 See Proclamation No. 513/2007 article 6(2).
734 See Proclamation No. 513/2007 article 6(3).
735 See Proclamation No. 513/2007 article 14(1).
736 See Proclamation No. 513/2007 article 14(2).
737 See Proclamation No. 513/2007 article 14(3).
738 See Proclamation No. 513/2007 article 15(2).
739 See Proclamation No. 513/2007 article 13(1).

of drivers and operators of equipment for solid waste management activities in their own jurisdiction.[740]

From the above discussion, it can be seen that those undertakings of the ULGs and the related issues have impacts on implementation of urban plans. For instance, procedures and processes of land compensation and resettlement issues could delay the implementation of city's plan. It also determines the status and role of ULGs in negotiating extra land for waste disposal from RLGs. Similarly, it defines their role in inter regional movement of solid wastes.

5.7. Conclusion

The chapter captured the examination of Ethiopian planning laws and legislations. It asserted that planning law comprises a number of legal instruments relating to urban planning. For this study laws relating to urban plan, building, urban Land Lease Holding, land expropriation and payment of compensation, EIA and pollution control, and, many more have been briefly analysed. The following were the concerns that come out from the discussions above:

- Urban plan Proclamation, Proclamation No. 574/2008, is the foremost planning law adopted to regulate and guide the country's urban development endeavour. It is a comprehensive legislation which takes into consideration the federal scheme of government, which the country follows, and the central role of urban centres in urban plan preparation, approval and implementation process. Under this proclamation ULGs are authorised to initiate, prepare, revise, modify, approve and implement urban plans of their respective urban centres.

- Ethiopian Building Code, Proclamation No. 624/2009, and it derivatives is adopted with the aim to determine the minimum national standard for the building of new construction or modification of existing buildings or alteration of their usage in order to guarantee public health and safety. The codes are only used and

740 See Proclamation No. 513/2007 article 13(2).

implemented in constructions built in the formal system. According to the Proclamation, any person who intend to carry out construction shall get a planning consent prior to making formal request for construction. Granting or refusing building permits are the domain of the ULGs. A building officer (BO), on behalf of the ULG, is responsible to approve building permits applications.

- The Urban Land lease holding Proclamation No. 721/2011, along with its regional regulations, is the current operating legal instrument which governs the urban land issues. The authority and responsibility of urban land administration and management, including the power to acquire develop and transfer land to the ultimate users, is allocated to the states (usually ULGs). ULGs have the authority to determine the lease period; to establish the benchmark lease price for every plot of urban land and to grant title deed (lease holding certificate) to the lease holder within the legal frameworks that were provided by the federal government.

- According to Urban Land Lease Proclamation, an urban land shall be permitted to be held by the lease hold if its use is in conformity with the urban plan guideline. For this reason, ULGs must ascertain that urban lands prepared for tender must conform to the urban plans before advertising the lands for lease. In this regard, the Chapter concludes that the relation between urban planning law and land administration processes is very strong. The chapter also concludes that absence of appropriate interface between these two sets of laws results into shortage of formally allocated land and hence significant informality and inadequacy in housing and basic infrastructure provisions.

- Expropriation and payment of compensation law is a complementary law to urban plan law. Understanding of the laws governing this area helps the ULGs to execute urban plans and govern urban redevelopment and expansion activities. According to the Constitution of FDRE, the government is authorised to expropriate private property for *public purposes* by paying compensation, commensurate to the value of the property, before dispossessing the landholder. To realize this constitutional provision, the federal government issued two proclamations, in 2005 and 2019, to provide for expropriation of land holdings for public purposes and payment of compensation. The earliest expropriation and

compensation law, Proclamation No. 455/ 2005, served for about 16 years and replaced recently by “Expropriation of land holdings for Public Purposes, Payment of Compensation and Re settlement Proclamation No. 1161/ 2019”. In their aim, both legislation are alike: to facilitate redevelopment activities and provision of services.

- The expression “*public purpose”*, which is the determining factor for exercising expropriation proceedings by the government, has not been defined by these laws in explicit manner. Proclamation No 455/ 2005 defined the phrase as “the use of land defined as such by the decision of the relevant body in accordance with urban structure plan or development plan with the aim of ensuring the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development”. According to this definition, any possible direct or indirect benefit to the public may justify expropriation action of the government. It is quite possible and easy for the government to show at least indirect public interest in almost all cases. Interestingly, the definition is put in a similar way in the new Proclamation.

- The chapter concludes that although Proclamation No. 1161/ 2019 is new and it is too early to evaluate its application, and Proclamation 455/ 2005 is also out of use at this point of discussion, it is noteworthy to have a general idea about the legal frameworks governing the subject. At least, it is appropriate to have a glimpse to the issue relating with the role and legal status of ULGs.

The other aspect of planning law, appraised under this Chapter, includes the environment related laws. The main laws which are relevant for this study include EIA proclamation, EPC proclamation, and solid waste management proclamation. Under the first two proclamations the role of ULGs is not mentioned. But the last proclamation provided vast authorities to the ULGs in relation to solid waste management and disposal. The Chapter concludes that the actions of ULGs in relation to preparation and implementation of urban plans have strong connection with the laws governing the environment. For instance, procedures and processes of land compensation and resettlement issues could delay the implementation of city’s plan. It also determines the status and role of ULGs in negotiating extra land

for waste disposal from RLGs. Similarly, it defines their role in inter regional movement of solid wastes.

CHAPTER 6

Urban Plan Proclamation and the Processes of Urban Plans

6.1. Introduction

Urban planning is a process-based activity performed to guide socio-economic and spatial developments of an urban area. It is a technical process, oriented towards bringing benefits to people, governing the use of land, and enriching the natural environment. It requires careful assessment and planning to facilitate community needs such as housing, environmental protection, education and health care facilities and other infrastructure can be incorporated. In short, the goal of urban planning is to augment the welfare of the people who inhabit the area that is being planned. For this reason, urban planning requires a transparent process, where the roles of various institutions, authorities, stakeholders, experts, and decision makers are clearly defined. And so, to clearly define the roles and powers of ULGs in implementation of planning laws it is necessary first to comprehend the processes involved in urban planning. According to urban planning and implementation manual of Ethiopia, *'planning process'* (urban plan process) means, the step-by-step activities carried out by a planning body in the preparation and implementation of urban plans.

The goal of this chapter is to conduct a thorough examination of the processes involved in planning activities. The chapter is structured into five sections to achieve this purpose. The topic will cover the following subtopics: plan inception, preparation, approval, implementation, and plan amendment. In Ethiopia, the ULGs' roles, and powers, relating to urban plan process, are mainly detailed in the Urban Plan Proclamation 574/2008. Thus, this chapter deals with the planning process as described in the urban plan proclamation No. 574/2008.

My focus on this specific proclamation is propelled by three reasons. Firstly, the proclamation is considered by the law makers as a comprehensive planning legislation which considers the federal structure of government and the central role of urban centres in urban plan preparation and implementation. It is an all-

inclusive legislation in a sense that it touches land, expropriation, and environment related issues. Secondly, it is enacted to replace the overall planning system by the prevailing spirit of decentralization in which it articulated, in a much better manner, the role of ULGs in the planning process. It recognizes the existence of regional institutions, the participation of private enterprises and the mandate of municipalities in city management and administration.741 Thirdly, in Ethiopia the ULGs' roles and powers relating to urban plan process are mainly detailed in this proclamation. After all, the proclamation aspires to guide and regulate the proliferation of unplanned urban centres by sound urban plans. It is important to comprehend how this vision can be achieved by ULGs.

The planning processes recognized under Proclamation 574/2008 include initiation, preparation, approval, implementation, modification, and revision of an urban plan. Each of these stages will be discussed under this chapter. It is to be noted that, in the Ethiopian urban context two plan types are identified by Proclamation 574/2008 as legal and binding: city wide structure plans (SP) and local development plans (LDP). These Plans have variations in their planning process. However, in this part of the study, as the topic deals with planning laws in general, the planning procedures and processes, unless and otherwise stated explicitly, are considered as being common to both plan types.

6.2. Plan Initiation

As aforesaid, Proclamation 574/2008 identifies two urban plan types as legal and binding: SP and LDP. The Proclamation also provides the definition and contents of these plans. According to the Proclamation, an SP is a legally binding plan accompanied by its explanatory texts formulated and drawn by covering the entire urban boundary and it sets out the basic requirements regarding physical development the fulfilment of which could produce a comprehensible urban development in social, economic and spatial spheres. With regard to the contents of SP, it states that any SP shall show the magnitude and direction of growth of the urban centre; major land use classes; housing development; the layout and

741 Abebe Zeleul "Urbanization for National Development in Ethiopia" 2006 *EEA* 8

organization of key physical and social infrastructure; urban redevelopment intervention parts of the urban area; environmental aspects; and industry zone.

Concerning LDP, the Proclamation provides an extensive meaning to the concept. It states that an LDP is a legally binding plan depicting medium term, phased and integrated urban renewal, upgrading and expansion activities of an urban centre with a view to facilitating the implementation of the SP by concentrating on strategic areas. It shall prescribe the functions, development aims, implementation approaches, role of plan implementing bodies, required institutions, local economic dynamism, urban design principles, tangible implementation standards, spatial framework, budget, and time of the implementation of a SP.[742]

LDP of a given locality of a town should stem, first, from the town structure plan, and needs to fit into existing urban planning and development policies, laws, and regulations (both federal and regional) and be linked and integrated with other development programs and strategies set by government of the respective town.[743]

The proclamation requires any LDP to state, zoning of land use type, building height and compactness or density of buildings; layout of local streets and plan of basic infrastructure; organization of transport scheme; housing typology and neighbourhood organization; urban upgrading, renewal and reallocation intervention areas; green areas, open spaces, water bodies, and places that might be used for common benefits; and any other locally relevant planning issues.[744] The Proclamation further requires an LDP to have a detailed implementation scheme which stipulates the institutional setup, resource and regulatory prescriptions needed for the implementation of plan in a concerned area.

Proclamation 574/2008 also deals with powers of plan initiation. According to it, the initiation and authorization of an urban planning process shall be formally

742 See Proclamation No. 574/2008 article 11(2).

743 Ministry of Works and Urban Development Federal Urban Planning Institute (2006) "Local Development Plan Manual" prepared by *Matheos consult* 18

744 See Proclamation No. 574/2008 article 11(3).

made by the ULGs as well as the regional and federal authorities concerned. Initiation is the beginning step of the planning process. According to Allan the beginning occurs with a need to plan perceived by the client constituency of the planner and refined through the formulation. According to Allan the various sets of values held by the public defines the public purpose or the need to plan. The public is made up of those people directly affected by the plan and is termed the client constituency of the planner.[745] The client of the professional urban planner is a constituency made up of the people affected by the plan and the employer of the urban planner.[746]

As per the proclamation, no process of urban planning preparation shall begin without prior identification of needs to be addressed.[747] Moreover, any interested governmental or other nongovernmental entity has the right to initiate a need to be considered during urban planning. All these imply that initiation for planning ought to come with the aim of solving problems faced by an urban community and the idea for preparing or revising urban plan should originate from the people and their delegates. The notion that the community should be involved in plan initiation is also provided in all City Proclamations of the RSs. For example, the ANRS City Proclamation clearly stated that the urban residents shall have the right to participate in all stages of the planning process including the initiation of plan. Residents' power to plan implies exercise of their democratic right.[748] As stated in urban planning and implementation manual of Ethiopia, the democratic rights of people will not be fully operational without exercising their power to plan.[749]

A fundamental belief about plan initiation is that the idea shall come either from community, investors, or publicly authorised organ, such as a CC, and it shall be participatory. It must adhere to the principle of participatory planning as

745 Thomas A. Dames THE URBAN PLANNING PROCESS (PhD Thesis Purdue University 1972) 1 available on http://hdl.handle.net/10945/16420 accessed on 5/12/2021

746 Thomas A. Dames http://hdl.handle.net/10945/16420 accessed on 5/12/2021

747 See Proclamation No. 574/2008 article 13(1).

748 See Revised ANRS Proclamation article 60(2).

749 See FDRE Urban Planning Implementation Manual (2012) *MOUDS* 14.

pronounced in the laws.[750] Yet, the practice shows, most of the planning ideas in the country are not originated from the community rather it is government driven. For example, in the case of Addis Ababa, LDPs are prepared largely based on the City Government initiatives. In this regard, the City's updated structural plan explicitly specifies that if one of the following requirements is met, LDP for a section of the city may be produced.[751]

- Development pressure: substantial investment plans in the pipeline
- Problem pressure: degradation of social, economic, and physical fabrics
- Strategic location: Possibility of triggering more development
- Ease of implementation: sufficient infrastructure services are available.

As remarked by Zerfu Hailu, LDP is not initiated from the community for most urban centres while community discussion and feedbacks are gained from vision setting, preparation and approval stage. Still, LDPs have been done with more technocrat-oriented approach without meaningful community participation.[752] It is also noteworthy to mention that there is not any procedural instrument as to how the members of the community, interested persons or investors to initiate plan preparation or changes on existing plan.

6.3. Plan Preparation

Urban planning is a lengthy process that involves initiation, preparations, creation of plan areas, approval and application or implementation of plans, as well as monitoring and control. It is designed to regulate the use of land and other physical resources in the public interest and can make a tremendous difference in

750 Note: The constitution, the city proclamations and the urban plan proclamation call for participatory planning.

751 Ministry of Works and Urban Development Federal Urban Planning Institute (2006) *Matheus consult* 14

752 Zerfu Hailu ''Land Governance Assessment Framework Implementation in Ethiopia: Final Country Report'' (*Supported by the World Bank 2016*) 73.

the quality of life and wellbeing of people living in cities.[753] Generally, it is aimed at partial or complete development of urban centres, with the current situation, as well as future scenarios in mind. In Ethiopia, ULGs have a plan making responsibility. They are responsible for the preparation of both SP and LDPs for their respective urban centres. Proclamation 574/2008 provides that urban centres at all levels are given the power and duty to prepare and review or cause the preparation and revision of their own SP and LDPs by certified private consultants or public institutions.[754]

The plan preparation process of SP and LDPs is similar on general level. In the case of SP, the planning issues are stipulated in general terms; hence, only strategic considerations should be regulated. In Europe, particularly in the UK, SPs operate at county level or subregional level and are broad in their scope, covering some social and economic considerations as well as those purely of land use. They are highly generalized.[755] Under the Ethiopian law, SP is to be prepared at the level of the entire urban boundary that sets out the basic requirements vis-à-vis physical development the fulfilment of which could yield a coherent urban development in social, economic, and spatial spheres. In the case of LDP, the issues are more concrete. The preparation of these plans by the ULGs is designed to provide the framework for development within their locality over the span of the plan period which, as per Proclamation 574/2008, SP has a lifetime of 10 years from the date of its approval and an LDP which is to be implemented within the validity period of the structure plan.[756] An LDP is a medium term plan, which depicts phased and integrated urban renewal, upgrading and expansion activities of an urban centre with a view to facilitating the implementation of the SP by focusing on strategic areas. Such plan in the European countries is named as Local land use plans. They are more precise and detailed, and their scope is fairly narrow, confined to areas of imminent change or where strict control is necessary. Their time horizon is shorter than SP.[757]

753 European sustainable Development and health series(1999) "Towards a new planning process, A guide to reorienting urban planning towards Local Agenda 21" WHO 4.
754 See Proclamation No. 574/2008 article 14.
755 European sustainable Development and health series (1999) *WHO*14
756 See Proclamation No. 574/2008 articles 11 and 12.
757 European sustainable Development and health series (1999) *WHO*15

The ANRS city proclamation also provides for urban plan preparation mandate to the ULGs in a similar way. The Proclamation stated that every urban administration shall, in as much as its capacity allows, have the authority to prepare or cause to be prepared its own city plan following the planning principles and standards laid down for the purpose by the RS. Similarly, Proclamation 574/2008 also empowers any city administration to prepare by its own or to cause the preparation by external body such as hired consultants. Although these legislations authorise the ULGs to prepare their city plan by themselves with their own employees, the actual practice is that the plans are prepared by licensed consultants for the preparation of urban plans or by public institution such as universities. The licensed consultants are usually being chosen in a public procurement procedure.

Participatory approach in planning enhances the significance of development plans and the chance of plans being implemented. To make urban planning more effective involvement of all stakeholders in the city, everyone whose interests are affected by urban planning process, from the initial stage of the planning process to implementation and maintenance is important.[758]

For this reason, both legislations provide for public participation. The ANRS city Proclamation obliges every city in the region to devise ways and means by which the dwellers of the city can effectively express their views and opinions in the process of preparation and implementation of plan.[759] Proclamation 574/2008 also requires the public to actively participate in the preparation stage. It states that the process of plan approval shall be undertaken only after conducting public hearings. Such hearing is to be conducted at a convenient location and shall be transparent and adequately communicated to the public at large, particularly to the kebele councils and community-based organizations.[760] Here, the CC notifies all interested persons in the urban centre to participate in the planning process and

758 European sustainable Development and health series(1999) *WHO* 24.
759 See Proclamation No. 574/2008 Article 45(3) and 60(2).
760 See Proclamation No. 574/2008 article 15(2).

where the draft of the plan is presented for discussion at a meeting of all stakeholders.[761] The relevant ideas, suggestions and objections shall be taken up as inputs to correct the plan. It was also observed by the Federal Urban Planning Institute that without active community and stakeholders' participation from plan initiation through planning and implementation, one would end up in either plan-to-shelves or strong opposition from the community under consideration.[762]

However, this provision lacks clarity, as it does not provide the exact number of public hearings and the way it is conducted. It simply states that the particulars will be determined by law. Yet, no law is made in this regard.

6.4. Plan approval

Approval of an urban plan at a reasonably short period after the preparation and deliberation of the final draft is a necessity on grounds that the plan becomes legal and binding. Failure to approve a plan affects urban management; distorts public and private investment decisions; as well as increases speculation. Urban plans, both SP and LDP, should be approved by the legally authorized body before adoption for implementation. Usually, LDPs are prepared in two different times within the SP period. First, along with the SP some areas of the urban centres, mostly, two areas will be selected by the CC. Second, other areas, the number varies, will be selected and LDPs will be prepared for them. The size or geographical limit of an area to be covered in LDP can vary from one case to another depending on the level and complexity of the urban centre. Both SP and LDPs should get formal approval before implementation process commences.[763]

The Urban Plan Proclamation and the ANRS City Proclamation provide plan approval authority for the respective ULGs. Proclamation 574/2008 states that the final draft of structure and local development plans of urban centres shall be

761 European sustainable Development and health series(1999) *WHO* 24.
762 Ministry of Works and Urban Development Federal Urban Planning Institute (2006) *Matheus consult* 17.
763 Ministry of Works and Urban Development Federal Urban Planning Institute (2006) *Matheus* consult 18.

deliberated upon and approved by their own councils and communicated to the concerned regional or federal authorities.[764] Similarly, the City Proclamation of the ANRS provides that the city administration or municipality may, through their CC or the Woreda council, approve their respective plan and follow up its implementation. Prior to approval, the plans should be displayed for public comment. Though, the laws require formal approval of these plans by the CC, the practice is that they were endorsed by the RUPI.[765] An appropriate public hearing is to be conducted at a convenient location and should be debated and agreed upon. The relevant authority should ensure that public opinion has been appropriately taken and incorporated in the final plan. The ULGs shall by any means of communication, widely familiarize the community with the approved structure and local development plans. This means, the approval of the SP and LDPs should be publicised for all parties through public media. Moreover, ULGs shall make available approved plans to interested parties. The documents should also be available for inspection by the public.

As stated above urban plan preparation shall require the observance of the federal and regional planning principles. Failure in respecting these principles allows the RS or the federal government, as may be appropriate, to holdup approved plans. The Urban Plan Proclamation clearly declares that the RS or the federal government is empowered to suspend an approved plan which does not conform to the basic principles of urban planning stipulated in the Proclamation.

At this point, it is to be noted that, the law does not set fixed time required to prepare and approve plans. However, approval of plans after the plans are being prepared by the maker must not take protracted period. It shall be done in a fairly short period of time. This is so because, implementing unapproved plan leads to non-transparent and arbitrary planning practice. Yet, there are practical instances of delays in the approval process. The requirement of public inquiry and the incorporation of ideas and suggestions emanating from the hearing; the disagreement within the members of plan approving entity; the incompetence of the consultants and the strict requirements set down by the regional government

764 See Proclamation No. 574/2008 article 16(1).
765 This is seen during the Debrebirhan City Structural Plan preparation and Approval time.

and by the ULGs; financial constraints etc. are some of the causes for the delaying of the approval process. In connection with this, there are practical cases of slow processes in the study area, both in preparation and approval and which resulted into out-of-date plans by the time they gained statutory approval.

6.5. Plan Implementation

Planning cannot work without plan implementation.[766] In other words, the planning process is unfinished business without plans being implemented. Failure to implement plans has long been considered a significant barrier to effective planning.[767] According to Calkins such plan implementation failure results into a condition known as a “new plan syndrome” which means the responsible planning office always prepares an updated, revised, or modified plan without regard to the implementation status of the originally prepared plan.[768]

Here, implementation denotes the actual execution of the intentions, aspirations and the concrete programmes and projects which address the objectives of the plan. The main intention behind plan preparation is to bring about sustainable urban development in line with the objectives of the plan. Planning is a political process as well as a technical process. The political aspects of the process, although occurring throughout, are most apparent in the implementation phase.[769]

During preparation stage issues of land use, transportation, buildings, landscapes, open places and green spaces, physical and social infrastructure, housing, economic investments, jobs, and businesses may be included in the plans for development of the urban community. Each of these sectors in the plan should

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766 E R. Alexander, R. Alterman and H. Law-Yone ‘’The National Statutory Planning System in Israel’’ in D Diamond and J B Mcloughlin (eds) *Evaluating plan implementation* (Progress in Planning1983)103.

767 Philip Berke, Maxine Day and Jan Crawford 2005 “What makes plan implementation successful? An evaluation of local plans and implementation practices in New Zealand Environment and Planning” 581 to 600 available on https://www.researchgate.net DOI:10.1068/b31166 accessed on 1/7/2021

768 Calkins H W “The planning monitor: an accountability theory of plan evaluation” 1978 *Environment and Planning A, 1979, volume 11,* p. 745

769 Thomas A. Dames 215 http://hdl.handle.net/10945/16420 accessed on 5/12/2021

have a corresponding means of implementation. For this, there shall be an implementing organization that facilitates the execution of the plan and that provide the means to realise the intention of the plans. Implementation instruments must be developed before starting the execution of plans.

According to the urban planning and implementation manual, the sequence of activities in the implementation of plans is as follows.[770]

- Plan endorsement or approval
- Formulation of regulations, directives, and working procedures,
- Entering contractual agreement with implementing agencies,
- Designing of projects according to the LDPs and operational plans,
- Allocating, assigning, and making arrangement of budget, manpower, and equipment
- Assess, negotiate, fix, and compensate landholders, relocate and take rehabilitation actions,
- Prepare land for the intended development (site clearing, surveying and localising benchmarks and cornerstones)
- Build necessary infrastructure
- Provide land and issue title deeds for potential investors (individual applicants, investors, or public bodies),
- Issue construction permit
- Register the allocated land,
- Follow up, monitor and evaluate building development,
- Update SP and LDP as required when alterations are made to local areas

Typically, ULGs are authorised, by establishing institutional set up and legal framework, to carry on the plan implementation task. Based on the context of the urban centres, ULGs may set some instruments such as rules and regulations regarding land use, plot size and service standards, typologies of layouts and buildings; buildings their height, clearance, and reconstruction; requirements relating to plan approval and rejection, regulations providing power and functions

770 See Urban Planning and Implementation Manual p. 42.

of plan implementing entities, such as the power to expropriate land for public purposes. As remarked by Alexander, Alerman and Yone, the ability to appropriate land for public purposes is one more significant implementation tool.[771]

The most important requirement for execution of plan is that plans should be appropriately approved and shall have legal backing for implementation. As stated above, approval of plans must not take long unreasonable period after plans are prepared. According to a survey of urban planning practices in Kenya's counties, failure to approve plans or delays in approving plans, as well as the period between plan formulation and execution, has resulted in poor performance of plans.[772]

Application of plans that are not approved leads to non-transparent and arbitrary planning practices and makes planning an irrelevant task. Draft plans face the risk of being shelved or poorly implemented.[773] Besides, plan implementation should be assumed in accordance with relevant laws, rules, and regulations. As Dyckman noted, planners have for a long time assumed that if the input to the planning process is enhanced and if the planning process is undertaken 'right', then implementation is unquestionably successful, and the impacts will be desirable.[774]

Under the Urban Plan Proclamation and the City Proclamation of the ANRS, the task of implementing urban plan is assigned to the ULGs. According to the Urban Plan Proclamation, every chartered city or urban administration is responsible for the implementation of structure and local development plans. In the implementation of urban plans, they have the powers to:

- inspect and stop any development doings if they are against the SP and LDPs;[775]
- dispossess urban land holdings by paying compensation; and[776]

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771 Alexander, Alterman and Law-Yone 1983 *The National Statutory Planning System in Israel* 129.

772 United Nations Human Settlements Programme "Urban Planning in Kenya: A Survey of Urban Planning Practices in the counties" *UNHABITAT* (2019) xi.

773 United Nations Human Settlements Programme (2019)72.

774 Alexander, Alterman and Law-Yone 1983 *The National Statutory Planning System in Israel* 103.

775 See Proclamation No. 574/2008 article 20(1).

- to coordinate, to the extent necessary for the execution of the plan, the actions of government offices, private and public development enterprises, service rendering institutions, private undertakings and other stakeholders working within the area.[777]

The powers and duties of the ULGs are described meticulously in the plan preparation and implementation manual. As per the manual, ULGs have the following major powers and duties to:[778]

- prohibit or regulate the use and development of land.
- forbid and control the re/subdivision of land.
- review, consider and approve or reject application for development activities.
- follow-up and report the proper implementation of plans and development projects.
- enact appropriate laws, formulate regulations, and working procedures.
- protect public land.
- control and prohibit illegal construction.
- provide and maintain parks, greeneries, and municipal services; and
- identify and preserve areas for re/development

The all-encompassing regulatory powers that the Law confers on the planning authority are the primary tools for implementing land use plans.[779] Prohibition, control, authorisation or granting of permission, expropriation and payment of compensation are the major powers which the ULGs exercise in implementing urban plans. As stated by the Urban Plan Proclamation, no development activity may be undertaken in an urban centre without a prior development authorization. And it is the ULGs power to take appropriate actions if a development activity is carried out without development authorization. In granting development authorisation, the ULGs shall observe certain principles. According to the Urban

776 See Proclamation No. 574/2008 Article 20(2).
777 See Proclamation No. 574/2008 Article 20(3).
778 See Urban Planning and Implementation Manual p. 44.
779 Alexander, Alterman and Law-Yone 1983 *The National Statutory Planning System in Israel* 130.

Plan Proclamation, the following principles shall be adhered to in any process of development authorization:

- ensuring economic and sustainable use of land;[780] To use land effectively and efficiently, ULGs must be proactive in developing and executing acceptable urban plans.[781]
- ascertaining the support of EIA study pertaining to development projects likely to have major environmental repercussions;[782] and
- provision of basic infrastructure during land allocation for development as per the urban plans.[783]

Environmental impact assessment is one of the topics that must be addressed while developing and executing urban planning. Waste disposal sites, abattoirs, industrial zones, quarry sites, construction operations to be carried out in protected areas, massive condominium projects, and other projects identified as having a negative impact on the environment in connection with urban plan preparation.[784] If these projects are planned and anticipated to have a detrimental impact on the environment, or if organizations in charge of forestry or environmental protection request an environmental impact assessment, an environmental impact assessment must be conducted.[785]

If any developer, who intends to commence a developmental activity in an urban centre, applies for a development permit and if his/ her application fulfilled the development principles, requirements, then the ULG shall issue the permit to the applicant. However, application for development permit may also be rejected by the ULGs on certain grounds. The Urban Plan Proclamation outlined the following three reasons for rejecting development permit application.

- Where the proposed development plan is not in line with the approved plan of the urban centre;[786]

780 See Proclamation No. 574/2008 article 26(1).
781 Ministry of Urban Development and Housing, FDRE (2016) "Urban Plan Preparation and Implementation Strategy" (First Edition March 2014)14.
782 See Proclamation No. 574/2008 article 26(2).
783 See Proclamation No. 574/2008 article 26(3).
784 Ministry of Urban Development and Housing, FDRE (2016)39.
785 Ministry of Urban Development and Housing, FDRE (2016)39.
786 See Proclamation No. 574/2008 article 29(1).

- When the development is likely to have an adverse impact on the environment and generally to the public in the area;[787] and
- If the development is not consistent with any other condition as may be specified under regulations to be issued pursuant to this Proclamation.[788]

Proclamation 574/2008 also provides for power relating to development freeze. In some countries this power is labelled as moratorium. It is a zoning designation that temporarily restricts or prohibits development in a certain area until a permanent classification can be determined; it is typically assigned during the construction of a general plan to serve as a foundation for permanent zoning.[789] In the USA, some cities have the power to suspend property owners' ability to seek development approval while the local government considers, drafts, and adopts a comprehensive plan or land use regulation to address new or changing circumstances in the community.[790]

Accordingly, ULGs are empowered to stop provisionally the development of an area or plot of land in case of preparation, revision, or amendment of urban plans. The proclamation declares that no development or demolition permit may be issued for an activity in an area under development freeze.[791] Yet, the law provides discretionary power to the ULGs that they may issue a development permit or authorize the applicability of existing permit for important development projects if they are of the belief that such development is not to considerably affect the implementation of the plan being prepared, revised or modified thereof.[792]

Urban centres at all levels have the rights and duties to acquire land to be used or reserved for development activities of public purpose and to fulfil the requirement of urban land which may arise due to the uncertainty of urban

787 See Proclamation No. 574/2008 article 29(2).
788 See Proclamation No. 574/2008 article 29(3).
789 The Institute for Local Government "Understanding the Basics of Land Use and Planning: Glossary of Land Use and Planning Terms" (2010)38 www.ca-ilg.org accessed on 6/10/2021.
790 Chapter 5 Plan Commission Handbook "Plan Implementation"16. https://www.uwsp.edu Accessed on 19/7/2021
791 See Proclamation No. 574/2008 article 50.
792 See Proclamation No. 574/2008 article 50(2).

planning and the execution process. The right of ULGs to dispossess holders in case of land acquisition and reserve for public purpose may be exercised in accordance with applicable laws. The Urban Land Lease Proclamation and Expropriation and Payment of Compensation Proclamation are pertinent legislations in this regard.

Implementation of urban plan is not an exclusive task which is only governed by Urban Plan Proclamation. There are additional legal instruments which complement the process. One of the most important implementation tools in this regard is the Building Proclamation along with its regulations and directives. This law specifies when, where and how to build a new construction or modification of existing ones or alteration of the use of any buildings. The aim of the law is, by setting minimum national standard, to ensure public health and safety. The proclamation is reminiscent of the French colonial establishment and regulatory legislation in French African colonies prior to the end of the colonial era. At the time, legislation was enacted specifying the conditions for obtaining a building permit as well as the minimum standards that must be met by those building units, especially in urban areas. Typically, such legislation was enacted to protect the health, safety, and security of building occupants and urban space users.[793]

The Ethiopian Building Proclamation, its regulations and directives include rules on actors' roles and responsibilities, the design, methods and materials of construction, and the standards of the additional services around the house.

To enforce this proclamation the law provides for the appointment of a BO to be appointed by the ULGs. BO is like Nigeria's Development Control Department and Ghana's District Planning Authority. The distinction is that authority is vested in a legal body in both countries. In Ethiopia, however, power is concentrated in the hands of a single officer. The rationale for this is to make the person in charge accountable. The Control Department of Nigeria is a multi-disciplinary department charged with the responsibility for matters relating to development control and

793 Ambe J. Njoh "Planning power: Town planning and social control in colonial Africa" *UCL (University College London Press) (2007)*26

implementation of physical development plans.[794] Whereas, the Ghanaian district planning authority is mandated to implement the regulations on behalf of every local authority.[795] It appoints a qualified building inspector who oversees and inspects daily work on buildings, erection, and installations to ensure compliance with the requirements of these regulations.[796]

The officer has massive power including receiving all applications for approval of plans and issuing approved plans. S/he has also the authority to inspect all buildings under the territorial jurisdiction of the urban centre to ascertain conformity with this Proclamation and other laws. Moreover, s/he is empowered to order rectification work in case where plans are approved by error; provided, however, that s/he must have satisfactory explanation for ordering such modification of work. Even, s/he is empowered to order inspection of exempted buildings constructed before the effective date of Proclamation No. 624/2009 and to order the demolition or rectification of such structures if public safety is at risk. A building officer also authorised to charge fees for the approval of plans relating to the construction of new buildings, extensions, or alteration of the same.

The law is emphatic in that no building should be constructed without a building plan, duly certified by the BO. Any person intending to carry out construction shall submit proof of possessory rights to the land or property on which the construction will take place and, it shall consist of the design and report according to the category of building in question. Moreover, the applicant shall secure a planning consent prior to submitting application for construction permit. And it is the power of the BO to grant a written declaration which verifies the proposed construction plan has complied with the urban plan of the urban centre or not. Commonly, certificate of planning consent is provided if the proposed construction plan agrees with zoning requirements and if it is within the allowable heights of buildings to be constructed in a given topology. If the documents submitted to the building officer are sufficiently complete and if the intended construction is conformed to the

794 NIGERIAN URBAN AND REGIONAL PLANNING ACT [1992 No. 88.] Article 27(2)

795 Ghana National Building Regulations 1996, (LI 1630), Regulation 7Building Permit and the Ghanian Local Government Act, 1993 (Act 462), section 64(1)

796 Ghana National Building Regulations 1996, (LI 1630), Regulation 11(Qualified Building Inspector) and Regulation 186 (Interpretation)

urban plan, the applicant will secure the plan approval certificate from the building officer. The approved plan can also be used as a building permit.

The law also authorised the building officer to inspect the quality of construction materials and poor workmanship. According to the Proclamation, a BO may order defective construction materials intended to be utilised for the work and stored on site or incorporated in the works, to be removed from the sites or the works.[797] Use of defective materials or exceptional cases of poor workmanship may be considered as grounds for denying approval for certain items or work. S/he may request test certificates for materials which have been incorporated or are intended to be incorporated in building works.[798]

A person intending to carry out construction work is required to employ a qualified registered professional for each type of design of the construction and retain the services for the purpose of supervising the erection thereof. S/he shall also hire a registered contractor with the necessary qualification for the category of building in question.

6.6. Plan Revision and Modification

Urban plans have validity periods at the time of preparation. According to Proclamation 574/2008, SP is valid for a period of 10 years from the date of approval[799] and an LDP shall be implemented within the validity period of the SP.[800] This implies, at the end of validity period, it has to be revised. However, sometimes part of a plan may require some amendments during its implementation and within its validity period. This situation is known as plan modification. In this regard, the Urban Plan Proclamation states that approved urban plans may be modified regarding a portion of an urban centre where the

797 See Proclamation No. 574/2008 article 17(1).
798 See Proclamation No. 574/2008 article 17(2).
799 See Proclamation No. 574/2008 article 10.
800 See Proclamation No. 574/2008 article 12.

need arises.[801] Periodic plan revision or partial plan modification may be undertaken due to varying reasons.

According to the Ghanaian SP model guideline, SP makes a variety of assumptions regarding the area's activities and functions, the availability of development land, population growth, changes in occupancy rates, and family size, among other things.[802] These assumptions are then contrasted to what occurs during the plan's implementation period. The larger the actual deviations from the assumptions that underpin the SPs, the more important it will be to conduct a review and establish a new SP.

As stated by the urban plan implementation manual, conditions that oblige plan revision include the following:[803]

- When space reserves for miscellaneous urban functions are depleted,
- When important new functions, which were not considered before, arise, (such as airports, industrial parks, universities, etc.)
- When the local economic base of an urban area transforms thereby requiring different institutions and land use changes,
- When change of technology is fundamental and when accommodating the changes within the prevailing plan is difficult or impossible,

Usually, the assumption behind plan revision is that the projected service level of the existing plan fails to meet the need of the growing urban population and that the prevailing plan is no more suitable for the situation.

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Plans have defined validity periods; they need to be revised in time. If the decision for revision is made by the appropriate body, revision process will be commenced. The overall revision task is analogous to starting the planning process again, which involves, initiation, preparation and approval processes. Plan revision may

801 See Proclamation No. 574/2008 article 22(3).

802 The Planning Model Volume 3, STRUCTURE PLAN GUIDELINES (COWI *MAPLE and CERSGIS)*11. Available on **www.tcpghana.gov.gh** accessed on 8/10/2021.

803 See Urban Planning and Implementation Manual pp. 23 and 24.

be initiated by public officials, investors, or by planning associations or professionals.

According to the Urban Plan Proclamation, the power to revise urban plan is vested upon the ULGs.[804] It provides that urban centres shall have the power to revise and modify or cause the revision and amendment or modification of their respective plans. Similarly, the ANRS city proclamation provides for urban plan revision mandate to the ULGs. It states that any city administration in the region has the power to cause the study and revision of the master plan; approve and supervise its implementation.[805] In this connection, the proclamation authorises the urban residents to have the right to participate in all stages of the planning process; including in the initiation, the study for the preparation, revision, approval, and implementation of their city plan. Every city in the region is obliged to devise ways and means by which the dwellers of the city can effectively express their views and opinions on the process of preparation and implementation of plan.

6.7. Some perspectives on public participation in the urban planning process: -

According to a study by the United Nations Economic Commission for Africa (UNECA), the term "public involvement" connotes a collaboration between the people and their government in the interest of national progress and development.[806] As a result, public participation encompasses far more than involvement and decision-making. It is the process by which 'individuals and their governments in a given environment share political, social, and economic responsibility for and contribute to both decision-making processes and activities on national priorities resource mobilisation, allocation, and utilisation for the advancement of the quality, social, and economic life of the entire society.[807]

Urban planning is a multidisciplinary endeavor that incorporates both technical and social science disciplines. According to Yan Xing et al., for a long time, urban

804 See Proclamation No. 574/2008 article 23.
805 See Proclamation No. 91/2003 article 8(c).
806 Public participation on development planning and management, *UNECA,* ECA/PHSD/PAH/90/4(1.2) (i)(d)) (1990) 3*4*
807 Ibid.

planning is seen as the government's responsibility until it is legally approved.808 Basically, it is not just a government-wide task, but also a sort of social activity that has a short- and long-term impact on people' interests. Depending on their objective and duties, many stakeholders may be included at various phases of the planning process. They can assist with scenario analysis, data collection, plan development, execution, assessment, and revision. It is possible to say that the concepts of urban planning and public participation are mutually beneficial. Public participation, it may be claimed, is a basic feature of the planning process and of the relationships between local governments, planners, and people. Thus, planners should always begin with the public's interest and demand when developing plans, and the public, in turn, should take an active part in urban planning and regard it as a basic right.

Regarding the purpose of public involvement, there are two schools of thought, one promoting the citizen perspective and the other advocating the administrative viewpoint.[809] According to Selznick, the purpose relating to the administrative perspective is to build their trust and faith in government, making it more likely that they will accept choices and plans and will work within the system when seeking solutions. The purpose of the public perspective notion is to provide citizens a say in planning and decision-making so that plans, choices, and service delivery may be improved.[810]

The first purpose helps the government's interests by developing well-behaved and trustworthy people who are aware of resource constraints and competing interests. Regardless of whether residents have faith and confidence in their government, the second purpose meets citizens' requests for plans that integrate their requirements and result in new or enhanced services. Fortunately, as Cole

808 Yan Xing, Jingwen Liu, Bingxin Li, Ming Zhang and D Meng "Research on Public Participation in Urban Planning" 2011 *TTP Switzerland* page 1333 available @ doi: 10.4028/www.scientific.net accessed on 01/29/2022.

809 James J. Glass "Citizen Participation in Planning: The Relationship Between Objectives and Techniques" 1979 *JAPA* Page 181 available @ http://dx.doi.org/10.1080/01944367908976956 accessed on 29/01/2022

810 James J. Glass 1979 *JAPA* 181.

points out, pursuing both goals at the same time is viable.[811] Participation is not a zero-sum game in which citizens must choose between developing trust or enhancing plans and services.[812] When planners and residents can strike a balance between the two goals, a participatory programme is more likely to be deemed effective.[813] When designing a citizen participation programme, both the government's and citizens' requirements should be considered.[814]

As Altrerman[815] pointed out, public involvement is not a one-dimensional concept: it may take multiple shapes, using a variety of methodologies; offering feedback at various stages of the planning process; and addressing a wide range of groups. Planners or decision makers may initiate engagement from the top down in specific instances (who themselves may further be required to initiate participation from the top, through legislation or administrative orders).[816] In other circumstances, public engagement is a bottom-up phenomena sparked by groups from the public.[817] For example in China, Public participation practice has two faces: The top-down, government-led participatory practice and the bottom-up, citizen-led participatory practice.[818] With the introduction of the 2008 Urban and Rural Planning Law, which legalized public engagement in urban planning, the former has developed across the country. The latter is frequently the consequence of citizen protests to government's unpopular planning schemes, as well as a reaction to comparable government measures.

Public participation is not a government gift, or a choice made by the person. Such comprehension is impossible. It implies that individuals in any society should not be free or joy-riders who expect everything from the government "but should be

811 Cole 1975, In James J. Glass (1979): Citizen Participation in Planning: The Relationship Between Objectives and Techniques, Page 182.
812 Cole 1975, In James J. Glass 1979 *JAPA* 182.
813 Cole 1975, In James J. Glass 1979 *JAPA* 182.
814 Cole 1975, In James J. Glass 1979 *JAPA* 182.
815 Rachelle Alterman, David Harris, and Morris Hill "The Impact of Public Participation on Planning: The Case of the Derbyshire Structure Plan" 1984 *TPR* Vol. 55, No. 2, page 178.
816 Alterman et.al. 1984 *TPR* 178.
817 Alterman et.al. 1984 *TPR* 178.
818 Lin Zhang, Pieter Hooimeijer, Yanliu Lin, and Stan Geertman "Roles and Motivations of Planning Professionals Who Promote Public Participation in Urban Planning Practice: Two Case studies from Beijing, China" 2019 *UAR* page 2 available @ https://doi.org/10.1177%2F1078087419895116 accessed on 29/01/2022.

active participants, in the development process.[819] Every person in society' is expected not only to share responsibility for the' political and' socio-economic destiny of 'the society in which he/she lives and earns his/her living but also to make reasonable contribution to and sacrifices for the planning and, management processes and activities which would lead .to an Improvement in the material wellbeing and 'quality of life of" everyone in the society.[820]

Almost every independent African country, including Ethiopia, has acknowledged public engagement in development planning and management as a sine qua non for long-term socio - economic growth.[821] For instance, in terms of participation, Ethiopia appears to have plenty of policies and initiatives, albeit more specific legal instruments are needed to make it more practicable on the ground. The FDRE constitution guarantees the right to participate in national development and the right to be consulted on policies and initiatives that impact communities.[822] The government is also responsible for increased participation in policy and programme formulations, as well as supporting local initiatives, according to the constitution[823].

In 2007, MUDHC and the now-defunct FUPI collaborated on and released a Participation Manual for Urban Planning for Ethiopian practitioners and municipal experts.[824] Rather than replacing any form of planning manual, this guide is intended to supplement it.[825] The manual highlighted that a common thread running through all past plans was that they attempted to duplicate the experiences of other countries with very varied surroundings in one way or another. Another flaw was their emphasis with land uses and building works while paying little regard to the real demands of the people.[826] The Town Planner was frequently the principal, and sometimes even the only, actor, with no or little public

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819 Public participation on development planning and management, *UNECA* (1990)3.
820 Public participation on development planning and management, *UNECA* (1990)3.
821 Public participation on development planning and management, *UNECA* (1990)3.
822 FDRE Constitution Article 43(2)
823 FDRE Constitution Article 89(6)
824 Participation Manual for Urban Planning, *MoWUD* and *FUPI* (2017)1.
825 MoWUD and FUPI *Participation Manual for Urban Planning* 1.
826 MoWUD and FUPI *Participation Manual for Urban Planning* 4.

input.[827] The manual recognizes the limitations of previous planning efforts, such as expert-driven plans, limited participation at a few of public sessions, generally to inform the people, and strategies that were neither strategic nor participative.[828] The fiscal implications of the plan were not considered (not strategic), and the reports tended to be extensive on information and deal with a range of topics but lacking on recommendations.[829]

According to a document adopted by the FDRE government in 2008 on "Ethiopian Democracy Building Issues", individuals, mass, and professional groups can engage in development and good governance at the grassroots level, from the federal government to the lower levels of government.[830] The paper also asserts that simply stating that our democracy must be built on people's direct participation is insufficient. It described public participation as a mechanism for broad-based engagement from individuals to the public, as well as a guarantee of democratic rights and long-term growth.[831]

According to another document, the "Public Sector Capacity Building Program of 2010," the people living in rural and urban regions are the country's most asset for achieving sustainable development, democracy, and good governance.[832] As a result, an atmosphere should be created that encourages individuals to actively participate in the area through direct and indirect representation. To this purpose, it is critical to build a public participation system that ensures people's continuing and long-term engagement.[833] The development and implementation of a public participation system that ensures continuous, consistent, and meaningful engagement is one of the first stages toward ensuring public participation.
Public participation is one of the principles of good governance, according to another official document, the "Urban Good Governance Improvement Package of 2007," which states that there should be a conducive environment for the public to actively participate in the development and good governance of the region, both

23 MoWUD and FUPI *Participation Manual for Urban Planning* 4.
828 MoWUD and FUPI *Participation Manual for Urban Planning* 5.
829 MoWUD and FUPI *Participation Manual for Urban Planning* 5.
830 Public participation and mobilization Implementation Paper, *MoWUD* (2012)11.
831 MoWUD *Public participation and mobilization Implementation Paper* 11.
832 MoWUD *Public participation and mobilization Implementation Paper* 13.
833 MoWUD *Public participation and mobilization Implementation Paper* 13.

directly and through their agents. From the perspective of municipal government, city governments must be democratically chosen by their citizens. Furthermore, a framework enabling people to be organised and directly involved in important development and good governance concerns in the region should be in place. Public participation should be incorporated into the formulation and implementation of policies, laws, guidelines, plans, and budgeting.[834]

In its preamble, the Urban Planning Proclamation states that it intends to "satisfy the requirements of society via public participation, openness, and accountability." One of the key ideas in of the proclamation is to ensure "the fulfilment of society's requirements via public participation," which is at the heart of participatory planning. The Proclamation further states that public hearings should be held before plans are approved for the public, public organisations, and kebele councils. Comments and objections that are relevant must also be considered as contributions.[835] According to the proclamation, decentralised urban planning means that each urban centre must outline its own plan.

Even though Ethiopia appears to have no shortage of policies and programmes supporting participation, their actual implementation to enjoy the advantages of participation and social inclusion is in doubt. In a study of the efficacy of participatory planning methods in Mekelle, Biniyam Teklu noted that, despite legislative intentions, practical participation and social inclusion are in doubt.[836] According to him, in Ethiopian cities, participatory planning is still in its early phases. Despite national policy guidelines, most practises end up providing options, such as "take it or leave it."[837] In concluding his study, Biniyam found that the idea of Participation in Community development, particularly in LDPs in Ethiopia has been recognized and practiced for over two decades' now. However, there are still difficulties in exploiting participation as a tool to a satisfactory level.

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834 MoWUD *Public participation and mobilization Implementation Paper* 13.

835 Proclamation No. 574/2008, article 15.

836 Biniam Tekle Biru "Social inclusion and participatory planning in marginal settlements of Mekelle City: A Case Study on Energy Management as Part of the SES" 2019 page 3 available @ https://creativecommons.org/licenses/by/4.0/ accessed on 07/02/2022.

837 Biniam Tekle Biru 2019 *A Case Study on Energy Management as Part of the SES* 5.

As per his research, more than half of the interviewees do not feel represented and do not believe the NDP represents their interests.[838]

In a case study of Addis Ababa Master Planning, Samrawit Yohnnes examined the planning process, politics, and civic participation to determine what causes public outrage and how planners reconcile the impact of politics with the needs of the public. Even though there are several underlying reasons that might lead to a riot, Samrawit found that inadequate planning practises were to blame for bringing all the public's economic, social, and political concerns and frustrations to the surface.[839] It may be claimed that the planning process, politics, and citizen participation did not come together harmoniously to produce a successful plan, but public participation was the most underestimated problem. Even if it was "non-participation" in treatment and manipulation, the public would have a good sense of the planners' intentions.[840]

Another study conducted by Zewditu Mulugeta relating to plan implementation in Injibara town in the ANRS found several limitations in the town's existing structural plan operation. A lack of competent staff, low civic participation and integration with multiple sectors, and financial challenges are just a few examples.[841] She also urged that the community, as well as relevant sectors, be participated in the execution of the town's structural plan.[842]

Behailu Melesse and Hailemariam Behailu conducted research in 2017 on 90 ANRS urban regions that submitted formal complaints about the quality of their urban plans. Customers' expectations were examined to quality factors in the preparation of urban land use plans in ANRS for this study.

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838 Biniam Tekle Biru 2019 *A Case Study on Energy Management as Part of the SES* 26.

839 Samrawit Yohannes Yoseph, "Planning process, politics and citizen participation in the case of Addis Ababa" 2017 page available @ https://www.academia.edu accessed on 18/02/2022.

840 Samrawit Yohannes Yoseph 2017 *Planning process* 13.

841 Zewditu Mulugeta "Assessment of the Existing Structural Plan Implementation Situation in Injibara Town, Amhara Regional State, Ethiopia" 2017 *IJAMR* Page 11 available @ DOI: http://dx.doi.org/10.22192/ijamr.2017.04.04.003 accessed on 16/02/2022.

842 Zewditu Mulugeta 2017 *IJAMR* 11.

The study found that the service providers have used an ineffective technique to prepare urban plans at the lowest possible cost and in the shortest possible time, at the expense of the quality of the land use plan.[843] The researchers noted that the "inform" and "consult" categories of public participation were used by the service providers for all land use plan preparation projects in general.[844] The main argument for choosing these lower levels of involvement is their capacity to accommodate many stakeholders in a short period of time and at a relatively low cost. As a result, the services provider, in this case the expertise of the Amhara RUPI, failed to work with communities to ensure that their concerns and desires are directly reflected in the alternatives developed, to provide feedback on how public input influenced the decision, to formulate solutions and incorporate their advice and recommendations into decisions to the greatest extent possible, and to implement what communities decide. In other words, service providers are more concerned with cost-cutting than with serving the needs of their clients through public participation.[845]

Poor quality structural plan components were also identified as one of the key reasons of land use inconsistency and land use deviation in research done in the ANRS town of Injibara.[846] The absence of public participation in the urban planning process and insufficient enforcement of existing laws were the main causes of this condition.[847]

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843 Behailu Melesse Digafe and Hailemariam Behailu Feleke "Expectations against considerations on quality of urban land use plan: the case of Amhara Region, Ethiopia" 2018 *AJLP&GS* Page 41.

844 Behailu and Hailemariam 2018 *AJLP&GS* 37.

845 Behailu and Hailemariam 2018 *AJLP&GS* 37.

846 Nigatu Amsalu Workineh "Land-Use Deviation from the Structural Plan in Injibara Town, Amhara National Regional State, Ethiopia" 2021 *ERJSSH* Page 121 available @ DOI: https://doi.org/10.20372/erjssh.2021.0801.08 accessed on 19/02/2022.

847 Nigatu Amsalu 2021 ERJSSH 122.

6.8. Conclusion

As urban planning is a process-based activity performed to guide socio-economic and spatial developments of an urban area, the study in this part of the thesis has sought to analyse the processes of urban plans under the Urban Plan Proclamation No. 574/ 2008. Urban planning is a technical process which requires careful assessment and planning with the intention that community needs such as housing, environmental protection, educational and health care facilities, and other infrastructure can be integrated. The purpose of urban planning is to enhance the welfare of the people who inhabit the area that is being planned. For this reason, urban planning requires a transparent process, where the roles of various institutions, authorities, stakeholders, experts, and decision makers are clearly defined. The planning processes recognized under Proclamation 574/2008 include initiation, preparation, approval, implementation, modification, and revision of an urban plan. This Chapter has discussed each of these stages. Emergent issues from the chapters included the following:

- The basic idea about plan initiation is that the initiative shall come either from community, investors, or publicly authorised organ, such as a CC, and it shall be participatory. Yet, the practice shows, most of the planning ideas in the country are not originated from the community rather it is government driven.
- Proclamation 574/2008 empowers ULGs to prepare by their own or to cause the preparation by external body such as hired consultants. Although the law authorises the ULGs to prepare their city plan by themselves with their own employees, the actual practice is that the plans are prepared by licensed consultants for the preparation of urban plans or by public institution such as universities.
- In terms of civic involvement, even though Ethiopia appears to have no shortage of regulations and programmes encouraging participation, their actual execution to reap the benefits of participation and social inclusion in many sectors, including urban planning, is lacking. The research mentioned

above show a lack of community engagement at both the national and regional levels.

- Proclamation 574/2008 also requires the public to actively participate in the preparation stage. However, the proclamation has not provided as to how such active participation by the community is exercised. It lacks clarity, as it does not provide the exact number of public hearings and the way it is conducted. It simply states that the particulars will be determined by law. Yet, no law is made in this regard.
- The Urban Plan Proclamation provides plan approval authority for the respective ULGs. It states that the final draft of structure and local development plans of urban centres shall be deliberated upon and endorsed by their respective councils and communicated to the relevant regional or federal authorities. approval of plans after the plans are being prepared by the maker must not take delayed period of time. It shall be done in a fairly short period of time. This is so because, implementing unapproved plan leads to non-transparent and arbitrary planning practice. Nevertheless, there are practical instances of delays in the approval process.
- According to the Urban Plan Proclamation the task of implementing urban plan is assigned to the ULGs. Prohibition, control, authorisation or granting of permission, expropriation and payment of compensation are the major powers which the ULGs exercise in implementing urban plans. Most importantly, plan execution requires an implementing organization that facilitates the carrying out of the plan and that provide the means to realise the intention of the plans. Implementation instruments must be developed before starting the execution of plans. However, there are practical gaps in the regard.
- Plans have validity periods; they need to be revised in time. If the decision for revision is made by the appropriate body, revision process will be commenced. The overall revision task is akin to starting the planning process again, which involves, initiation, preparation and approval processes. Plan revision may be initiated by public officials, investors, or by planning associations or professionals.

CHAPTER 7

The ULGs legal roles and mandate in the implementation of planning laws

7.1. Introduction

Any population, especially urban inhabitants who are densely populated and that live in proximity, and which lacks laws and order, is doomed to chaos and failure. Even if, they have the law and order but lack effective implementation, still they are vulnerable to chaos and crises. Normally, urban planning laws are primed to guide and regulate orderly physical development. They are formulated to enhance the general wellbeing of the urban community as well as the protection of natural environment and also to ensure public health and safety through their effective implementation. As noted by Rachel Alterman, by affecting the use of most types of land and space, planning laws and specifically development control can deeply affect the prevailing socio-cultural and economic order.[848] They may have dramatic effects on individual health and safety, housing values, employment opportunities, family life, personal time (spent on travel), and accessibility to public services.[849]

However, it is to be reiterated that the existence of planning laws only does not assure orderliness in development and/ or brings about welfare to the community. Even if, they exist on the books they are regarded as either non-existent or almost irrelevant if they are not properly implemented. Those urban centres which do not implement their planning laws can be considered as cities without planning laws. Such kind of cities face problems relating to market failures such as inadequate public infrastructure, absence of public open space, proliferation of informal settlements, poor environmental quality, large proportion of slum areas and (real) negative externalities among land uses.

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848 Alterman 2013 *WBLR* 1.
849 Alterman 2013 *WBLR* 1.

In some cases, it happens that the law exists, but its application is haphazard and irregular. Moreover, the quality of the legislation may be poor as the objectives of the law are not expressed in a way that is easily understandable to all. Again, it may be seen that the purpose of the law may not reflect local needs and challenges. In such cases, implementation of law will not remedy urban problems. Implementation of planning laws should take into account understanding of the wider framework in which the laws are initiated, enacted, and performed.

Most importantly, it is imperative that laws which are clearly written and have explicit objectives still need strong institutions to apply them. Usually, the quality of the law, its intelligibility and its implementation capability is shown by the strength of established institutions and their ability to efficiently run their affairs for which they are established. Any law, including planning laws, should provide for the creation of an institution responsible for its implementation and equip it with the necessary technical and financial enforcement mechanisms. Thus, urban planning law must clearly define roles and responsibilities of the various government organs involved in the sector. In this regard, the Ethiopian laws allocate the roles and mandate of implementation of planning laws to the different order of government i.e., to the federal, RSs, and ULGs. And the objective of this research is to investigate into the roles and responsibilities of ULGs in implementation of planning laws.

Therefore, the purpose of this chapter is to examine the ULGs' roles and responsibilities in the implementation of various national planning legislation, with a particular focus on the tasks and obligations of this organ as set forth in the planning laws discussed in Chapter 5. It is evaluated in terms of capacity, organisational structure, and legislative quality. The chapter is organised into four subtopics to achieve this goal, each of which examines the legal duties and mandates in the application of legislation pertaining to urban planning, building, urban land, and the environment.

7.2. The ULGs legal roles and mandate in the implementation of planning laws and the Urban Plan Proclamation 574/2008

As seen in the preceding chapters, the ULGs are empowered by the Urban Plan Proclamation, to initiate, prepare or cause the preparation, revision and modification of, and implement structure and local development plans in accordance with the national urban development scheme or regional urban development plans as may be appropriate. The plans have to be initiated, prepared, revised, and approved under the leadership of the CCs of the ULGs and must be aligned with policies developed by other orders of government, as appropriate, before becoming legally binding documents. However, in playing their roles and fulfilling their mandates, ULGs face some practical challenges in connection with this legislation. These challenges can be merged into three major categories: the quality of the legislation; the organization of institutional responsibilities and role; and the capacity for implementation of the legislative framework.

7.2.1. Quality of the legislation (Proclamation 574/2008)

Many nations enact a multitude of urban laws only to see them become unsuccessful in shaping their urban environments. Ethiopia is not an exception. The mere existence of legislations does not ensure effective management of urban areas. For a law to make a difference and be a valuable device in directing the management and development of urban areas, it ought to be of good quality. Legislative quality is characterized by laws that are detailed and precise in achieving their intended results, yet clear and simple to understand. In essence, quality of legislation refers to the appropriateness of the law in directing the desired socio-economic and other changes in the society. As remarked by PLAF the defining features of quality legislation include simplicity, precision, certainty, clarity, unambiguity, accessibility, coherence, efficiency, consistency, transparency, accountability, efficacy and most importantly, effectiveness.[850]

850 UN Habitat Urban Legislation Unit Working Document ''Planning Law Assessment Frame work (PLAF)'' (*UN Habitat Urban Legislation Unit Working Document 2017*) 13.

The intention of this subtopic is not to assess the value of Proclamation 574/2008 in relation to the above mentioned all defining features of quality legislation. However, whether the legislation fulfils the precision, simplicity and clarity requirements and whether these features affect implementation of the law needs to be examined.

Legislative quality depends heavily on the mechanisms and processes defined in the legislation. Proclamation 574/2008 states several processes and procedures for regulating development undertakings in urban centres. For instance, it provides procedures relating to urban plan initiation, preparation, revision and approval. It also provides for procedures of issuance, rejection and suspension of development and demolition permit. Furthermore, it states about processes of granting or denying certificate of conformity and the payment for the service. In all these instances the proclamation does not clearly define the processes in an intelligible manner. Instead, it used expressions such as *''particulars determined by law'', ''specified by law''* or *''prescribed by law''* in order to comprehend the intended outcome of the specific provision. Picking a case in point, the proclamation provides the following three provisions:

> *"No process of urban planning preparation shall commence without prior identification of needs to be addressed.*[851] *And any interested governmental or other nongovernmental body shall have the right to initiate a need to be considered during urban planning in such manners and procedures as may be prescribed by law".*[852]

> *"Urban centres at all levels shall have the power and duty to prepare and review or cause the preparation and review of their respective structure and local development plans by certified private consultants or public institutions. Particulars shall be determined by law".*[853]

851 See Proclamation No. 574/2008 article 13(1).
852 See Proclamation No. 574/2008 article 13(2).
853 See Proclamation No. 574/2008 article 14.

The proclamation contains eighteen such expressions as ‘’…particulars shall be determined by law’’. The quantity and repetition of such expressions may not imply the defect in terms of quality of legislation. But, if the intended law are not made, the required particulars which aimed to effect the specific provision will get absent and the objective of the law will not be achieved. For example, one of the provisions of the proclamation provides as follows.

> *“the process of plan approval shall be preceded by public hearings to be conducted at a convenient location.*[854] *Such processes and hearings shall be transparent and adequately communicated to the public at large, particularly to the kebele councils and community based organizations.*[855] *The relevant suggestions and objections shall be taken up as inputs to rectify the plan. Particulars shall be determined by law”.*[856]

Relating to the above, there is no law which determine the extent or frequency of public hearings. Moreover, there is no regulation which interprets such issues as convenient location, adequate communication, and relevant suggestions and objections. In short, there is no law which governs matters relating to public hearing as planned by the proclamation. In almost all the eighteen cases the laws proposed by the proclamation are not being made. However, in some rare cases, issues are covered incidentally by some other legislation, such as, the building and urban land lease proclamations. It is also interested to note that the proclamation does not define the competency and authority of making rules or regulations for its implementation. The Proclamation is only a kind of framework (skeleton) without rules or detailed instruments (the blood and flesh).

The fundamental scale of good quality legislation is that it must be implementable. Implementation involves looking at the law in a holistic manner. However, implementation does not take place automatically; it must be considered during the planning, drafting, and adopting phases of a law. The implementation tools,

854 See Proclamation No. 574/2008 article 15(1).
855 See Proclamation No. 574/2008 article 15(2).
856 See Proclamation No. 574/2008 article 15(3).

the rules and regulations, must be created along with the parent legislation. Their absence will definitely increase the probability of failed implementation of the law. As noted by PLAF, the enforcement practices and tools must not be created in isolation and must work in tandem throughout the entire process of the legislation, from its design to its end goal.[857] Each tool must be evaluated to consider how structure, content, purpose and intended results align to create a cohesive law.[858] A strong overall framework with detailed implementation prevents laws from becoming a "black hole."[859]

7.2.2. The organization of institutional responsibilities and role

Laws that are clearly put in addition to having precise objectives, proper processes and procedures also require institutions to implement them. A well framed law should create the body responsible for its implementation as well as equip it with the required legal, technical and financial enforcement mechanisms. Proclamation 574/2008 legally authorises the ULGs to prepare, approve and implement urban plans. However, as seen above, for exercising these powers or to realise the object of the law, they require certain supplementary laws. There are no comprehensive laws and regulations which facilitate the integration of the urban development plans with the regional and national plans. Moreover, urban plans are prepared, revised and approved without comprehensive regulations in the process of preparation, revision and approval. The position of these additional laws, whether they are primary or secondary legislation, is also not clear. Besides, the Proclamation does not state as to which organ or entity is responsible for the making of such laws. According to the urban plan preparation and implementation strategy, which is adopted by the Ministry of Urban Development Housing and Construction (WOUDC) in 2014, ULGs are assigned with the role of making and applying plan preparation and implementation rules and directives.[860]

Although, Proclamation 574/2008 provides for allocation of powers and duties, it does not authorise the Federal Government, the RSs or ULGs, to make laws for

857 UN Habitat Urban Legislation Unit Working Document, 2017 *PLAF* 17.
858 UN Habitat Urban Legislation Unit Working Document, 2017 *PLAF* 17.
859 UN Habitat Urban Legislation Unit Working Document, 2017 *PLAF* 17.
860 FDRE MOUDC Urban Plan Preparation and Implementation strategy, 2014 p.135

its implementation. What the Proclamation does is, to grant certain powers (non-law-making powers) and duties to the Federal Government and the RSs for its implementation.

Accordingly, the Ministry at the federal level have the powers and duties to:[861]

- prepare, jointly with the relevant federal government organs, the national urban development scheme;
- supervise and follow-up as to whether urban plans are in accordance with this Proclamation and in so doing ensure balanced and integrated urban development in the country;
- provide technical and capacity building support regarding urban plans for urban centres;
- follow up and appraise at the national level, the general implementation of development authorization regulations;
- collect and organize information regarding urban plans and make the information available to those interested groups; and
- to develop criteria for certifying, grading and licensing of consultants and issue licences or certificates of competence to grade one consultant engaged in the preparation of urban plans.

Similarly, the RSs are empowered to exercise the powers and duties to:[862]

- initiate and formulate regional urban development plans in accordance with the national urban development scheme;
- follow up, evaluate and ensure the proper application of urban plans;
- coordinate or direct and integrate development efforts connecting two or more urban centres having regional impact.

The ULGs neither have the laws required for implementing the Urban Plan Proclamation nor do they have the authority to make it. The situation in the country is rightly observed by the National Urban Development Spatial Plan (NUDSP) report as, "…rarely is planning undertaken with elaborate tools; indeed the

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861 See Proclamation No. 574/2008 article 55 (1-6)
862 See Proclamation No. 574/2008 article 56 (1-3)

planning capacity of most urban areas needs considerable strengthening if the urban challenge is to be successfully addressed".[863]

7.2.3. The capacity for the implementation of the legislative framework

For achieving the implementation of any legislative framework, the setting up of adequate human and financial resources is a requirement. In addition to having strong institutions and quality legislation, implementation of planning legislation requires competent human resources and adequate finance. In connection with this, features such as financial capacity, coordination mechanisms among different sectors, organizational functions and enforcement mechanisms must be considered. In this regard, Proclamation 574/2008 states that LDP shall have a detailed implementation scheme which postulates the institutional setup, resource and regulatory prescriptions needed for the implementation of plan in a concerned area.[864] However, the implementation of this part of the law does not seem to be satisfactory. The practice shows that ULGs face hurdles in the implementation of urban plans due to the fact that they lack, organisational structure, with adequate financial and human resources and the human resources of the ULGs are unequal with what they are expected to do in respect of the urban plans.

In describing the inadequate capacities of local bodies to support and manage urban development, the NUDSP final report states that capacity constraints and lack of financial resources are common in all urban centres of the country.[865] It found out that ULGs have been assigned certain duties and responsibilities but they lack resources, and human capacity and capabilities.[866] The implementation of strategic objectives suffers from lack of suitable resources. There appears to be a clear need to improve the capabilities of local government if the expected urban development at local levels is to be effectively managed.[867] It is also stated

863 FDRE, MUDHC National Urban Development Spatial Plan (NUDSP) document: Existing Situation and Diagnostic Final Report March 2015 p. 260.
864 See Proclamation No. 574/2008 article 11(4).
865 See FDRE, MUDHC National Urban Development Spatial Plan (NUDSP) document p. 256.
866 See FDRE, MUDHC National Urban Development Spatial Plan (NUDSP) document p. 268.
867 See FDRE, MUDHC National Urban Development Spatial Plan (NUDSP) document p. 268.

that insufficient human skills at strategic levels to undertake comprehensive planning, particularly at local level, is the weakness of urban centres.[868]

A study conducted during the preparation of SP for Debrebirhan town in the ANRS is a case in point that shows the city administration's serious shortage of manpower. Data collected from offices in the city reveal that only 20% of positions are filled by workers in the Kebele administration offices; the urban development and industry office has filled only 50% of its work force; in the BO office only 40% is filled by workers. When we see department wise, for instance, the urban land tenure administration and information case team required having nine employees, but it has only five of them. Similarly, plan implementation and beautification core process have five (only 41%) employees out of twelve. At kebelle level, each kebelle requires five urban planners but it is almost impossible to fill the position and all the kebelles do not have the needed staff.

Earlier in the year 2009, the GOE felt the issue of professional capacity in the area and adopted an urban governance programme for urban centres. And under its urban plan capacity building project it stated seven goals. One of the goals of the project is to make ECSU to produce 1000 urban planners per year.[869] However, it is seen that, the following year the ECSU had only less than fifty students admitted in the Urban Planning Department. This shows that there was no collaboration between the programme setter and the implementer. The capacity of the university with regard to accommodation, number of teaching staff, classrooms etc. were not considered. Besides, the problem is not only with numbers of students admitted and graduated, but there are problems of placement. It is practically observed that urban planners who were graduated in the previous years were assigned in different unrelated positions and sometimes assume political posts. All these require the integration of the MOUD, RSs, ULGs and Universities. In this regard, RSs and ULGs are required to identify suitable candidates and sponsor them for their studies. The RSs and ULGs shall enter into a contractual agreement. The contract shall clearly specify that upon completion of

868 See FDRE, MUDHC National Urban Development Spatial Plan (NUDSP) document p. 291.
869 FDRE, MOUD Urban Governance Programme: revised and adopted Amharic version 2009 p. 30.

their studies, the graduates will have to be assigned at the right position and they will serve those ULGs for a specified period of time. The assignment to the right position means assigning the graduates only to urban plan related mandate.

ULGs are accountable for important programmes though the financial resources available to each are often not sufficient to enable them to successfully implement the programmes for which they are responsible.[870] Mostly, land lease revenue is the finance source of ULGs. As noted in NUDSP final report, in line with regional financial arrangements, ULGs have greater revenue autonomy than RLGs, achieved mainly through land-lease.[871] These land-lease revenues should help finance infrastructure for urban development; but at present, they serve only to cover the daily expenditures of the ULG. The 2014 WB Report for ULGDP II, finds that municipal revenues "are simply not sufficient to meet the rapidly growing municipal functions".[872] According to this report, the current system of relying on ULG's own source of revenues to fulfil most, if not all, its institutional and infrastructure/service delivery mandates is not feasible.[873] Without supplementary funding, ULGs will operate at a sub-optimal level and not realise their roles as economic growth engines for the country.[874]

The issue of ULGs' financial capacity also has its impact on implementation of urban plan in expansion areas. This happens when neighbouring rural lands are required for, by way of expansion, development activity and where holders of the land do not want to be relocated by public authorities with low financial compensations. Such situation may cause delay or, in extreme case, non-implementation of development plans.

Moreover, there are no regulatory prescriptions seen which facilitate urban plan process. Also, there are no appropriate coordination mechanisms set that should exist among ULGs and the regional institutions. These entities are also entrusted

870 FDRE, MOUD Urban Governance Programme p. 269.
871 FDRE, MOUD Urban Governance Programme p. 269.
872 FDRE, MOUD Urban Governance Programme p. 274.
873 Ethiopia Second Urban Local Government Development Plan (ULGDP II) Technical Assessment report 2014: as a Program-for-Results (*PforR*) Operation p.19.
874 ULGDP II Technical Assessment report p. 19.

with overlapping powers relating to the process of urban plans. The entities that are responsible for urban planning process require a high degree of collaboration and coordination to obtain optimum results on the ground. Nevertheless, the planning practice of the ANRS is different.

For example, the ANRS Urban Planning Institute (UPI) and the ULGs have overlapping powers. UPI is established by the ANRS Urban Planning Institute Establishment Proclamation No. 147/2007 to prepare plans and to undertake research activities in the sector. According to the Proclamation, one of the objectives of UPI is to enable urban centres to be centres of rapid development by way of preparing and getting prepared urban plans and being led by this ensures each other's strong linkages as well as with the rural area.[875] By the Proclamation the institute is empowered, among others, to prepare urban plans in its initiative or upon the request of urban centres.[876] It is also the power of UPI to study and get approved by submitting to the relevant body the financial expenditure required to prepare urban planning for urban centres.[877] It is to be noted that the overlapping exists as Proclamation 574/2008 and city Proclamation of the ANRS vest the power of plan preparation and implementation to the ULGs not to others. A case in point, in 2014 Gondar city administration, in the ANRS, hired a consultant to revise its outdated plan where, the consultant began the preparation of the SP by collecting the required data. But after some time, when the draft plan proposal was presented, the Institute forwarded its comments for rectifying the plan. The comments were not incorporated as required by the Institute and the situation repeated again and again. In the meantime, the WB, for its ULGDP fund, requested approved statutory city-wide SP for releasing the fund. Existence of up-to-date approved statutory city-wide SP is a condition by the WB for releasing the fund. Then, the city administration approved the plan by its CC. However, the approval was not accepted by the UPI and the plan got suspended. The plan was not accepted until 2019 E.C.[878] and such situation clearly undermines the autonomy of ULGs.

875 See Urban Planning Institute Establishment Proclamation No. 147/2007 article 4(1).
876 See Proclamation No. 147/2007 article 6(1).
877 See Proclamation No. 147/2007 article 6(12)
878 Note: Gondar City SP started in 2014 but completed in 2020 for about seven years the city had no plan.

What is more, to this situation is that there is no appropriate coordination mechanism, as to how these public entities exercise their planning power, provided by these laws. Therefore, no integrated practice with regard to implementation of planning laws is found among these authorities. Most of the time, instead of exercising their planning power, ULGs seek direction from the institute in preparing their plans. This may limit the roles of ULGs in the implementation of the urban development process in terms of their legal responsibilities.

In fact, in many federal countries such as the USA, Australia and Canada, planning regulation and development control are located at the local level, with a significant element of federal and state oversight but the interaction is clearly regulated.[879] But in the Ethiopian case, as seen above, powers are overlapped and there is lack of strong mechanism which facilitates institutional coordination and interactive synergy.

7.3. The ULGs legal roles and mandate in the implementation of planning laws and the Ethiopian Building Code

As discussed in Chapter Five, and as stated in the preamble of the Building Proclamation, the need to determine the minimum national standard for the construction of new building or modification of existing ones or alteration of their use in order to ensure public health and safety, is the reason for making the building proclamation, regulation and directives. For attaining these aims, the code assigns the ULGs, through their BOs, the plan approval, reviewing and inspection authority which means BO is responsible for accomplishing certain procedural steps in enforcing building codes, which include accepting proposal, design approval, planning consent, building permit provision, construction supervision, and grant occupancy permits. Incidentally, the BOs and their delegates also issue stop orders and rectification or demolition instructions. According to the building

879 Alexander, Alterman and Law-Yone 1983 *The National Statutory Planning System in Israel* 120.

directive, all construction works such as erecting new building, alteration of the use of old building, its demolition, its renovation (except painting and finishing works), its expansion, its modification and construction of temporary building require permit.[880]

As stated in the Proclamation, building permits are the domain of the ULGs. A building officer (BO), on behalf of the city administration, is responsible for approving building permit applications. Proclamation 624/2009 requires every urban administration or designated organ to assign a BO, with the required educational and professional qualifications to apply, on its behalf, the provisions of this Proclamation and other laws.[881]

The law makes the BO to be a qualified professional person not an institution. The assumption behind preferring such arrangement by the law makers is to provide clear responsibility upon the individual officer. The law also empowers the BO to delegate another person or an approved person to carry out duties relating to review of plans if he is unable to undertake fully or partially.[882] The delegation for review of plans may be extended to cover inspection duties.[883]

The building codes provide the required techno-legal framework for regulating all the building activities from planning, design to completion of construction. In connection with this, the law assigns all-encompassing authority of plan approval, reviewing and work inspection mandate to the building officer and its delegates. Yet, there are certain factors relating to building officer and the delegates which impede the efficient processing of building permit. One of the main factors is attributed to the limited capacity of the permit providing government bodies, i.e., the building officer and its delegates. Many applicants for building permit complain that the experts at the construction permit departments hold the application for longer period and usually extend the normal time period especially, if the building design is complex. Moreover, they lack the ability to clearly state their remarks and suggestions in case of rejection or rectification issue is involved in the application.

880 See Building Directive No. 5/2003 article 10(2).
881 See Proclamation No. 624/2009 article 11(1).
882 See Proclamation No. 624/2009 article 12(1).
883 See Proclamation No. 624/2009 article 12(4).

Mainly, workers in the construction permit departments are less competent than the people that make the designs and apply for the construction permits. The other complaint raised by permit applicants that hinder the processing of building permit is the dishonest practice of workers in the permit department. The disagreement of neighbours is also the other factor that delays the efficient processing of building permit. For these reasons, many agree that acquiring a building permit in Ethiopia is a major challenge for aspiring contractors and developers.

The practices of processing building permit have main procedural requirements. It involves acquiring title deed, involvement of adjacent neighbours, reviewing urban plan compliance, checking professional competence of design consultants, as well as criteria and time limit for reviewing the design and structure.

In the ANRS, if all requirements are satisfied, the issuance of building permit is to be executed within twenty-four days for G+1 and above buildings. For G+0 buildings it takes eight days. In both cases, the three days are to be allotted for the provision of planning consent. The remaining twenty-one and five days are assigned for approval of the design for the G+1 and G+0 buildings, respectively. However, if any defect found on qualifying the preconditions, planning and design scrutiny and analysis for complex building, the time limit for processing building permit will prolong to more than twenty-four days. Sometimes, the matter is pended or rejected without due justification and labelling the application as if it contravenes urban planning or design regulations. There are also instances where the process is deceptively approved without due examination of the matter. This is true, especially in developing countries, such as ours, where the minimum standards set by law are not what the poor can achieve with available resources. Consequently, they are forced to breach the said laws and to seek the help of corrupt government officials in the permit department. This fact is evidenced by measures taken by firing and demotion of officers in big cities as well as the constant building permit violations and zoning regulation changes. According to the SECR final report, one of the challenges to enforce the building code is the lack of professional ethics on the part of staff to be assigned as construction

supervisors and building controllers.[884] Thus, the above factors also contribute to poor surveillance and monitoring of building progress.

Just like approving building permits, issuing occupancy permits is also the domain of the ULGs. A building officer, on behalf of the city administration, is responsible for granting occupancy permits for fully or partially completed public buildings. According to Proclamation 624/2009, a newly constructed multi-storey buildings belonging to category "C" shall not be put to use before it has been checked for compliance with the proclamation and unless an occupancy permit has been issued.[885] However, the building officer is granted with discretionary power that s/he may provide an occupancy permit for a partially completed building provided safety is ensured.[886] For instance, cities in the ANRS reported that they give occupancy permits for such partially completed commercial buildings as this would enable owners of such buildings to generate financial resources (e.g., from rental incomes) which they can use to gradually complete the construction of the whole building. Yet, the existence of uniform responses for all occupancy permit applicants not confirmed.

In a nutshell, Ethiopia has a national building code, the major focus of which is ensuring public health and safety. As noted by R Alterman, there is a lot to be said in favour of introducing building laws in developing countries, even without planning regulations.[887] Such laws would address the basic requirements of safety and health.[888] Making of building codes is not a simple matter since the administrative and enforcement institutions would have to be formed together with competent professionals recruited to issue permits and enforce the rules.[889] And as seen above, most of the duties and authorities relating to implementation of the provisions of the code have been brought under the ULGs' competence. They exercise such broad authority through their building officers, who are usually assisted by other workers (civil servants). The BOs and their delegates play the

884 MUDHCo and ECSU, 2015 *SECR* 167.
885 See Proclamation 624/2009 article 18(1).
886 See Proclamation 624/2009 article 18(2).
887 Alterman 2013 *WBLR* 18.
888 Alterman 2013 *WBLR* 18.
889 Alterman 2013 *WBLR* 18.

decisive role in issuing planning consent and building permits. In addition to granting building permit, BOs undertake construction supervision and inspection. They also issue occupancy permits, stop orders and rectification or demolition instructions. However, there are gaps in providing all these services within strict deadlines. The main factors contributing to the problem may include poor qualification, low experience, and lack of professional ethics on the part of staff who engage in these activities and who are assigned as construction supervisors and building controllers.

To end with, it is noteworthy to mention that the Proclamation is appropriately made, and it is comprehensive as compared to other legislations in the area. It is clear, detailed and is aptly supported by the necessary implementation tools, regulations and directives.

7.4. The ULGs legal roles and mandate in the implementation of planning laws and the Urban Land Laws

The Ethiopian Constitution has given the mandate to legislate laws for the utilization and management of land and other natural resources to the federal government. At the same time, RSs, within their jurisdictions, are given the responsibility to administer land and other natural resources. Accordingly, RSs have created regional local institutions for urban land administration and ULGs are the major implementing agencies. The Ministry of Agriculture (MOA) through its rural land administration and use directorate and the MUDC are the lead institutions in the country wide guidance and oversight of rural and urban land administration, respectively. Initially, at the federal level, for rural land administration purpose, Proclamation 89/1997 was issued. This proclamation has been replaced by Proclamation 456/2005. Several regional governments have articulated their land policies and laws. There are also lower-level instruments, which include regulations and directives, developed by regions. For the urban land administration purpose, RSs use the federal laws. The urban land management practice follows various types of legal instruments that include Condominium Proclamation 370/2003, Urban Plan Proclamation No. 574/2008, Urban Land

Lease Hold Proclamation No. 721/2011 and the Urban Land Holding Registration Proclamation No. 818/2014. These legislations are important to implement urban policies and plans, specifically with regard to the adequate supply of land for development of infrastructures, public facilities and services.

At present, the urban land administration system of Ethiopia exhibits three major tenure types: leasehold, old possession and state holding. Proclamation 721/2011 defines the terms "Lease" and "old possession". According to it, "Lease" is a system of for occupying land by which the right of use of urban land is attained under a contract of a defined period.[890] And "old possession" means a parcel of land legally acquired formerly i.e. before the urban centres entered into the leasehold system or a land provided as compensation in kind to persons dispossessed old possession.[891] When the ULGs lease public land, according to the law, to any developer, state holding becomes lease holding. This is usually done where there is an available parcel of public land and the government wants to generate sufficient revenue for a high priority, long term project. The Proclamation plainly specifies that all urban land shall in the future be transferred into lease system.[892] It emphasized that lease system would be the cardinal landholding system in urban Ethiopia.

ULGs are in charge of dealing with urban land matters. Land development, planning and information, provision of building permits and land administration matters (keeping records, underpinning secure tenure, and facilitating transactions) are the domain of ULGs. As stated earlier, constitutionally, urban land management and administration i.e. the power to acquire, develop, and transfer land to the ultimate users is the power of the states (usually ULGs). The lease period is already statutorily fixed. ULGs have the authority to establish the benchmark lease price for every plot of urban land[893] and to grant title deed (lease holding certificate) to the lease holder within the legal frameworks that were provided by the federal government.[894]

890 See Proclamation No. 721/2011 article 2(1).
891 See Proclamation No. 721/2011 articles 2(18).
892 See Proclamation No. 721/2011 articles 5 and 6.
893 See Proclamation No. 721/2011 article 14(1).
894 See Proclamation No. 721/2011 article 17(a) to (f).

However, there are certain requirements to be fulfilled by the ULGs prior to advertising urban lands prepared for tender. Proclamation 721/2011 necessitates that urban land parcels for tender shall be prepared in conformity with urban plan and shall have access to basic infrastructure.[895] They have to be parcelled, delineated, and assigned with unique parcel identification number.[896] They should have also site plans and other necessary preconditions. Where the urban land prepared for tender involves a special development program and implementation action plan such things shall be included in the information. Thus, ULGs are required, among other things, to provide serviced units of urban lands for varying uses; for private or public development activities. In this connection, ULGs face certain challenges.

It is to be noted that the key role of the ULGs shall be providing land and infrastructure for housing and other developments. However, allocation of residential land is one of the biggest urban challenges for them. Generally, there are shortages of land with in the territories of urban centres. If the land is available, it entails financial cost for infrastructure provision and if land is acquired by way of expropriation from rural farmers, again financial cost for compensation is needed.

One study shows the provision of residential land represents the biggest urban challenge for the government.[897] The reasons are twofold: on the one hand, having a land plot for housing has a high social value in Ethiopia, and on the other hand, urban populations in many urban centres expect to obtain sizable land plots practically for free.[898] Typically, social expectations of the urban people regarding cheap land exceed feasible levels of land supply in many of the urban centres. Mainly, urban centres do not have reserves of vacant land of such size and used to expropriate land from rural land holders around the city. Expropriating plots of land from farmers for urban development usually entails high social costs.

895 See Proclamation No. 721/2011 article 8 (b) and (c).
896 See Proclamation No. 721/2011 article 8 (d).
897 FDRE: Options for strengthening land administration (Document of the World Bank Report No: 61631-ET 2012) 43.
898 FDRE 2012 *Document of the World Bank Report No: 61631-ET* 43.

Furthermore, financial costs for compensation and for the supply of basic infrastructure are generally not recovered from low lease payments by urban land recipients. Such situation impedes the ULGs to play their role in urban development. It is also important to note that as the majority of the population could not pay for the cost; due to this, they resort to informal housing.

In small and medium towns, where the urbanization trends are low and the resource is meagre for financing basic infrastructure cost, the formal land supply system has failed to cope up with urban growth and investment needs.[899] As a result, the change in use to intended use occurs so slowly which affect the prevailing statutory urban plan to be outgrown by propagation of squatter settlements and informal land market. Besides, the capacity to provide serviced plots is weak as one goes from main cities to small urban areas, which implies large undeveloped land liable for squatting in situations where the change in use to destined use under the official land delivery system is weak.[900]

In Ethiopia, to implement urban planning related developments, ULGs utilise systemic expropriation of land from farmers in neighbouring rural areas. However, there is no means of converting land rights possessed by farmers into urban rights. When any rural territory is planned for urban growth area covered by an urban plan, land holders of the territory are subject to expropriation. They will not get the benefit of conversion of land holding rights of rural tenants into urban land rights. The practice also shows that they do not gain from the conversion and resulting increases of land values.

As noticed in chapter 5, Proclamation 455/2005, which was replaced by Proclamation No. 1161/ 2019, used to govern the issues of expropriation and compensation. Most importantly, Proclamation No. 1161/ 2019 contains provisions governing resettlement schemes.[901] It states that RSs, Addis Ababa and Dire Dawa shall establish fund for compensation and rehabilitation.[902] They are also

899 Zerfu Hailu ''Land Governance Assessment Framework Implementation in Ethiopia Final Country Report 2016'' *Supported by the World Bank* pp. 73-74.
900 Zerfu, 2016 *Report Supported by the World Bank* 73-74.
901 See Proclamation 1161/ 2019 article 16
902 See Proclamation 1161/ 2019 article 16(1)

required to develop resettlement or rehabilitation packages that may empower displaced people to sustainably resettle.[903] Urban or Woreda administrations shall have the duty to resettle people evacuated on the basis of the resettlement package and allocated budget.[904] If the land expropriation is for public purpose for investment, people who are displaced may own shares from the investment.[905] Yet the Proclamation does not provide for converting land rights held by farmers into urban rights. As commented by Achamyeleh G A, in the process of urban expansion and development in Ethiopia, peri-urban landholders or farmers' land rights are taken, forcibly and against their will, by the state and thereafter reallocated to urban residents and private investors through lease agreement.[906] Achamyeleh G A further noted that "the existence of wrong interpretation and assumption in relation to expropriation, that all land, be it urban or rural, belongs to the state, has resulted in unjustifiable disregard of land value in the amount of compensation paid to those people evicted from their land".[907]

Incidentally, if we see the role and legal status of the ULGs in this connection, both Proclamations give the power to expropriate landholdings to the RLGs and ULGs. According to Proclamation 455/ 2005, this power is stated as follows.

> *"A Woreda or an urban administration shall, upon payment in advance of compensation in accordance with this Proclamation, have the power to expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where' such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose".*[908]

903 See Proclamation 1161/ 2019 article 16(2)
904 See Proclamation 1161/ 2019 article 16(3)
905 See Proclamation 1161/ 2019 article 16(4)
906 Achamyeleh Gashu Adam ''Urban Built-Up Property Formation Process in the Peri-urban Areas of Ethiopia'' 5 Available @: https://www.intechopen.com/ accessed on 24/04/2020
907 Achamyeleh https://www.intechopen.com/ 6 accessed on 24/04/2020
908 See Proclamation 455/ 2005 article 3(1).

Proclamation 1161/ 2019 also provides similar stipulation.

> *"The city or Woreda administration has the power to order evacuation and takes over land decided to be expropriated for public purpose under article 5 of this proclamation".*[909]

Article 5 of the above-mentioned proclamation deals with the procedure as to how decision on expropriation of land for public purpose is to be made. It states that "the appropriate Federal authority, or a regional state, Addis Ababa, Dire dawa cabinet shall decide on the basis of an approved land use plan or; master plan (which must have detailed action plan)[910] or; structural plan whether the expropriated land directly or indirectly brings improved development and is beneficial to the public."[911] However, the above mentioned entities may delegate to a Woreda or city administration the power to decide on land expropriation for public purpose.[912] The budget necessary to cover the costs of compensation and rehabilitation; and the responsible body that shall cover these costs shall be made clear at the time when expropriation for public purpose is decided.[913] Land holders may file objections on the public purpose decision where their land is expropriated in the absence of the fulfilment of the requirements provided under this part of the law.[914]

In connection with resettlement matters, Proclamation No. 1161/ 2019 prescribes responsibilities of the ULGs and RLGs. They are required to organise consultative meetings with people that are going to be displaced on the type, benefits and generally the process of the project.[915] They are also required to pay or make others pay compensation to the landholders whose land holdings are expropriated.[916] Furthermore, they need to implement resettlement package;[917]

909 See Proclamation 1161/ 2019 article 5(6).
910 See Proclamation 1161/ 2019 article 5(2).
911 See Proclamation 1161/ 2019 article 5(1).
912 See Proclamation 1161/ 2019 article 5(5).
913 See Proclamation 1161/ 2019 article 5(3).
914 See Proclamation 1161/ 2019 article 5(4).
915 See Proclamation 1161/ 2019 article 25(1).
916 See Proclamation 1161/ 2019 article 25(2).
917 See Proclamation 1161/ 2019 article 25(3).

maintain record of the property located on the expropriated land;[918] maintain record and evidence relating to the displaced;[919] support and ensure the improvements of the livelihood of displaced farmers and pastoralists.[920]

It is to be noted that in Ethiopia landholders have the right to claim compensation when a government decision related to implementation of plan, or any development or re development action results in expropriation. However, as seen above especially under the former law (proclamation 455/ 2005), there were legal and practical gaps in dealing with expropriation proceedings; evaluation, payment, and amount of compensation; rehabilitation and resettlement schemes. Experiences show that expropriation issues decided by urban authorities are mostly top-down without seeing the interests of the farmers including the preferences in the kind of compensation. For example, the majority of the local landholders (91%) in the peri-urban areas choose to have either land-to-land compensation from other areas or preserving reasonable parcels of land within the urban boundary.[921] Consequently, government adopted Proclamation 1161/ 2019 to address these issues. As the proclamation is recent, it has not been tested on practical situations. It contains some promising provisions with invisible prospects.

7.5. The ULGs legal roles and mandate in the implementation of planning laws and the Environmental laws

The Constitution of FDRE empowers the Federal Government to make laws concerning to the utilization and conservation of land and other natural resources, historical sites and objects.[922] RSs are also empowered to administer land and other natural resources in accordance with Federal laws.[923] This means, the power to make laws with respect to natural resources and land is an exclusive power of the Federal Government. But, states are left with the power to administer

918 See Proclamation 1161/ 2019 article 25(4).
919 See Proclamation 1161/ 2019 article 25(5).
920 See Proclamation 1161/ 2019 article 25(6).
921 Achamyeleh Gashu Adam ''Introducing Land Readjustment as an Alternative Land Development Tool for Peri-Urban Areas of Ethiopia 2016'' in Achamyeleh Gashu Adam *Urban Built-Up Property Formation Process* 6.
922 See FDRE Constitution 1994 article 55(2)(a).
923 See FDRE Constitution 1994 article 52(2)(d).

the natural resources including land in accordance with the laws made by the Federal Government.

The Constitution also provides certain environmental right to the citizens. According to it, the Peoples of Ethiopia as a whole, and in particular, each Nation, Nationality and People in Ethiopia, have the right to improved living standards and to sustainable development.[924] It further declares that all citizens shall have the right to live in a healthy and clean environment.[925] Again, it requires that all persons who have been evacuated or whose livelihoods have been harmfully affected as a result of state programmes to have the right to commensurate financial or alternative means of compensation, as well as relocation with adequate state assistance.[926] Indeed, for attaining the sustainability of the desired development and enjoyment of the stated environmental rights by citizens require the commitment of the government at any level. The constitution, in its environmental objectives part, obliges federal and regional governments to make effort for attaining the environmental rights enshrined in the constitution. It states that government shall make effort to ensure that all Ethiopians live in a clean and healthy environment.[927] Accordingly, the federal government has taken measures like proclaiming environmental impact assessment, pollution control and waste management laws. At this juncture, it is to be noted that there is no specific power granted, either to the federal or the regional government by the constitution to legislate such laws. Yet, the federal government utilised the power to make laws regarding the utilization and conservation of land and other natural resources and proclaimed the EIA, EPC and SWM Proclamations.[928] As stated earlier, the RSs are vested with the task to administer the natural resources and land on the basis of the laws made by the Federal Government.

Regarding the role of ULGs in relation to implementation of these laws, it is suitable to see the issue one by one. Proclamation 299/2002, the first legislation to be discussed, makes EIAs obligatory for implementation of key development

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924 See FDRE Constitution 1994 article 43(1).
925 See FDRE Constitution 1994 article 44(1).
926 See FDRE Constitution 1994 article 44(2).
927 See FDRE Constitution 1994 article 92(1).
928 See preambles of EIA, EPC and SWM proclamations.

projects, programs, and plans. The Proclamation is a tool for harmonious and integrated economic, social, environmental, and cultural considerations into decision making processes in a manner that encourages sustainable development. However, in this proclamation nothing has been mentioned about the role of ULGs in the EIA process. Since, they are the real owners of the urban environment, or at least, as they are closer to the natural resources and to the sources of pollution, ULGs should have been assigned with clear tasks under the proclamation. They should have played active role in the EIA process and should have been given the financial, legal and technical responsibilities associated with EIAs. Yet, they have not been given any task in this regard. There are instances where local administrations and other government officials lack information about EIA and its importance. It is common practice to undertake developmental activities, especially those run by government, without checking EIA requirements. Although, ULGs are closer to the people than other level of governments, and they have more access to local information that lets them to better respond to the needs of citizens, they are not provided by law the authority to deal with the process of EIA.

EPC Proclamation 300/2002 is the second legislation to be discussed here. It requires developmental activities to consider environmental impacts prior to their establishment. The Proclamation requires on-going developmental activities to implement measures that decrease the degree of pollution to a set limit or quality standard. Thus, one of the prescriptions of the legislation is to ensure, through inspection, the compliance of on-going activities with the standards and regulations of the country by means of an environmental audit. Unlike Proclamation 299/2002, EPC Proclamation mentioned the ULGs and assigned them with responsibilities relating to management of municipal waste. Accordingly, all urban administrations (ULGs) shall ensure the collection, transportation, shipment and, as appropriate, the treatment, recycling or safe disposal of municipal waste through the institution of an integrated municipal waste management system.[929] Monitoring and evaluating the adequacy of municipal waste management systems is to be conducted by the authority,

929 See Proclamation No. 300/2002 article 5(1).

though, in collaboration with the regional agencies.[930] The management of non-hazardous waste management responsibility is designated to the ULGs in a more detailed way by the SWM Proclamation.

SWM Proclamation 513/2007 provides more responsibilities to the ULGs than the two earlier proclamations. The proclamation requires ULGs to ensure the involvement of the lowest administrative levels and their own local communities in designing and executing their respective solid waste management plans.[931] It aims to promote public participation to prevent undesired impacts and improve benefits resulting from solid waste management. The proclamation aspires to promote community participation to prevent adverse effects and enhance benefits resulting from solid wastes. It provides for preparation of solid waste management action plans by ULGs.

Proclamation 513/2007 lays general obligation upon the ULGs to create enabling environment and to promote investment on the provision of solid waste management services.[932] It also stipulates that any person, be it legal or natural, should get a permit from relevant bodies of an urban administration to engage in the collection, transport, use or disposal of solid waste.[933] The most important role assigned to the ULGs by the proclamation is the construction of solid waste disposal sites. ULGs are also mandated to undertake EIA process and environmental audits in connection with the construction of solid waste disposal sites. As seen above, ULGs have the authority to give permission for those persons who intend to involve in collection, transportation, use, or disposal of solid waste. In this connection, they have the responsibility to ascertain the conformity of any vehicle or equipment before it gets licence for solid waste disposal activity.[934] They can even set standards to determine the skill of drivers and operators of equipment for solid waste management activities in their own jurisdiction.[935]

930 See Proclamation No. 300/2002 article 5(2).
931 See Proclamation No. 513/2007 article 5.
932 See Proclamation No. 513/2007 article 4(1).
933 See Proclamation No. 513/2007 article 4(2).
934 See Proclamation No. 513/2007 article 13(1).
935 See Proclamation No. 513/2007 article 13(2).

Although, tasks such as formulating legal and policy framework and setting standards are carried out at the national level, to select sites that are located away from human settlement, to acquire the land, deal with resettlement and compensation issues and finally construct the solid waste disposal site are duties of the ULGs.

Local governments - whether they are towns, cities or metropolitan sections typically carry out the principal responsibility of managing certain interconnected urban planning areas: urban land, the natural environment, infrastructure, housing and community facilities, and social services. If this part of urban planning is realized correctly, for example, if solid waste management activities are properly carried out, then it becomes easy to reconcile economic, social, developmental and environmental goals. It is the easiest way to realise the ideal of living in a clean and healthy environment. It is agreeable that proper solid waste management is highly needed in all urban centres, and ULGs which are classified as service providers are appropriate to handle the issue as they are the nearest to the problem. However, there are some constraints which could delay implementation of urban plan and which may hamper the role of ULGs in the implementation of planning laws. These include for example, financial limitation to handle compensation issues, legal constraints in acquiring land and to handle cross- jurisdictional issues, resettlement and associated socio-economic and environmental risks etc. Moreover, the technical capacity of staffs in the ULGs in selecting the appropriate waste disposal site usually lacks professional competence.

7.6. Conclusion

The discussions under the previous chapters have thrown light on the nature and concepts of ULG and urban planning laws which serve as a starting point of this study. The objective of this research is to investigate into the roles and responsibilities of ULGs in the implementation of planning laws. Any law, including planning laws, should provide for the creation of an institution responsible for its implementation and equip it with the required technical and financial enforcement

mechanisms so as to realise its objective. This means, ULGs to be actively engaged in the implementation of planning laws and to be able to achieve the purpose of urban development, they should be legally authorised to perform certain roles and make use of certain tools and techniques. In short, urban planning law must clearly define roles and responsibilities of the various government organs involved in the sector.

In this study, I use the term planning law to include laws relating to urban plans, buildings, urban land, expropriation and payment of compensation and environmental laws. Therefore, this Chapter has examined the ULGs' roles and responsibilities in the implementation of these laws. The chapter concludes that in playing their roles and fulfilling their mandates, ULGs face some practical challenges. These challenges are related to low quality of the legislation; weak capacity for implementation of the legislative framework; and nonexistence of detailed plan implementation tools. In almost all the planning legislation problems relating to the quality of legislation and absence of detailed implementation tools are apparent. The building law is clear, detailed and is appropriately supported by the necessary implementation tools, regulations, and directives. However, there are certain practical challenges in utilising these tools so as to achieve the intended objectives. The main factors contributing to the problem include poor qualification, low experience, and lack of professional ethics on the part of staff working in the sector.

CHAPTER 8

Major Findings and key Recommendations on the role of ULGs in the Implementation of Planning Laws

8.1. Introduction

Urban planning, in general, and decisions made under planning law, in particular, touches the life of urban and rural populace in many respects. This is rightly perceived by Rachelle Alterman as follows.

> *"Unlike many other types of civic laws, planning laws, once applied to regulatory planning and development-control decisions, affect not only one or two distinct spheres such as governance, business, or childcare. Because the entire range of human (and nature-based) activities require the use of space, and because space is often also people's major property asset, the procedures, institutions, and especially the rules for controlling of urban and rural development bear effects on a broad range of spheres of life. Some of these effects can be anticipated, many are ancillary or unintended. By affecting the use of most types of land and space, planning laws and especially development control can deeply affect the existing socio-cultural and economic order. They may have dramatic effects on personal health and safety, housing prices, employment opportunities, family life, personal time (spent on travel), and accessibility to public services".*[936]

The above reflection suggests the need for examining the exercise and implementation of planning laws by the ULGs. And as discussed in Chapter One, the focus of the research plan and objectives of the study were:

- To identify and examine the various urban planning laws and regulations in Ethiopia;

936 Alterman 2013 *WBLR* 1.

- To scrutinize the implementation process of ULG's urban planning law, its roles, legal mandates, capability in terms of manpower (professionals), technology and skill; and its institutional set-up (the organizational structure of the urban centre or city administrations);
- To investigate the powers and authorities of the various levels of government in relation to the implementation of the urban planning laws and their vertical and horizontal relationships the control and supervision of higher level over the lower level, if any;
- To identify and examine the involvement of various actors i.e., the public, NGOs, CBOs etc through public participation and the role played by ULGs in this connection in local urban planning law implementation process; and
- To provide a clear demarcation of urban local government's role and present a series of recommendations that will assist a discussion about urban local government's future direction and to propose legislative measures with regard to implementation of urban planning law.

In Ethiopia, the federal and the regional laws vest the role of implementation of planning laws upon the ULGs i.e., ULGs are legally authorised to make decisions emanating from planning laws and its implementation. Therefore, this study embarks on finding out why ULGs are not able to effectively implement planning laws in the ANRS of Ethiopia. Some ULGs of ANRS were the cases studied. The various issues influencing the role and the legal status of the ULGs in the implementation of planning laws based on the conceptual framework guiding the study have been discussed and analysed in the previous chapters of this report. This Chapter incorporates different sections including the following: findings on the roles performed by the ULGs and their capacity in the implementation of planning laws; findings on the institutional framework and planning process; findings on the role played by the Federal government and RS in the implementation of planning laws and other findings general to the study. These findings would be discussed and interpreted to form the conclusion and recommendations parts.

8.2. Findings in relation to ULGs governance system

8.2.1. Findings relating to the status of ULGs

As observed in Chapter Four and as found in literatures, there are three-level government: federal, state/provincial and LG, which is common to all federal systems; however, the place and role of LGs in those systems vary markedly.[937] In some, LG is a constitutionally recognised sphere of government, while in others, it is merely a competence of the state/provincial government.[938]

The study found that in Ethiopia LGs have not been established by federal constitution, but they have been instituted by regional states according to their own Constitutions and governance structures. Specially, the ULGs have no recognition even by regional constitutions as their rural counterpart; instead, they are creatures of regional proclamation. Neither the federal nor the regional constitutions recognise and assign powers, functions, and revenues for ULGs. Nonetheless, each regional government has adopted city proclamations that define the cities' powers and responsibilities.

It is also found that the regional legislations made ULGs as semiautonomous local government entities, having legal personality as corporate bodies with their own political leadership (council) and their own budget. They are administered by their own councils, whose members are directly voted to represent each kebele (ward) within their jurisdiction. They have the right to collect municipal taxes and revenues and mandated to undertake a wide-ranging list of municipal and state functions, the latter under delegation from their regional governments. Yet, as ULGs derive their existence and power from the law enacted by superior level of government, their status is on a subordinate level. They can be regarded as appendages of the regional government. There is also no constitutional guarantee which prohibits the regional government from changing the law that may affect their autonomous functioning.

937 Steytler 2005 *KASJ* 1.
938 Steytler 2005 *KASJ* 1.

8.2.2. Findings relating to the roles played by ULGs

With regard to the roles of ULGs, the review of the relevant legislations confirms that all ULGs through their councils have legislative power. They have the authority to issue local policies and to make decisions which confirm to their powers and responsibilities; to make regulations and guidelines which are necessary for the execution of the policies and plans made by them. They are also granted with the executive and judicial powers they need to administer their locality.

It is also found that ULGs in Ethiopia have dual responsibilities, state, and municipal functions. State functions are delegated by RSs to ULGs, whereas municipal functions are the key functions of ULGs. Municipal functions include, among others, preparation, approval, and implementation of development plans. State functions are financed by regional block grants. All municipal functions are expected to be funded from own local incomes.

The legal instruments also show that the governance and administrative structure of ULGs consist of legislative, executive and judicial organs and most of the ULGs follow the council-mayor system. The governance organ includes the city council and the speaker of the council, the mayors and the mayor's committee, the city manager or the manager of municipal services, a city court and other executive offices and commissions. The council assumes the legislative power and the mayor in whom executive leadership is vested exercises executive authority.

It is also found that all city proclamations, including the ANRS, authorised CC with the legislative power. As a law-making organ, it issues local policies, and makes decisions which conform to its powers and responsibilities. It approves the city plan and ensures its implementation. Likewise, it makes regulations and guidelines for the implementation of its decisions and policies. However, there are

no instances in the ANRS where a city issued any policy or made any regulations and guidelines in this regard.

As representatives of the people, CC has the power to elect the city mayor, a speaker and deputy speaker from among its members. In principle and as provided by law, the mayor shall be elected from among the members of the CC on the recommendation of the political party or coalition parties that constitute a majority seat in the CC. Nevertheless, it is found that mayors are appointed by higher levels of administration rather than elected by members of the CC. They are appointed on the basis of their political commitment and loyalty to the ruling party. Thus, the mayor vacates his/ her mayoral position or council membership not by the CC but by the decision of the ruling political party.

The other finding in relation to ULGs governance system is that a mayor of a city has dual accountability: to the city council and to the regional chief administrator. The motive behind mayor's accountability to the regional government is to control the city administration. Prioritisation of upward accountability at the cost of community needs and concerns undermines the autonomy of the city.

In a similar fashion, the powers of appointment and removal of the managers and deputy mayors is not the mayor's exclusive power. Without the consent of the ruling political party the mayor cannot appoint or remove managers and deputy mayors of any city.

CC has also over sighting function. It can call the mayor, the mayor's committee, and other officials for questions and can examine their performance. However, as the members, including the standing committee and the deputy speaker, have not provided with any kind of payment or incentives, they do not take the task seriously.

8.2.3. Finding in relation to the professional qualification of City Managers

It is found that in all urban centres of the ANRS, the manager of city services, who are expected to be professional and politically neutral, are selected not based on

their professional qualification and appropriate experience. Rather, political affiliation and commitment are the key criteria for filling the position. They are often selected owing to their political stand, background, and personality. It is also seen that in some urban centres, non-professionals are appointed as managers as a reward to their loyalty.

In addition to their deficiency in profession and experience, all city managers in the various cities of RS are required to be party members and take active role in politics. In studying the urban problems in Ethiopia, Mihiret noted that the modus operandi of municipal government and cities are run by amateurish politicians rather than a competent cadre of professional managers.[939] It is also found that the political aspect of manager's activity determines manager's security of tenure. Obviously, the term of office of the manager is not determined based on his/ her performance but based on his/ her political allegiance and commitment.

The study also found that the service of managers is not made by employment contract, but by appointment made by politicians where their duration is unknown and not fixed, and usually short. Short period of service does not enable a manager to have long term planning and strategic thinking. Moreover, such situation compels him/ her to exert more of the energy to political activity rather than taking on measures to improve service delivery and address community issues.

8.2.4. Finding in relation to ULGs judicial powers

As aforesaid, all city proclamations of the RSs provide for the organization of ULGs at different levels with legislative, executive, and judicial powers. Regarding judicial powers the ANRS city proclamation provides for the organisation of city courts, their powers and functions, mode of operation and the manner of appointments of the judges. According to the law, a city court exercises exclusive jurisdiction over urban cases which includes matters relating to or arising from such cases as implementation of city plan, building construction as well as

939 Endale H *Urban Governance with respect to Cities' Competitiveness in Ethiopia* 17.

housing and land management laws; issues of whether houses and urban lands have been utilised for prescribed purposes and issues connected with municipal services. The finding in this connection is that the practice of ULGs in establishing city court is not satisfactory. In the ANRS, only three city administrations are established city courts.

The other finding in this connection is that one of the criteria for the selection of judges by the judicial administration council requires loyalty of candidate to Federal and Regional Constitutions which is ambiguous, subjective and a politically motivated supplement. It may be appropriate to say loyalty not to the constitutional order but to the ruling party. It's ambiguous because it is difficult to determine whether a person is loyal to a constitution or not, especially at the time of selection.

8.2.5. Findings relating to IGR

Even though, there is constitutional division of powers among the levels of government which requires coordination, integration and collaboration, the Constitution of ANRS has not provided any guidance on regulating the IGR that may exist between the RS and LGs and between/ among LGs. Yet, the city proclamation of the ANRS, though in generic terms, has dealt at with IGR at regional level. The proclamation attempted to incorporate explicit provisions for regulating IGR issues. It provides the relations of ULGs with three entities: *first,* with the federal or regional governments and with other organisations; *secondly*, with the residents; and *thirdly*, with the neighbouring rural districts. It is found that these relations are not dealt with in detailed manner and have no guiding principles. Comparatively, other city proclamations such as the ONRS, SNNPR, and TRS have better dealt with the issue of IGR. They provide general principles which guide the relationship between the ULGs and RS. According to them, the relationship between the cities and regional government shall be guided by the spirit of cooperation, partnership, collaboration, and the rule of law.

The relationships between the ULG with the neighbouring rural district demands the establishment of urban-rural consensual joint committee. According to the

ANRS city proclamation, the task of the committee is to receive and examine joint issues which intertwine the urban and rural areas in development and social respects; and to seek solution by presenting its recommendations to the councils concerned. However, it is found that there is a problem where expansion areas by urban centres for future development require the taking of rural lands from neighbouring districts. In ANRS, such kinds of issues are to be decided by the council of regional government where the concerned RLGs do not take part. Such unilateral decision of the regional council undermines the autonomy of the neighbouring RLGs; in that; they have no say or suggestion in deciding the matter or they lose their territory for the growth which is going to be under the control of the city administration. Seeing the practice of other region, such as TRS, demarcation of city's border is made by the agreement made between the city administration and the neighbouring RLG or by the regional government where, the decision of the regional government comes only if the two parties disagree with the matter.

8.3. Findings in relation to ULGs' role in implementing planning laws

The planning processes recognized under Proclamation 574/2008 include initiation, preparation, approval, implementation, modification, and revision of urban plan. Both city proclamations and the urban plan proclamation grant the authority to initiate, prepare, revise, modify, approve, and implement urban plans to the ULGs. The idea behind these authorities is that democratic rights of people will not be effective without exercising their power to plan.[940] However, this study found some issues in connection with the exercise of these rights by the ULGs.

8.3.1. Findings in relation to Plan initiation

Regarding plan initiation, the assumption is that the idea shall come either from community, investors, or publicly authorised organ, such as a CC, and it shall be participatory. It must adhere to the principle of participatory planning as

940 See FDRE Urban Planning Implementation Manual p. 14.

pronounced in the laws.[941] Yet, it is found that most of the planning ideas in the country are not originated from the community rather it is government driven. As remarked by Zerfu H, LDP is not originated from the community for most urban centres while community discussion and feedbacks are collected from vision setting, preparation and approval phase still, LDP's have been done with more technocrat-oriented approach without meaningful community participation.[942] Furthermore, there is no procedural instrument as to how the members of the community, interested persons or investors to initiate plan preparation or changes on existing plan.

8.3.2. Findings in relation to Plan preparation

Both the federal urban plan legislation and regionally adopted city proclamations mandate the authority to prepare and review their respective SP and LDPs to the ULGs. If they have the required skill and capacity, the ULGs can prepare the plans by themselves otherwise. They have also the option to hire external consultants and cause the preparation of the plan. One of the important requirements for plan preparation is the engagement of the public in the process. In this regard, both legislations require the public to actively participate in the preparation stage. They necessitate that the process of plan approval shall not be effected earlier to a public hearings to be conducted at a convenient location and the procedure of such hearing shall be transparent and adequately communicated to the public at large, particularly to the kebele councils and community-based organizations. The suggestions and objections, according to their significance, are required to be recorded and taken up as inputs to rectify the plan.

However, it is found that the laws do not provide as to how many times the hearing is to be conducted and how it is going to be recorded and utilised as inputs. Proclamation 574/2008 merely states that '*'the particulars will be determined by law''*. Yet, no law is made in this regard.

941 Note: The constitution, City proclamations and the Urban Plan Proclamation call for participatory planning.

942 Zerfu, 2016 *Report Supported by the World Bank* 73.

The other finding in this connection is that draft plans and documents for presentation are prepared in English but presented in local languages. This has its own limitation for the public, especially for the local representatives of the public, as they are not familiar with the convention of English use.

8.3.3. Specific findings of public participation in planning

Ethiopia looks to have a plethora of policies and initiatives that encourage public participation in development efforts, as noted in the preceding section of the research. People have the right to participate in national development and to be consulted on policies and programmes that affect them, according to the constitution and various federal policy texts. However, studies in the field demonstrate that involvement in planning is not practised to the point of capturing its benefit. Studies demonstrate that there appears to be issues in leveraging participation as a tool of effective planning to a suitable level in the country as a whole and specifically in ANRS. It was found that public participation was the most underestimated problem in the planning process. In addition, challenges with plan execution included a lack of qualified employees, minimal civic participation, and integration with other sectors. Research also found that the quality of plans was affected by the outcome of ineffective public participation techniques (the lowest level of public participation method was applied i.e., the consult and inform method).

8.3.4. Findings in relation to Plan approval

The Urban Plan Proclamation and the ANRS City Proclamation provide plan approval authority for the respective ULGs. These legislations state that the final draft of structure and the local development plans of urban centres shall be deliberated upon and approved by their own CC. Approval of an urban plan at reasonably short period of time after the preparation of the final draft is inevitable on grounds that the plan becomes legal and binding.

However, there are certain problems found out in this study. The requirement of public inquiry and the incorporation of ideas and suggestions emanating from the hearing; the disagreement within the members of plan approving entity, i.e. the

regional UPI and the concerned ULG; the incompetence of the consultants and the strict requirements set down by the regional government and by the ULGs; financial constraints etc. are some of the causes for the delaying of the approval process. In connection with this, there are practical cases[943] of slow processes in the study area, both in preparation and approval and which resulted into out-of-date plans by the time they gained statutory approval. It is noteworthy to mention that the data collected for preparing the plans in these areas is out of date and not relevant. [944] Both the legislations governing the issue and the contractual agreements made in this regard are deficient in addressing the issue.

The Urban Plan Proclamation declares that the RS or the federal government shall have the power to suspend an approved plan which does not conform to the basic principles of urban planning specified in the Proclamation. The finding observed in this connection is that even if the ULGs desire to approve the plans, practically, it is not possible for them to do it unless RSs, through their UPI, check the draft plan and give affirmation for approval by the ULGs. There are instances where the plans travelled back and forth between the regional UPI and the ULGs where in in each entity's hand it takes substantial period, which, in turn, causes delay of approval of plans.

8.3.5. Findings in relation to Plan implementation

Under the Urban Plan Proclamation and the City Proclamation of the ANRS, the task of implementing urban plan is assigned to the ULGs. Prohibition, control, authorisation or granting of permission, expropriation and payment of compensation are the major powers which the ULGs exercise in implementing urban plans. It is noteworthy to state that appropriately approved plans can be easily implementable. Besides, plan implementation related tasks should be undertaken in accordance with relevant laws, rules and regulations. The major finding in this connection is that the urban plan proclamation and the city

943 Note: In the ANRS Gondar city SP preparation was started in 2014 but completed in 2020 and Kombolcha city SP Preparation was started in 2017 but not completed until now even the situational analysis report has not been presented to the city administration.

944 Note: In these areas, data collection was conducted in the beginning of the year but many things got changed at preparation time and data would not be relevant unless it is updated.

legislation of the ANRs lack the appropriate rule, regulations and working procedures to deal with certain issues like participatory planning, development freeze, in the provision of development authorisation, EIA, etc. all these will be discussed under the planning laws and legislation part.

8.4. Findings relating to the feature of planning laws

As aforesaid, in the previous chapter, legislative quality relies heavily on the mechanisms and processes prescribed in the legislation. Although, Proclamation 574/2008 states several processes and procedures for regulating development undertakings in urban centres, it is found out that these processes and procedures are not stated in a clear manner. For instance, it provides procedures relating to urban plan initiation, preparation, revision and approval. It also provides for procedures of issuance, rejection and suspension of development and demolition permit. Furthermore, it states about processes of granting or denying certificate of conformity and the payment for the service. In all these instances, it is found out that, the proclamation does not clearly define the processes in a comprehensible manner. Instead, it uses expressions such as *“particulars determined by law”, “specified by law”* or *“prescribed by law”* in order to comprehend the intended outcome of the specific provision.

Moreover, it is found that there is no any law, rule or regulation as intended by the proclamation is being made. Moreover, the entities to make these laws are not established by the enabling legislation. This means, the Proclamation does not state as to which organ or entity is responsible for making of such laws.

The other finding in this connection is that the proclamation empowers the RSs and the Federal Government to exercise certain non-law-making powers. So, there is a gap as to who is authorised to adopt the laws envisioned by the proclamation. In conclusion, it can be perceived that ULGs neither have the laws required for implementing the Urban Plan Proclamation nor do they have the authority to make it.

8.5. Findings in relation to human and financial resources

For implementing any legislative framework, the setting up of adequate human and financial resources is a requirement. In this study, it is found that there are gaps relating to competent human resources and adequate finance, which are key factors, for attaining the implementation of planning laws. The study shows that financial and the human resources of the ULGs are unequal with what they are expected to do in respect of the urban plans. For example, a study conducted during the preparation of SP for Debrebirhan town in the ANRS shows that the city administration has a serious shortage of manpower. Data collected from offices reveal that only 20% of positions are filled by workers in the Kebele administration offices; the urban development and industry office has filled only 50% of its work force; in the BO office, only 40% is filled by workers. When we see department wise, for instance, the urban land tenure administration and information case team required having 9 employees, but it has only five of them. Similarly, plan implementation and beautification core process have 5 (only 41%) employees out of twelve. At kebelle level five planners are required but it is almost impossible to fill the position.[945]

It is found that ULGs have been assigned certain duties and responsibilities but they lack resources, human capacity, and capabilities.[946] There appears to be a clear need to improve the capabilities of local government if the expected urban development at local levels is to be effectively managed.[947] It is also stated that insufficient human skills at strategic levels to undertake comprehensive planning, particularly at local level, is the weakness of urban centres.[948] Moreover, the study found that there is no integration between the RSs, ULGs and universities in setting curriculum, based on clearly identified need assessment, for the required competencies.

945 Note: ANRS Debrebirihan city administration SP, prepared in the year 2014 by DAYA consult.
946 See FDRE, MUDHC National Urban Development Spatial Plan (NUDSP) document p. 268.
947 See FDRE, MUDHC National Urban Development Spatial Plan (NUDSP) document p. 268.
948 See FDRE, MUDHC National Urban Development Spatial Plan (NUDSP) document p. 291.

With regard to their capabilities, it is found that the staffs at various departments of the ULG lack the required skill. For example, many of the officials working in the BO do not know which laws to be observed while disposing of their function. In this regard, respondents were asked to enumerate legal documents to which they refer while providing a service to the public. Out of nine respondents only one respondent said that he refers to the constitution, federal and regional proclamations, rules, regulations and directives relating to his duty. Others simply stated that they observe legal procedures but do not know the exact laws. All these show that public officials especially at kebelle level serve their people without the observance of the rule of law.[949]

Generally, land lease revenue is the finance source of ULGs. These land-lease revenues should help finance infrastructure for urban development; but it is found that revenue collected from land lease serve only to cover the daily expenditures of the ULG. The 2014 WB Report for ULGDP II, finds that municipal revenues "are simply not sufficient to meet the rapidly growing municipal functions".[950] According to this report, the current system of relying on ULG's own source of incomes to meet most, if not all, ULG's institutional and infrastructure/service delivery mandates is not feasible.[951] Without extra funding, ULGs will operate at a sub-optimal level and not fulfil their roles as economic growth engines for the country.[952]

The study also found that lack of adequate financial resource, on the part of ULGs, have undesirable impact during expansion activities that demand land from neighbouring rural areas. This usually happens if holders of the rural land do not want to be relocated by public authorities with low financial compensations. Such situation causes delay or, in extreme case, non-implementation of development plan by the ULGs.

949 See ANRS Debrebirihan city administration SP 2014.
950 See ULGDP II Technical Assessment report p. 19.
951 See ULGDP II Technical Assessment report p. 19.
952 See ULGDP II Technical Assessment report p. 19.

8.6. Findings in relation to the building code

The Building Proclamation of Ethiopia is a comprehensive law. It has implementation regulation and directives. According to these laws, all construction works such as erection of new building, alteration of use of old building, demolition, renovation (except painting and finishing works), expansion, modification and construction of temporary building require permit.[953] A building officer (BO), on behalf of the city administration, or his delegate, is responsible to carry out the building proclamation by permitting or rejecting application relating to these activities.

The main finding relating to the exercise of the power of BO and its delegate in implementing the building code as provided under the law is attributed to the limited capacity. This is evidenced by the description of many building permit seekers. They complain that the authorities at the construction permit departments hold the application for longer period and usually extend the normal time period especially, if the building design is complex. Moreover, they lack the ability to clearly state their remarks and suggestions in case of rejection or rectification issue is involved in the application. Mainly, the BOs or their delegate who work in the construction permit departments are less competent than the people that prepare the designs and apply for the construction permits. The other complaint raised by permit applicants that hinder the processing of building permit is the dishonest practice of workers in the permit department. According to the SECR final report, one of the challenges to enforce the building code is the lack of professional ethics on the part of staff to be assigned as construction supervisors and building controllers.[954] And it is for these reasons tha many say that acquiring a building permit in Ethiopia is a major challenge for aspiring contractors and developers.

953 See Building Directive No. 5/2003 article 10(2).
954 See FDRE MUDHC & ECSU State of Ethiopian Cities Report p. 167.

8.7. Findings in relation to land laws

ULGs are in charge of dealing with urban land matters. Land development, planning and information, provision of building permits and land administration matters (keeping records, underpinning secure tenure, and facilitating transactions) are the domain of ULGs. Proclamation 721/2011 necessitates that urban land parcels for tender shall be prepared in conformity with urban plan and shall have access to basic infrastructure.[955] They must be parcelled, delineated, and assigned with unique parcel identification number.[956] Hence, ULGs are required, among other things, to provide serviced units of urban lands for varying uses; for private or public development activities. However, in this connection, ULGs face certain challenges. The main challenge of the ULGs is the shortage of land within the territory of the urban centre for providing land and infrastructure for housing and other developments. Mostly, urban centres do not have reserves of vacant land of such size, and they usually expropriate land from rural land holders around the city. If land is available with in the territory of the urban centre, it requires adequate finance for the provision of infrastructure and if land is acquired by way of expropriation from rural farmers, again substantial amount of money for compensation is needed. It is found that, most of the time, due to these reasons, ULGs only make parcel of lands without access to basic infrastructure.

It is also found that the financial costs for compensation and infrastructure provision are generally not recovered from low lease payments by urban land recipients. Such situation impedes the ULGs to play their role in urban development. It is also important to note that as the majority of the population could not pay for the cost, they resort to informal housing.

The other land related issue considered in this study is in relation to exercising expropriation of rural lands, ULGs do not have any mechanism of converting land rights held by farmers into urban rights. When any rural territory is planned for urban growth area covered by an urban plan, land holders of the territory are subject to expropriation. Usually, rural land holders are not benefited from the

955 See Proclamation No. 721/2011 article 8(b) and (c).
956 See Proclamation No. 721/2011 article 8(d).

conversion of land holding rights of rural tenants into urban land rights. The practice also shows that they do not gain from the conversion and resulting increases of land values.

The study also found that the existence of wrong interpretation and assumption that all land is public property disregarding land value. Such unjustified assumption reduced the amount of compensation paid to those people expropriated form their land. As the rural land holders are dissatisfied with the amount and type of compensation, there appears to be a difficult situation for effecting land clearance activities by the ULGs which, in turn, causes delay in implementation of urban development plans.

In this connection, a study found that the great majority of the local landholders (91%) in the peri-urban areas wish to have either land-to-land compensation from other areas or preserving reasonable plots of land within the urban boundary.[957]

8.8. Findings in relation to environmental laws

The other finding in this study is related to ULGs' role in implementing environment related planning laws. EIA Proclamation is a tool for harmonious and integrated environmental, economic, social, and cultural considerations into decision making processes in a manner that promotes sustainable development. Although, ULGs are the real owners of the urban environment, or at least, as they are closer to the natural resources and to the sources of pollution, yet they have not been assigned with tasks under the proclamation. It is found that under the proclamation nothing has been mentioned about the role of ULGs in the EIA process.

The other issue relating to environmental management is the role of ULGs in disposing wastes. Legally, waste management responsibility is designated to the ULGs. It is agreeable that appropriate solid waste management is highly needed in all urban centres, and ULGs which are classified as service providers which are

957 Achamyeleh https://www.intechopen.com/ 6 accessed on 24/04/2020

appropriate to handle the issue as they are the nearest to the problem. However, there are certain limitations which could delay the execution of this sector's activity and which may hamper the role of ULGs in the implementation of planning laws. Mainly, these constraints relate with acquiring of land and the financial limitation to handle compensation issues. The other problem found is relating with IGR and the legal constraints to handle cross- jurisdictional issues. It is also found that the technical capacity of staffs in the ULGs in selecting the appropriate waste disposal site usually lacks professional competence.

8.9. Key recommendations

From the foregoing discussion a few recommendations are made on the role and status of ULGs in the implementation of planning laws. The recommendations are made in the context of seven areas of concern which arise out of the earlier discussions.

i. ULGs derive their existence and power from the law enacted by superior level of government and their status is on a subordinate level. They can be regarded as appendages of the regional government. There is also no constitutional guarantee which prohibits the regional government from changing the law that may affect their autonomous functioning. For example, the city proclamation provides for the dissolution of the CC by the RG if a grave act prejudicial to the public interest is committed. And the RG can designate a provisional city administration. But the ground for the dissolution of the CC is provided in generic terms. Therefore, it is recommended that, the autonomy of the ULG must be guaranteed and entrenched by way of constitutional amendment.

ii. As per the ANRS city proclamation, the mayor shall be elected from among the members of the CC on the recommendation of the political party or coalition parties that constitute a majority seat in the CC. However, it is found that mayors are appointed by higher levels of administration on the basis of their political commitment and loyalty to the ruling party. Thus, the mayor vacates his/ her mayoral position or even his/ her

council membership not by the CC but by the decision of the ruling political party. Therefore, it is recommended that, although it seems idiosyncratic to implement, laws must be respected.

iii. The planning laws governing urban plan processes should be adopted in such a way that avoids unnecessary overlap of the planning mandates of the UPI and ULGs. It shall articulate the autonomy of the ULGs and the mode of technical support by the UPI. The regional proclamations, city proclamation and UPI establishment proclamation, must have consistent and coherent correlation with the federal and regional constitutions and the federal urban plan proclamation. Planning institutions and ULGs should work in a coordinated manner and must avoid confrontation and conflict by mediation. Moreover, the ANRS City Proclamation shall contain general principles which guide the relationship between the ULGs and RS and the relationship between the cities and regional government (its organ such as the UPI) shall be guided by the spirit of cooperation, partnership, collaboration and the rule of law.

iv. ULGs have been provided with plenty of autonomy under the City Proclamation to be engines of national growth and designer of sustainable urban development. However, this requires capable and competent leadership. The capacity of members of the CC, the mayor and deputy mayor and the city manager should be properly built, through continuous training, to inspire them that they are the only responsible authorities to address the problems and needs of the public. They need to be refined with constant training and workshops so that they would be equipped with the knowledge, skills and competencies necessary to carry out the development agenda of their urban centre. Such training will also improve councillors' capability and quality of deliberations during their meetings.

v. It is found that in all urban centres of the ANRS manager of city services, who are expected to be professional and politically neutral, are selected not based on their professional qualification and appropriate experience. They are often selected owing to their political stand, background, and personality. Commonly, they are required to be party members. It is also seen that in some urban centres, non-professionals are appointed as managers as a reward to their loyalty. Therefore, it is recommended that city manager's assignment must be based purely on merit. The position holders should have the relevant expertise and experience. Furthermore, the position of the city manager must be detached from political activities. Likewise, the powers of appointment and removal of the managers and deputy mayors is not the mayor's exclusive power. Without the ruling political party consent the mayor cannot appoint or remove managers and deputy mayors of any city. Hence, analogous recommendation, as above, is forwarded.

vi. The ANRS city proclamation provides for the establishment of city courts. A city court exercises exclusive jurisdiction over urban cases which includes, among others, matters relating to or arising from such cases as implementation of city plan. However, it is found that the practice of ULGs in establishing city court is not even-handed. In the ANRS, only three city administrations are established city courts. Therefore, it is recommended that other ULGs in the region must establish their city court. As the judges of these courts have basic knowledge on policies and strategies of trade, industry, investment and urban development of the country, they have a better position to handle the stated urban cases than the regular courts and bring justice to the needy. They can also reduce the burden of the regular courts.

vii. The IGR issues, in ANRS city proclamation, are not provided in detailed manner and have no guiding principles. Somewhat, other city proclamations such as the ONRS, SNNPR and TRS have better dealt with the issue of IGR. They provide general principles which guide the

relationship between the ULGs and RS. According to them, the relationship between the cities and regional government shall be guided by the spirit of cooperation, partnership, collaboration, and rule of law. Hence, it is suggested that the ANRS should amend its city proclamation and incorporate detailed guiding principles and procedures so that the issue of IGR can be handled smoothly.

viii. Although the power to initiate the idea of urban plan is provided by law to the community, investors, or publicly authorised organ, such as a CC, so far there is no procedural instrument as to how the members of the community, interested persons or investors initiate plan. It is also found that most of the planning ideas in the country are not originated from the community rather it is government driven. Therefore, it is recommended that the federal government or the RS shall prescribe a law which details the implementation of the particular provision in this regard. The law shall have detailed steps and requirements, manners and means of execution with regard to public participation.

ix. Both the federal urban plan and the RS city plan proclamations mandate ULGs to prepare urban plan for their city. The laws also oblige the process to be participatory. And the ULGs required conducting hearing in this regard. However, it is found that the laws do not provide as to how many times the hearing should be conducted and how it is going to be recorded and utilised as inputs. Proclamation 574/2008 merely states that '*'the particulars will be determined by law"*. Yet, no law is made in this regard. Therefore, it is recommended that the intended law shall be made. The intended law must also deal with language issues to address the issues relating to draft plans and documents for presentation which usually are prepared in English language but presented in local languages. This has its own limitation for the public, especially for the local representatives, as they are not familiar in English it excludes them from participating meaningfully or substantively in the process.

x. It is the power of ULGs, through their respective CC, to approve urban plans. However, there are four major problems found in this study which cause delay of the approval; *first,* the requirement of public inquiry and the incorporation of ideas and suggestions emanating from the hearing; *second,* the disagreement within the members of plan approving entity; i.e., the regional UPI and the concerned ULG; *third*, the incompetence of the consultants and the strict requirements set down by the regional government and by the ULGs; and *fourth,* financial constraints are the causes for the delaying of the approval process.

xi. The recommendation stated above serves the first problem. Regarding the second problem, it is stated earlier in this sub section that the regional proclamations, city proclamation and UPI establishment proclamation, must have consistent and coherent correlation with the federal and regional constitutions and the federal urban plan proclamation. Planning institutions and ULGs should work in a coordinated manner and must avoid confrontation and conflict by mediation. Regarding the third issue, the criteria for the selection of consultants must be made with due diligence and must check the performance and litigation history of the consultants. The attached professional documents of the crew must be scrutinised and where the selection committee set by the city administration lacks capability and skill the assistance of the regional planning office shall be utilised.

xii. Prohibition, control, authorisation or granting of permission, expropriation and payment of compensation are the major powers which the ULGs exercise in implementing urban plans. All these require implementation rules, regulations and directives. However, the ANRS lack the appropriate rule, regulations and working procedures to deal with issues like participatory planning, development freeze, development authorisation and EIA. Therefore, it is recommended for the ULG to prepare or cause the preparation of these instruments.

xiii. Proclamation 574/2008 provides procedures relating to urban plan initiation, preparation, revision and approval, issuance, rejection and suspension of development and demolition permit and many more procedures and processes. However, it is found that, the proclamation does not clearly define these processes. Instead, it uses expressions such as "*particulars determined by law", "specified by law*" or *"prescribed by law"* in order to comprehend the intended outcome of the specific provision. Hence, it is suggested that these laws should be passed as soon as possible. Besides, as the entities that are responsible for making these laws are not established by the enabling legislation, it is recommended that these organs should be created and assigned with the appropriate authority.

xiv. The study found that there are gaps relating to competent human resources and adequate finance, which are key factors, for attaining the implementation of planning laws. It means, financial and the human resources of the ULGs are unequal with what they are expected to do in respect of the urban plans. Empirical evidence (a study conducted during the preparation of SP for Debrebirhan town in the ANRS) revealed that the city administration has a serious shortage of manpower. Moreover, the study found that there is no integration between the RSs and universities in setting curriculum for the required services. Therefore, it is recommended that the ANRS, the ULGs and capacity building institutions, such as the ECSU, must work together to address human resources capacity at city level. Likewise, to address the skill related problem, it is suggested that the above-mentioned government entities shall work in a coordinated manner and shall exert a combined effort.

xv. By and large, land lease revenue is the finance source of ULGs. These land-lease revenues should help finance infrastructure for urban development; but it is found that revenues collected from land lease

serve only to cover the daily expenditures of the ULG. Therefore, it is recommended that additional funding has to be allocated for the ULGs. The other financial challenge arises due to ULGs' shortage of land within their territory for providing land and infrastructure for housing and other developments. If land is available within the territory of the urban centre, it requires adequate finance for the infrastructure provision and if land is acquired by way of expropriation from rural farmers, again substantial amount of money for compensation is needed. To address such problem similar recommendations, as above, is forwarded. Mechanism of converting land rights held by rural land holders into urban rights is also recommended to address the issue of compensation.

xvi. EIA Proclamation is a tool for harmonious and integrated environmental, economic, social, and cultural considerations into decision making processes in a manner that endorses sustainable development. As ULGs are the real owners of the urban environment, and as they are closer to the natural resources and to the sources of pollution, it is recommended that they should be legally engaged and allotted with tasks relating to the EIA process. Moreover, to deal with limitations relating to solid waste management, (acquiring of land to build disposal sites; financial limitation to handle compensation issues; lack of technical capacity of staffs; and constraints to handle cross-jurisdictional issues) recommendations made to correct capacity building problems and enhancement of financial strength by providing additional funding mechanism would suffice.

CHAPTER 9

Conclusion

The overall objective of this thesis was to investigate the role and legal status of ULGs of ANRS in implementing the urban planning laws. The question *''why are the ULGs not effective in the implementation of urban planning laws in their areas of jurisdictions?''* formed the core of the problem statement of the thesis. The study identified several problems relating to the role and legal status of ULGs in the implementation of planning laws; these laws can be merged into five major categories – role and legal status, planning processes, planning law, and ULGs' capacity in human and financial resources. These elements were based on the assumption that ''to understand the implementation of any law, including planning laws, it is essential to study its function in the context of the system as a whole''.

The examination of the federal and regional constitutions showed that ULGs are not constitutionally recognised, and they are creatures of regional proclamation. Despite the fact that the Constitutions fall short of recognizing the ULGs, or providing constitutional rights or protections to ULGs, each regional government has enacted city proclamations that postulate the cities' powers and responsibilities. Pertaining to their role, the assessment of the city proclamation of the ANRS confirms that all ULGs through their councils have legislative power. They have the authority to issue local policies and to make decisions which fall under their powers and responsibilities; to make regulations and guidelines which are necessary for the execution of the policies and plans made by them. They are also granted with the executive and judicial powers they need to administer their locality. ULGs in Ethiopia have dual responsibilities: state and municipal functions. State functions are delegated from RSs to ULGs, whereas municipal functions are the exclusive functions of ULGs. Municipal functions comprise, among others, preparation, endorsement, and implementation of development plans. State functions are financed through regional block grants. All municipal functions are expected to be funded from own local incomes.

The urban planning processes were studied based on a comprehensive review of the urban plan proclamation and other planning laws. The review of the national planning laws indicated that there are certain gaps in terms of quality of the legislations. It was found that there are no clear rules and regulations which guide urban plan revision and approval processes. The legal subject matter of the study includes legislations governing urban plan, urban land, expropriation, building, and environment.

Even though they lack express constitutional recognition, ULGs have a legal status that allows them to carry out their planning responsibilities. However, the assessment of the materials of the study revealed that while ULGs studied are better positioned than other stakeholders in areas of their jurisdictions, they are not effective in the implementation of urban planning laws. The problem identified were low financial capacities of local bodies, weak capacities of human resources, organisational structure, and lack of comprehensive regulations for carrying out certain provisions of the planning processes and procedures.

By the way, in the year 1989, a workshop regarding decentralisation in Sub Saharan Africa (SSA) was held in Italy and the participants concluded as follows.

> *"decentralisation of planning and decision making from national to regional and local levels is underway (to some extent) in all countries with the aim of improving effectiveness and gaining a broader involvement and commitment from the communities being served (the ''bottom-up'' approach to decision making, management and accountability). However, the process must rest on real devolution of power to local levels, rather than the mere illusory practice inherent in de-concentration or field administration of central government".*[958]

958 Report prepared jointly by the World Bank and the Istituto Italo-Africano ''Strengthening Local Governments in Sub-Saharan Africa'' (Proceedings of Two Workshops Held in Porretta Terme, Italy March 5-17, 1989) Page ix.

They further supposed that,

> *"along with sharing power with the local governments, the central government must provide them with the financial, legal, institutional and managerial resources they need to fulfil their duties. This involves greater freedom to set the rates and type of taxes and fees. It also involves improved capacity to collect revenues. To this end, staff and institutions must be developed. This can be achieved through; (1) training at all levels; (2) identifying and applying incentives to attract and retain qualified staff; (3) clearly defining responsibilities between levels of government and coordinating their activities."*

The above stated conclusions and the recommendations outlined by the participants of the workshop were in harmony with the recommendations forwarded under this study. Capacity building measures for the staffs and the city administrator entities, such as the members of the CC; improving the legislative quality of planning laws and adopting comprehensive rules and regulations in the area; enhancing the financial capacity by providing additional funds; and creating clear legal instruments (proclamations, rules and regulations) which govern IGR issues by clearly defining the authority and responsibilities of each entity in the relation are the main recommendations made under this thesis.

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