

THE PREROGATIVE OF THE EMPEROR TO DETERMINE POWERS OF ADMINISTRATIVE AGENCIES*

by

*H. E. Ato Aberra Jembere, B.A., LL.B.***

“The Emperor determines the organization, powers and duties of all ministries, executive departments and the administrations of the Government...”

Article 27 of the Revised Constitution.

Introduction

The term “administrative agencies” is used in this article to denote those governmental or public authorities created either by an order,¹ general notice,² or legal notice³ as autonomous bodies, distinct from a ministry, a department or a branch thereof, or a court, or a legislative body. Administrative agencies are called in Ethiopia either a board,⁴ authority,⁵ office,⁶ commission,⁷ municipality,⁸ administration,⁹ corporation,¹⁰ committee,¹¹ institute,¹² organization,¹³ or agency.¹⁴

Administrative agencies, as repositories of executive, quasi-legislative or quasi-judicial powers, affect the rights of private parties through either administration, adjudication or rule making.¹⁵

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** Secretary - General to the Council of Ministers with the Rank of Vice-Minister.

1. Civil Aviation Order, 1962, Order No. 25, *Neg. Gaz.*, year 21, no. 17.
2. Awash Valley Authority Charter, 1962, General Notice No. 299, *Neg. Gaz.*, year 21, no. 7.
3. Public Service Pensions Commission Charter, 1962, Legal Notice No. 250, *Neg. Gaz.*, year 21, no. 7.
4. The Imperial Board of Telecommunications of Ethiopia.
5. The Ethiopian Electric Light and Power Authority.
6. The Post Office.
7. The Public Service Pension Commission.
8. The Municipality of Addis Ababa.
9. The Ethiopian Antiquities Administration.
10. The Grain Corporation of Ethiopia.
11. The Investment Committee.
12. The Institute of Agricultural Research.
13. The Ethiopian Tourist Organization.
14. The Central Personnel Agency.
15. In this article we are not concerned with the administrative process by which the administrative agencies carry out their task of adjudication, rule making, and related functions, or with the law - administrative law - which governs the powers, procedures, and judicial review of the acts of the administrative agencies.

In this study we are concerned with the following questions: What form of legislation should be used to create an administrative agency? Under what authority should such legislation be issued? To what extent may powers be granted to administrative agencies by an Imperial order under Article 27 of the Revised Constitution? Do such powers as may be granted to administrative agencies under Article 27 of the Revised Constitution include executive, quasi-legislative or quasi-judicial powers?

In order to answer these questions, the writer of this article attempts: (1) to draw the line between the powers that may be granted by an order and those which must be conferred by a proclamation or decree; and (2) to correlate the prerogative of the Emperor in determining the powers of an administrative agency with the constitutional limitations provided in the Revised Constitution of Ethiopia.

To this end, we must examine the relevant historical development of the Ethiopian legal system, the multidimensional powers of the Emperor, and the constitutional definitions of the manner in which various powers may be granted to administrative agencies. However, the analysis is of a preliminary nature, because of a lack of materials and cases on Ethiopian constitutional law.

The thesis the writer of this article attempts to advance may be summarized:

- a) Matters dealing with the organization and determination of duties and powers which do not involve regulatory power, police power, or powers regulating matters of public finance may be dealt with in the form of an order under Article 27.
- b) Effective delegation to administrative agencies of regulatory powers, police powers, and powers regulating matters of public finance, requires an enabling proclamation, under Articles 34 and 88, or a decree, under Article 92 of the Revised Constitution in cases of emergency that arise when the Chambers are not sitting, and subject to the approval of the Parliament at its subsequent session.
- c) Where an order under Article 27 has apparently delegated regulatory, police or financial powers to an agency, appropriate enabling legislation is necessary before the delegation can become effective.

Having thus formulated a basis on which to predict whether a particular delegation of power to an administrative agency granted by an order under Article 27 would be legally effective in the absence of enabling legislation enacted in the form of a proclamation or decree, a special study of the powers granted to the Awash Valley Authority (AVA) is made. The purpose of this study is to give a concrete example of the general analysis presented. It is found that some provisions of the Awash Valley Authority Charter are immediately effective, whereas others require further legislative action to become effective, if the thesis of this article is accepted.

PART I: GENERAL CONSIDERATIONS

I. The Prerogative of the Emperor

A. Historical perspective - separation of powers

We first study the prerogative of the Emperor from a historical perspective, to see if it is possible to determine some lines of development. For the purpose of

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this article, the legal history of Ethiopia can be divided into three general periods: (1) Pre-1931 Constitution, (2) Post-1931 Constitution, and (3) Post-Revised Constitution of 1955. The powers exercised by the Emperor in each period in determining the organization and powers of administrative agencies vary.

1. Prior to 1931 Constitution

The notion of separation of powers between three branches of government — legislative, executive and judiciary — was unknown during this first part of the legal history of Ethiopia. Imperial laws were enacted by the Emperor, whenever he felt the new laws should be made or new administrative agencies should be created. The sources of power in enacting Imperial laws were then custom, convention and the free will of the monarch. Thus, prior to the 1931 Constitution, the prerogative of the Emperor to create, and to determine powers and duties of administrative agencies was absolute.

2. Post-1931 Constitution

In the second period of Ethiopia's legal history (1931-1955), the doctrine of separation of powers was introduced by the present Emperor in very general terms, and the absolute power of the Emperor was limited to a certain extent. The prerogative to determine the organization and the regulation of all administrative departments of the government was reserved to the Emperor. However, Article 11 of the 1931 Constitution provided that:

“The Emperor shall lay down the organization and the regulations of all administrative departments.”

This provision only concerns the power of the Emperor to determine the organization and internal rules of administrative departments, which of course include administrative agencies. Under Article 34 of the 1931 Constitution, the power to enact a substantive law, which affects the rights of individuals, was shared by the Emperor and the Parliament. Such “laws,” corresponding to present proclamations, were to be enacted only after having been discussed by the two chambers of Parliament and having obtained the confirmation of the Emperor.¹⁶ Article 11 read in conjunction with Article 34 gives a basis for concluding that the Emperor by His own free will limited His prerogatives. He retained sole power to create administrative agencies, determine their organization, and lay down the regulations which governed them. But He reserved the power to enact a substantive law affecting the rights of individuals, such as a grant of regulatory powers to an administrative agency, to Himself acting together with Parliament. By virtue of Article 11 of 1931 Constitution, the Emperor could act alone to determine the internal rules — “regulations” — under which the administrative agencies had to operate. But “laws,” rules directly affecting the rights of citizens, had to be enacted by Parliament and the Emperor jointly. That a grant of regulatory powers to an administrative agency should be made by a “law” is shown by the proclamations

16. Art. 34 of the 1931 Constitution provides: “No law may be put into force without having been discussed by the Chambers and having obtained the confirmation of the Emperor.”

promulgated for the establishment of the Imperial Board of Telecommunications of Ethiopia¹⁷ and the Charter of the Scrap Iron Board.¹⁸

3. Post-Revised Constitution of 1955

The doctrine of separation of powers and the principle of checks and balances between the three branches of the government are spelled out in greater detail in the Constitution of 1955 than in the first Constitution of Ethiopia. Nevertheless, the scope of Article 27 of the Revised Constitution, at least in its English version, appears to be wider than its counterpart, Article 11 of the 1931 Constitution. In the language of Article 27 of the Revised Constitution it is within the prerogative of the Emperor to determine the "organization, powers and duties" of administrative agencies: under Article 11 of the 1931 Constitution He determined only the regulations of the administrative agencies. The language of Article 27 in the English version thus suggests that the Emperor may delegate to administrative agencies powers which may extend to the people outside the organization: whereas under Article 11 of the 1931 and the Amharic version of Article 27 of the Revised Constitution, it seems that He is able to delegate to administrative agencies only the right to adopt regulations limited to the internal administration of the agencies. When we later consider the nature of powers to be granted to administrative agencies under Article 27 of the Revised Constitution of 1955, we will ask whether the historical progression does not suggest a narrower reading for the article than its language alone might suggest.

B. Discretionary powers of the Emperor provided in the Constitution

Here we are particularly concerned with the exclusive, special or discretionary powers of the Emperor, with respect to determining the organization, powers and duties of administrative agencies in conformity with the provisions of the Revised Constitution of Ethiopia. At present, the Emperor exercises his prerogatives in six major areas, as outlined below. The Emperor's power is multidimensional, because he plays a great role in the affairs of the State as Head of State, Fountain of Justice, legislator, secular head of the established Church, Commander-in-Chief of the armed forces and Chief Executive.

Accordingly, the Emperor, by virtue of the prerogatives set out in Chapter II of the Revised Constitution exercises, *inter alia*, the following discretionary powers:

1. According to Article 36 he may take measures consistent with other constitutional provisions that may be necessary to ensure, *inter alia* the safety and welfare of the inhabitants of the Empire. That Article may be the general authority under which some semi-public organs have been organized, as appears to be the case with the granting of the Charter of the Haile Sellassie I University.¹⁹ The basis for the

17. The Imperial Board of Telecommunications of Ethiopia Proclamation, 1952, Proclamation No. 131, *Neg. Gaz.*, year 12, no. 5.

18. Scrap Iron Board Charter (as amended by General Notice No. 268 of 1960) 1953, General Notice No. 168, *Neg. Gaz.*, year 13, no. 4.

19. Charter of the Haile Sellassie I University, 1961, General Notice No. 284, *Neg. Gaz.*, year 20, no. 8.

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issuance of the Charter of the Haile Sellassie I Foundation²⁰ could also possibly be attributed to the source of power provided in Article 36.

2. By virtue of the residual power of the Ethiopian monarch to review cases in Chilot; and due to the prerogative of residuum of justice,²¹ He maintains justice as provided in Article 35. It should be noted, however, that the possibility of Article 35 being used to create agencies for the administration of justice is severely restricted by Articles 108 and 109 of the Revised Constitution.²²

3. He delegates legislative, adjudicative or regulative power to administrative agencies with prior approval (Article 88), or later approval (Article 92) of both chambers of Parliament. The Post Office²³ is an example of an administrative agency created with powers given to it by enabling legislation enacted with prior approval of Parliament. The Civil Aviation Administration is an example of an administrative agency to which powers were given by enabling legislation approved later by the Parliament.²⁴

4. He promulgates the decrees, edicts and public regulations of the Ethiopian Orthodox Church, (which is given the status of an administrative body by Articles 398 and 399 of the Civil Code of 1960) by virtue of Article 127. The issuance of the Menelik II Memorial fund and the Trinity Monastery Charter²⁵ or the Church Administration Order²⁶ are examples of the exercise of this prerogative.

5. He organizes armed forces and decides what armed forces shall be maintained, both in time of peace and in time of war under Article 29. The creation of the Imperial Territorial Army is an example of this authority.²⁷

6. Finally, He determines the organization, powers and duties of all ministries, executive departments and the administrations of the government, under Article 27.

II. Constitutional Limitations to the Emperor's Prerogatives

A. Limiting provisions of the Constitution

Even though the Emperor alone under His own sovereign powers and prerogatives, set out in Chapter II of the Revised Constitution, may create a new administrative agency by issuance of an order, Articles 115-118 of the Revised Constitution require that all fiscal appropriations for its permanent operation must be expressly approved by Parliament. Article 119 also stipulates that no branch of

20. Charter of the Haile Sellassie I Foundation, 1959, General Notice No. 253 (as amended by General Notice No. 261 of 1960) *Neg. Gaz.*, year 18, no. 11.

21. R.A. Sedler, "The Chilot Jurisdiction of the Emperor of Ethiopia: A Legal Analysis in Historical and Comparative Perspective," *Journal of African Law*, vol. 8, no. 2 (1964), p. 756.

22. The Administrative Court in the Central Personnel Agency was established under Art. 27 of the Revised Constitution, rather than Art. 109 of the Revised Constitution.

23. Post Office Proclamation, 1966, Proclamation No. 240, *Neg. Gaz.*, year 25, no. 22.

24. Civil Aviation Decree, 1962, Decree No. 48, *Neg. Gaz.*, year 21, no. 17, later approved by Notice of Approval No. 8, *Neg. Gaz.*, year 22, no. 9.

25. Creation of the Trustees of the Menelik II Memorial Building Fund and Trinity Monastery Charter, 1957, General Notice No. 229 (as amended by Gen. No. 263 of 1960) *Neg. Gaz.*, year 17, no. 5.

26. Church Administration Order, 1967, Order No. 48, *Neg. Gaz.*, year 26, no. 9.

27. The Imperial Territorial Army Order, 1958, Order No. 21, *Neg. Gaz.*, year 18, no. 2.

the government may undertake a loan or pledge or a credit without the express approval of the Parliament. Powers granted to an administrative agency by a valid decree issued by the Emperor may be repealed unilaterally by a majority vote of both chambers of the Parliament, as provided in Article 92 of the Revised Constitution. Hence, the doctrine of checks and balances between the three branches of the government, incorporated in the Constitution, places limitations upon the powers of the Emperor.²⁸

Thus, the powers to be granted to an administrative agency by an order²⁹ issued under Article 27 are limited to a certain extent by the other provisions of the Revised Constitution, notably, Articles 88, 92, 115-119 and 122.

B. Article 4 vs. other provisions of the Constitution

A provision imposing any limitation on the powers of the Emperor might seem to be superfluous in the face of Article 4 of the Revised Constitution, for such strong language as "... His power indisputable" is used in this Article in referring to the powers of the Emperor.

The duty of the Emperor to take all measures that may be necessary to ensure, at all times, the defence and integrity of the Empire, the safety and welfare of its inhabitants (Article 36); or the prerogative to exercise the supreme authority over all the affairs of the Empire (Article 26); or the supreme direction of the foreign relations of the Empire (Article 30); or the duty to maintain justice (Article 35); all are duties that do not go beyond the provisions of the Revised Constitution. To this effect, Chapter II of the Revised Constitution, in enumerating the powers and prerogatives of the Emperor, uses such language as "... in the manner provided for in the present Constitution" (Article 26); and "subject to the other provisions of this Constitution" (Article 36). Both the opening and the closing articles in Chapter II of the Revised Constitution, which deals with the powers and prerogatives of the Emperor, stipulate the limitations thereto.

One may then conclude that all powers of the Emperor are limited by the other provisions of the Revised Constitution. It follows that the scope of the powers to be granted to administrative agencies under Article 27 or other constitutional articles is limited by the restrictions imposed on the powers of the Emperor elsewhere in the Constitution. The supremacy clause, set out in Article 122 of the Revised Constitution, which declares future laws that are inconsistent with the Constitution "null and void," defeats the argument one may present to the effect that any delegation of power made by the Emperor to any administrative agencies is unchallengeable due to Article 4 of the Revised Constitution. Article 122 requires the conclusion that if a delegation of power is inconsistent with the other provisions of the Constitution such delegation becomes unconstitutional.

28. Kenneth Redden, *The Law Making Process in Ethiopia*, 1966, Addis Ababa, pp. 6-7.

29. An order, even though it is a primary law on its own merit, i.e. as the principal form of executive law, is subordinate to a proclamation promulgated pursuant to the provisions of Articles 88, 89 or 90, or to a decree enacted under Art. 92 of the Revised Constitution. Incidentally, no reference is made in the Amharic version of the supremacy clause of the Revised Constitution, Art. 122, (again due to bad translation) to the form of law known as "order," even though it is enumerated in Art. 88 as among the laws required to be published in the *Negarit Gazeta*.

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These basic conflicts of the constitutional provisions must be reconciled somehow. The writer would attempt to reconcile Article 4 with the other provisions of the Revised Constitution by the well established rule of interpretation of law that a specific provision prevails over a general provision. Since Article 4 is in the general part of the Revised Constitution, the specific provisions of the Constitution should prevail over this general provision, that is to say, the limitations placed on the prerogatives of the Emperor in Articles 26, 36, 88-92, 122 and the other provisions of the Revised Constitution limiting or balancing the powers of the Emperor should be regarded as a qualification of Article 4.

The prerogatives of the Emperor referred to earlier and provided in the different provisions of the Revised Constitution apply to different cases. For the purpose of this study, the most relevant constitutional provision is Article 27. Analysis of these can be a model for the analysis of other cases.

III. Analysis of Article 27

A. Discrepancy between the Amharic and English versions and its reconciliation

The English version of Article 27 of the Revised Constitution reads:

"The Emperor determines the organization, powers and duties of all ministries, executive departments and the administrations of the Government and appoints, promotes, transfers, suspends and dismisses the officials of the same."

It should be noted that the Amharic version of the same Article differs from the English version. The literal translation of the Amharic version is:

"The Emperor determines the working conditions, establishes the departments which carry government functions, and all ministries.³⁰ He appoints, promotes, transfers, suspends and dismisses the officials of the departments."

In addition to the difference in construction of the sentence, i.e. one long sentence in the English version in contrast to two short sentences in the Amharic, the comparison reveals the following major differences in substance. First, only ministries and departments are mentioned in the Amharic version, unlike the English which mentions ministries, executive departments and administrations of the government. Secondly, a vague term, such as "setting of working conditions" is used in the first sentence of the Amharic text, while the terms "organization, powers and duties" are incorporated in the English version. Thirdly, the Amharic version, while naming departments and ministries in the first sentence, refers to departments (agencies) only in the second sentence. The English version on the other hand seems to refer to all the three categories of governmental establishments, as it uses the term "...of the same" at the end of the sentence.

In short, the Amharic version seems to embody the spirit of Article 11 of the 1931 Constitution, to wit: the Emperor determines only the organization and the internal regulations of the ministries and administrative agencies, and shares with the Parliament the matter of granting powers to them. The English version on the other hand might be read to recognize Imperial power not only to set up ministries, executive departments and the administration of the government, meaning administrative agencies, but also to determine their powers and duties by executive law, with certain limitations.

While the term "duties" could be substituted for the vague expression "determination of working condition" existing in the Amharic version, the term "power,"

30. In fact the word "ministers" is used. It seems that this is a misprint.

which is included in the English version, remains without a counterpart in the Amharic version. As the term "power" is the key word in the topic of this article, we have to focus our attention on two major questions. First, is the absence of the term "powers" in the Amharic version accidental or deliberate? Second, what nature of powers is contemplated in Article 27 of the Revised Constitution, if we conclude that we have to read the word "power" into both versions of the Article under review?

The writer believes that the discrepancy between the Amharic and the English version is more likely to be the result of bad translation than of legislative intent. As the word "powers" is correlative to "duties," the English version which contains both, and relates them with the preceding term "organization," appears to be more logical than the Amharic version.

The Revised Constitution as a whole was originally drafted in English and translated into Amharic. Hence, it is more likely that the discrepancy between the two versions is a result of bad translation than of legislative intent. However, since the legislating authorities, particularly the members of both Chambers of Parliament, were familiar with the Amharic version, and deliberated on that alone, one might argue that the Amharic version should be considered as the true intent of the legislators, and as such should control. In addition Article 125 of the Revised Constitution stipulates that Amharic is the official language of the Empire.

But, how to reconcile the two texts?

The vagueness of the Amharic version calls for clarification of its precise meaning. One of the possible ways of clarifying the true meaning of Article 27, particularly in its Amharic version, is comparing the two texts — Amharic and English — and going back to the original draft. The above enumerated findings, on the comparison of the two texts, coupled with the fact that the text was originally drafted in English, gives a ground to argue that the deficiency in the Amharic version should at least be complemented by what is provided in the English version.

In spite of its vagueness, the Amharic version creates an argument in favour of interpreting the English version fairly restrictively, because the Amharic version implies that only powers to regulate the internal working of the government and the administrative agencies may be granted under Article 27. In other words, according to the Amharic version, the powers that may be granted to administrative agencies under Article 27 seem to be limited in scope and application.

B. The scope of powers to be granted under Article 27

No effective regulatory power may be granted to administrative agencies under Article 27 of the Revised Constitution, because the Amharic version limits the scope and application of that provision. The term "power" expressly provided in the English version, should be interpreted, therefore, fairly restrictively, in the light of the Amharic version, to mean powers to regulate the internal working of the government and administrative agencies, as opposed to jurisdiction over third parties, i.e. ordinary citizens. In short, from the analysis of the Amharic and English versions of Article 27 one may conclude that:

1. The English version is more logical than the Amharic version, and might be used as a means of clarification to understand properly the Amharic version;

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2. The Amharic version should be read to mean what the English version provides, because a prerogative to determine the organization and duties of all ministries, executive departments and the administrations of the government should at least be able to grant some sort of powers, for, according to the Amharic version, no immediately effective power may be granted under Article 27.

The question is then what kind of power may effectively be granted to administrative agencies by executive law under the Constitution? According to the author's interpretation of the language of Article 27, the nature of powers to be granted to administrative agencies shall not involve: (1) regulatory powers, for instance, grant of jurisdiction over third parties, i.e., ordinary citizens, as opposed to powers to regulate the internal working of the administrative agencies; (2) police powers, for instance, the power to establish new offences or new punishments for old ones, or the power to secure the judicial enforcement of regulations; and (3) powers regulating matters of public finance, which are explicitly or implicitly reserved for parliamentary approval.

With these limitations the powers that may be granted to administrative agencies under Article 27 may include executive, quasi-legislative and quasi-judicial powers. In short, non-regulatory powers, and powers not depriving an individual of life, liberty or property without due process of law, or imposing taxes, or spending money, or borrowing money without approval of Parliament, may effectively be granted to administrative agencies under Article 27. On the other hand, for an effective grant of the substantive powers excluded above, the legislative forms particularly prescribed for them in the Constitution must be followed.

This answer raises problems, because the Executive may wish to form some agency without waiting for the occasionally slow legislative processes, which as indicated earlier will be necessary to delegate effectively certain desirable substantive powers. It may feel that the new body should be created and its powers defined all at once, by an order or charter, and not piecemeal through the deliberations of various legislative units; there are advantages to be gained from forceful presentation of a comprehensive scheme. For any or all of these reasons, or others, one may find the Executive appearing to do by order, under the authority of Article 27, what should properly only be done by proclamation or, in the appropriate constitutional circumstances, by decree.

What is the legal effect of such an order or a charter? When one has been published, how ought matters to proceed? The Charter of the Awash Valley Authority may be taken as an example of this kind of problem. Briefly put, the opinion of the author is, that while there may be valid reasons for outlining the desirable structure of a new agency in full by an order under Article 27, these reasons can not serve to give legal effect to provisions that are not within constitutional power to "make law" under this provision. One would have to presume that, in all its action, the government means to act within the limits of its power as defined in the Constitution. Therefore, the author believes that where such provisions are included in an order or charter they should be interpreted as a call for further action to implement them by the appropriate constitutional authority. Only when such action is taken will such provisions become legally effective.

IV. Findings as to the Prerogative of Determining Powers of Administrative Agencies

All the factors considered, and the analysis made above, lead to a somewhat narrow reading of Article 27 of the Revised Constitution. On account of the limitations imposed on the prerogatives of the Emperor by the other provisions of the Constitution, the authority of the Emperor, provided in Article 27, is limited to creating an administrative agency and determining its internal organization, internal powers and duties only. In other words, the nature of powers to be granted to administrative agencies under Article 27 should deal only with the internal organization, duties and powers, which do not involve regulatory powers, police powers, and powers regulating matters of public finance which are explicitly or implicitly reserved for parliamentary approval.

V. The Nature of Powers to be Granted to Administrative Agencies by Executive Law

Given the responsibilities of stewardship attributed to Him under Article 36 of the Constitution, the Emperor as Sovereign and Chief Executive is expected to take the necessary measures for the public good so far at least as the Constitution does not inhibit them. One of the means by which this function may be fulfilled is by creating administrative agencies, whose powers and duties are determined by executive law under Article 27 of the Constitution.

In Ethiopia, executive laws are made in the form of orders, general notices and legal notices. The superior forms of legislation are proclamations and decrees.

As Corwin puts it: "Executive laws fall into two categories: first, those that concern primarily the internal organization of the administration, and so are of interest chiefly to its members or would-be members; secondly, those that supplement the general law."³¹

In Ethiopia, as a general survey of the executive laws so far issued shows, heads of administrative agencies are usually given powers to make rules regarding the internal structure of their organization, as well as to make regulations in specified fields within their jurisdiction.

There must be, however, some limitations to the latter type of power, i.e. to making regulations which affect the rights of individuals or impose new obligations on the public in general. For example, an administrative agency should not be given by an executive law such powers as to regulate the conduct or to limit the number of persons who practice a profession unless a standard is laid down by a proclamation or a decree, because a measure which is not made subject to the check and balance process might lead to the employment of subjective standards and denial of due process of law.

PART II:

A CASE STUDY—POWERS GRANTED UNDER THE CHARTER OF AVA

VI. Definition and Usage of the Term Charter

The legislation under which the Awash Vally Authority is created is known as a "Charter."

Proclamation No. 1 of 1942, which established the Negarit Gazeta—the official law reporter of Ethiopia—lists the types of primary and subordinate legislation of

31. E.S. Corwin, *The President (Office and Powers, 1787-1957)* (4th ed. 1957) New York University Press, New York, p. 393.

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Ethiopia. The list includes the following forms of legislation: proclamations, decrees, laws, rules, regulations, orders, notices, and subsidiary legislation.³² Neither the charter nor general notice is listed in the Proclamation. But in practice the latter is used as a form of law, and the former as a caption of a particular kind of law. In other words charters are issued as general notices. A general notice is a form of legislation which is in the border line between primary and subsidiary legislation. Some times primary legislation such as the Charter of the AVA is enacted in the form of a general notice. (See General Notice No. 299 of 1962). At other times, subordinate enactments, such as the Statement of Income and Expenses of I.B.T.E. is issued in the form of a general notice. (See General Notice No. 339 of 1965). General notices usually fall under either "laws" or "rules" or "regulations" as enumerated in Proclamation No. 1 of 1942, depending of course, on the importance of the legislation to be issued in the form of the general notice. The equivalent term used in Amharic is "government notice."

All autonomous agencies are generally referred to as "chartered" agencies, whether they are created by proclamation, decree, order or general notice. Prior to the enactment of the Civil Code of Ethiopia of 1960, imperial charters were granted to both public and private associations, in order to give the status of corporate bodies, as there was no legal basis for forming such associations otherwise. That is how private associations like the YMCA received an imperial charter, published in the *Negarit Gazeta*. Since, the promulgation of the Civil Code in 1960,³³ however, no charter has been granted to private associations or organizations except the Haile Sellassie I Foundation.

VII. The Form and the Source of the Legislation

The Charter of the Awash Valley Authority was issued in the form of a general notice. Administrative agencies on the other hand have usually been created as autonomous bodies both in practice and as a matter of law in the form of an order, rather than in the form of general notice, since the promulgation of the Revised Constitution in 1955. Moreover, the Emperor refers to the advice of the Council of Ministers only when He enacts orders or decrees, and not when He issues general notices. To the best knowledge of the author, the only cases where no reference to the advice of the Council of Ministers was made regarding orders were in the Central Personnel Agency and Public Service Order (Order No. 23 of 1961); and the Ministers (Definition of Powers) Order, Amendments No. 1 and No. 2, (Orders No. 44 and 46 of 1966). The reference to the advice of the Council of Ministers in General Notice No. 299 of 1962, which creates the Awash Valley Authority, appears to be an exception.

An enquiry made by the author revealed that this piece of legislation was originally drafted in the form of an order, citing Article 27 of the Revised Constitution as the source of authority for the legislation, with the caption "Charter,"³⁴ the drafter apparently took for granted the past practice of creating autonomous

32. Establishment of *Negarit Gazeta* Proclamation, 1942, Art. 2(a) Proclamation No. 1, *Neg. Gaz.*, year 1, no. 1.

33. The Civil Code gives status of corporate body to private associations formed and registered in accordance with Articles 404-482 inclusive.

34. There is evidence that at the time that the Charter was in preparation the principal draftsman pointed out that certain of the enumerated powers of the AVA could only be granted by Proclamation.

public authorities by charter. The reference to the advice of the Council of Ministers was incorporated in the original draft; later on however, the form of the legislation was changed from order to general notice, and the citation of Article 27 was omitted. In the opinion of the author the reason for preference of a general notice to an order seems to be that the executive branch of the government believed that more power could be granted to the AVA by imperial charter than could be given constitutionally in the form of an order.

Due to the fact that the original draft was made in the form of an order, and to some of the wording of the preamble, especially the reference to the advice of the Council of Ministers, it seems that the source of authority for the issuance of the AVA Charter is Article 27 of the Revised Constitution, despite the form, i.e. general notice, and the absence of citation to Article 27. The form does not make the legislation unconstitutional.³⁵

VIII. Legal Analysis of the Provisions of the Charter

Let us proceed to examine now what provisions of the Charter of the AVA are immediately effective and which require further legislative action, from the power given to the authority under Article 27.

A. Purpose of the AVA

The general purpose of the AVA is laid down in the first clause of Article 4 in the following words:

“The purpose of the AVA is to administer and develop the natural resources of the Awash Valley....”

It should be noted here that the word “purpose” is used to mean responsibilities and duties as well.

B. Specific duties

In addition to the general power laid down in Article 4, the scope of which is not limited by the subsequent enumerations, the specific responsibilities listed from (a) to (h) in the cited Article, are given to the AVA. Some of these duties do not require special constitutional consideration.

Two specific provisions, however, do require special consideration.

1. Control and distribution of water

a) Sub-section (f) of Article 4 gives to the AVA special power to assign waters of the Awash River for irrigation and other purposes. This provision implies that the waters in the Awash Valley are part of the state domain. According to Article 130 of the Revised Constitution, the natural resources of the Empire, including waters, lakes and rivers, are made state domain; Articles 1228 and 1447 of the Civil Code of Ethiopia of 1960 also stipulate that the ownership of all running and still water vests in the State, and the community has only the right to the use of the water. As provided in Article 1229 of the Civil Code, water becomes private property where it is collected in a man-made reservoir, basin or cistern from which it does not flow naturally. Article 1228 (2) stipulates also that all running

35. James C.N. Paul, “Cases and Materials on Public Law I (1966-1967)” unpublished, Library, Faculty of Law, Haile Sellassie I University, Chapter XIII, p. 23.

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and still water shall be controlled and protected by the competent authority. Moreover, the Civil Code in Article 1230(3) provides that nothing shall affect the provisions of special laws and administrative regulations, whether of general or local application. Since the Charter of the AVA is a special law of local application, the legal provisions regarding water incorporated in the Civil Code are not binding on the authority, provided that the AVA exercises this power by virtue of a delegation of power by enabling legislation.

Therefore, the function of assigning water of the Awash River for irrigation and other purposes by the AVA to those who meet its requirements is immediately effective, provided it is made without any discrimination.

b) Article 9 of the Charter safeguards the existing water rights in the Awash Valley which are embodied in agreements existing between the users of said water and any agent of the government. This is a provision deliberately inserted to recognize the water rights acquired by H.V.A. Ethiopia Share Company (Wonji) under an agreement. The purpose of this Article is to reaffirm the rights acquired under an agreement and not to make any discrimination between users of the said waters. As an agent of the government, the AVA has the power to regulate the uses of the water in its jurisdiction, without affecting existing water-rights in the Awash Valley which are embodied in an agreement.

2. Taking any action to assure the best use

Article 4 (h) assigns to AVA a general responsibility, to do all such things as may be necessary to assure the best use and development of the resources of the Awash Valley.

By virtue of this provision, the Authority may take any action which might affect the natural flow of the river by building a reservoir at the upper part of the Awash basin, to collect the flowing water or divert the course of the river in order to develop certain areas of the Awash Valley. This act might become detrimental to persons downstream, who use such water for domestic purposes and irrigation as well as for industrial use. To assure at least the right of water use to persons downstream certain safeguards to this right of use guaranteed by the provisions of the Civil Code should be made, or the language of this sub-section qualified to this effect.

C. Ordinary powers

The powers granted under Article 5 of the Charter are powers a juridical person (corporate body) may normally have. Those powers include the power to contract, to sue and be sued³⁶ in its own name, and to acquire, own, possess and dispose of property.

Mr. Pogucki,³⁷ after considering at length the issue of whether a general notice published in the *Negarit Gazeta* constitutes administrative law in the meaning of the Civil Code or not, concluded that the general notice does not have the character of administrative law as prescribed by the Civil Code. This implies that Article 5

36. The words "use" and "used" are employed in Art. 5(b) of the Chapter instead of "sue" and "sued". This is certainly a misprint.

37. R.J.H. Pogucki, *Preliminary Analysis of the Charter of the AVA*, 1967 (unpublished) p.4.

of the Charter is meant to give separate juridical personality to AVA but only in public law and that the AVA exercises rights in civil law on behalf of the ministries or on behalf of other public authorities, rather than on its own legal virtues, i.e. not because it is a public corporation having separate entity from the Government.

The writer subscribes to this conclusion, as the AVA is an administrative agency³⁸ and not a legal person in civil law, exercising rights prescribed by administrative law, in the proper sense of the word. The qualifications of the extraordinary powers of the Authority, enumerated in Article 6 of the Charter, by such terms as "in co-operation with" and "as agent of the Government" or "as agent for other Government Ministries and Public Authorities," may be cited as a proof that the AVA exercises rights in civil law on behalf of the concerned ministries and other public authorities; and not on account of the administrative laws envisaged in Article 397 of the Civil Code of Ethiopia.

Even though they are listed in the Charter in the section which deals with the extraordinary powers granted to the AVA — (the power to receive and administer, as agent of the Government, international aid and credits (Article 6 (f));³⁸ the power to act as agent for ministries and other public authorities (Article 6(g); the power to ascertain land ownership in the Awash Valley and to administer all state-owned land (Article 7); the power to perform the functions entrusted to it for the most efficient and economic development and use of the resources of the Awash Valley (Article 8); and the power to adopt by-laws consistent with the provisions of the Charter (Article 20) — these are delegations of powers, which do not involve constitutional issues.

D. Extra-ordinary powers

The extra-ordinary powers granted to the AVA are classified under the following headings and examined in succession.

1. Regulatory powers

The point at issue in this section is:

- whether the Charter simply distributes powers within the government by saying that the AVA is the appropriate agency to exercise such powers, or
- whether the Charter grants the AVA powers over third parties which the government did not previously possess.

With this in mind, the writer examines the following specific provisions of the Charter under which regulatory powers are granted to the AVA. By "*regulatory power*" we mean the grant of jurisdiction over third parties, i.e. ordinary citizens, as opposed to powers to regulate the internal working of the government and the AVA.

a) Expropriation

Article 6 (a) empowers the AVA to acquire real and other property by expropriation in accordance with the law.

38. According to later explanation by the principal draftsman of the Charter, Art. 6(f) was merely intended to permit the AVA to administer, but not itself to become liable for the credits. The credits would actually be concluded by other government departments.

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The writer assumes that the "law" mentioned in this Article of the Charter is the special expropriation law envisaged in Article 44 of the Revised Constitution. That special expropriation law envisaged in Article 44 is incorporated in the Civil Code of 1960, Articles 1460-1488 inclusive. Expropriation proceedings are defined in Article 1460 of the Civil Code as proceedings whereby the competent authorities compel an owner to surrender the ownership of an immovable required by such authorities for public purposes. Article 1463 of the Civil Code gives light to what the term "public purposes" means, by stating that the project which renders expropriation necessary must be declared to serve the public interest or public utility. As a matter of fact the technical terms "public utility," "public interest" and "public purposes" are used interchangeably in the provisions of the expropriation section of the Civil Code.

The test for determining if a concern is of public utility is whether the project requiring the expropriation serves the public interest and is required in the prevailing situation for the public interest. It is true that the purpose of the AVA meets this test. Besides, even though Article 1464(1) of the Civil Code places a limitation on the concept of public utility, by stipulating that no expropriation proceedings may be used for the purpose solely of obtaining financial benefits, this limitation is qualified by sub-section (2) of the same Article, by prefixing the word "however" at the beginning of the sentence in the original French text and the Amharic version of the same Article, unlike the English version.

Accordingly, therefore, expropriation proceedings may be used by the AVA, to enable the public to benefit by the increase in the value of land arising from works done in the public interest. Since dams and irrigation seem to be clearly a matter of public utility, it would be legal to expropriate land at present under-utilised for the purpose of developing it, by virtue of Article 1464 (2) of the Civil Code. Expropriation for public utility is justified more explicitly in the Amharic version of Article 44 of the Revised Constitution, where, unlike the English version, the term "public service" (utility) is used.

Therefore, provided that the term "law" as used in Article 6 of the Charter means the special law of expropriation cited above, and subsequent legislation enacted for the implementation of the same, the power granted to the AVA under Article 6(a) of the Charter is immediately effective. But if the term "law" used therein means any executive law, and not the special expropriation law provided in the Civil Code, the power so delegated to expropriate requires further legislative action, because the exercise of such power requires enabling legislation enacted in the form of a proclamation or decree.

b) Regulating the use of water and facilities

Articles 4(e) and 6(d) of the Charter entitles the AVA to issue regulations relating to the use of water, land and other facilities within its jurisdiction.

As indicated earlier, Article 1228 (2) of the Civil Code recognizes the power of the competent authority of the government to control and protect all running and still water. Since the AVA is given exclusive jurisdiction over the Awash Valley, as provided in Article 3 of the Charter, the AVA is the competent authority in this area, and as such any administrative regulations of local application issued by this Authority are valid, as stipulated in Article 1230 (3) of the Civil Code of 1960, as far as the use of water is concerned. The power granted to the AVA to issue regulations as to the use of the facilities placed under its jurisdiction causes no problem,

due to the fact that it is appropriate for an agent of the government to regulate the use of the facilities which are under its jurisdiction.

But a difficult question arises as to whether the power granted to the AVA to issue regulations as to the use of land in the Awash Valley is limited to the private and public domain of the State,³⁹ or whether it extends to private lands, or leased land as well.

Article 3 (a) of the Charter stipulates that the AVA shall have exclusive jurisdiction for the purposes set forth in the Charter over the area comprising the watershed of the Awash basin, as geographically defined. Thus, the regulatory powers set forth in the Charter seem not to be limited to the private and public domain of the State only. Since the purpose of the AVA is to administer and develop the natural resources of the Awash Valley (Article 4 of the Charter) the AVA seems to be entitled to issue regulations as to the use of land within the Awash valley. But to the best knowledge of the writer, no law exists which limits the right to own and dispose of property (land) guaranteed by Article 44 of the Constitution. As a matter of fact, the Amharic version of Article 44 states that: "Everyone has the right, within the limits of the law, to acquire (land) and to use it for whatever purpose he wishes." In the context of this Article the words "within the limits of the law" mean "within the limits of Parliament-enacted law" as provided in the same Article of the Constitution.

In the presence of such constitutional freedom as to the use of private land, and in the absence of Parliament-enacted law restricting that freedom, the AVA does not have, and cannot legally have, a power to regulate the use of private land, except to give guidance as to good husbandry. Therefore the power granted to the AVA under Article 6(d) to issue regulations relating to the use of land subject to its jurisdiction seems to require further legislative action. The AVA may only issue regulations relating to the use of state-owned land transferred to it by the ministries and public authorities by virtue of Article 7 of the Charter and leased land of the State.

In all cases, the rights guaranteed under Articles 37, 38 and 43 of the Constitution should be respected. If any of the regulations issued under Article 6(d) of the Charter denies any of the rights guaranteed by the Constitution, the regulations should be declared null and void under Article 122 of the Constitution.

c) Granting concessions

The power given under Article 6(e) of the Charter to the AVA to grant concessions for the use of land in the Awash valley for agricultural, industrial and other purposes, is immediately effective. In this case, the AVA is acting in cooperation with appropriate ministries and public authorities or as an agent of the government. Since the executive branch of the government possesses such power in any event, the AVA is not given additional powers in this respect.

2. Fiscal powers

In this section we deal with matters of public finance incorporated in the Charter.

39. The distinction between the public and private domain of the State is pointed out by Russell S. Berman in "National Resources: State Ownership and Control Based on Article 130 of the Revised Constitution," *J. Eth. L.*, vol. III, no. 2 (1966) p. 553.

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a) Fixing fees and charges

Article 6(b) empowers the AVA to fix fees and charges for the use of water land and other facilities subject to its jurisdiction.

The Livestock and Meat Board Proclamation of 1964 defines "fee" as a charge fixed in accordance with the provision of the cited Proclamation.⁴⁰ The Ethiopian Antiquities Administration Order also refers to fees for admission.⁴¹ One may logically infer from all this that "fees" means charges for services rendered or facilities provided by administrative agencies or government departments.

Accordingly, the power given to the AVA to fix fees and charges for the use of water and other facilities, e.g. dams and reservoirs, is immediately effective. Because "fees" as used in the Charter means charges for services rendered or cost of water supplied to the users, and not taxes in the proper sense of the term, the fees to be fixed by the AVA for lands subject to its jurisdiction are a sort of rent for state-owned lands in the Awash Valley. As rightly stated in Professor Paul's teaching materials for public law, Article 113 of the Revised Constitution seems to refer only to taxes or fees dependent for their collection on the power of the government *qua* government, and not to transactions which are not qualitatively different from those undertaken by a private firm.⁴² Fees are charges for the services provided by the government or government agency. Fees and charges are fixed by administrative agencies, as agents of the government, as payment for the services they render on delegation of such power either simply by an executive law as in the case of the Ethiopian Antiquities Administration Order, or by proclamation as in the case of the Livestock and Meat Board Proclamation, cited above.

The writer is not suggesting, however, that there should not be a limit to the amount of fees that the AVA could charge for the use of water and other facilities. The AVA, being in a monopolistic situation, might try to charge an arbitrary amount. To check such temptation, the executive branch of the government should fix at least the upper limit or the ceiling of the fees to be charged, by requiring the Authority to submit its proposal of rates of charges and fees, before enactment, to the Council of Ministers for approval.

Alternatively, the writer submits that safeguards similar to those set up in the Livestock and Meat Board Proclamation be adopted as a standard for fixing fees and charges by administrative agencies. The relevant Article of that Proclamation reads in part:

"to fix, impose and collect fees on all . . . using facilities of any sort provided by the Board, . . . provided, however, that such fees shall be fixed upon a uniform basis and shall reflect, as nearly as possible, the cost and value of the services and the facilities being provided to the users thereof, having due regard to the need to expand and finance the expansion, maintenance and improvement of such services and facilities."⁴³

40. Livestock and Meat Board Proclamation, 1964, Art. 2 (3), Proclamation No. 212, *Neg. Gaz.*, year 23, no. 13.

41. Ethiopian Antiquities Administration Order, 1966, Art. 4 (6), Order 45, *Neg. Gaz.*, year 25 no. 17.

42. Paul and Clapham, *Ethiopian Constitutional Development* Vol. II 1969, Addis Ababa, p. 453.

43. Livestock and Meat Board Proclamation, cited above at note 39, Art. 3 (10).

Even though Article 113 of the Constitution does not require that fees and charges be fixed in accordance with legislation approved by Parliament, the writer is of the opinion that if the delegation of power to fix fees and charges be given initially in the basic law rather than in the executive law, in accordance with the precedent created in the case of the Livestock and Meat Board, public criticism would be stifled in advance and the rights of individuals would be more adequately safeguarded.

b) Using fees and charges collected

Article 6(b) bestows power on the AVA to use fees and charges collected in carrying out its operations, in accordance with policies adopted by the Board of Directors.⁴⁴

The fees and charges collected by the Authority in carrying out its operations are public revenues by definition even though they are distinct from taxes. Taxes are levied for financing any government service, whereas fees are charged for the specific service rendered by a department of the government. The proviso in Article 6(b) of the Charter itself suggests that the fees and charges collected by the Authority are part of the public revenues, as it requires that any surplus of such income be turned over to the general treasury of the government.

Article 114 of the Revised Constitution explicitly states that none of the public revenues shall be expended, except as authorized by law. By "law" we mean, in the context of the Constitution, a proclamation approved by Parliament and enacted by the Emperor. The last part of Article 34 of the Constitution substantiates this contention, as it reads, "... *the Emperor has the right . . . to proclaim all laws, after the same shall have been passed by the Parliament.*" (emphasis added). Article 119 of the Revised Constitution also affirms the same.

Thus, Article 114 of the Constitution would seem to negate in explicit terms the existence of power to regulate the financial operations of administrative agencies, except by a Proclamation. In other words, no power to regulate the financial operation of administrative agencies, such as spending of funds by an executive law, may be derived from Article 27 of the Constitution. Chapter VII of the Revised Constitution, being the specific part dealing with financial matters, controls all other provisions of the Constitution in respect to finance. Besides, in the presence of a specific provision negating the authorization of the use of public revenue without a proclamation, one may not logically infer from Article 27 that the power to determine the organization, powers and duties of administrative agencies includes the power to authorize the use of public revenues by executive law.

Therefore, the power granted to the AVA to use fees and charges collected in the carrying out of its operations seems to require further legislative action.

c) Borrowing money

Article 6(c) of the Charter empowers the AVA to borrow money in accordance with law.

Since the term "law" is used in this legislation without any qualification or reference to executive law, it should be taken for granted that it means "proclamation" as argued earlier.

44. It seems that the drafter used the term "Board of *Directors*" in this Article by oversight, as he repeatedly used the term "Board of *Commissioners*" in Articles 10, 13 and 16.

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As borrowing money by the executive branch pursuant to a law duly adopted in accordance with the provisions of Articles 88, 89 or 90 of the Revised Constitution, is allowed by Article 119 of the Constitution, the power granted to the AVA as an agent of government to borrow in accordance with law—a proclamation to be approved by Parliament and promulgated by the Emperor—is constitutional.

If the term "law" is used in Article 6(c) to mean an executive law, then the provision becomes inconsistent with Article 119 of the Constitution. As such, it is to be declared null and void under Article 122 of the Constitution.

Article 119 of the Revised Constitution stipulates that no loan may be contracted for, within or without the Empire, by any governmental organization (which includes administrative agencies) except as authorized by a law adopted in accordance with Articles 88, 89 or 90 of the Constitution. This constitutional provision explicitly negates the existence of any independent borrowing power for the AVA, unless authorized by a proclamation duly adopted by Parliament and promulgated by the Emperor.

In short, the AVA being a governmental organization, by virtue of Article 2 of the Charter, cannot borrow money pursuant to Article 6(c) of the Charter, unless it is duly approved as required by Article 119 of the Constitution.

d) Investing in public companies

Article 6(h) empowers the AVA to invest its funds—presumably its revenues collected as fees and charges—in public companies.

Investing in public companies, i.e. companies established under the Commercial Code of 1960, is for all practical purposes expending public revenues, because to invest in a company one has to draw from the public revenues under one's disposal. Such drawing, even if not spending the fund directly, amounts to utilising the fund in a venture that might be profitable or not.

Since investing in public companies amounts to expending public revenues it requires prior authorization by the Parliament as stipulated in Article 114 of the Revised Constitution, or a blanket delegation of power to invest authorized by the Parliament and the Emperor jointly. Apparently, investment by the government in such companies requires parliamentary approval in the budget.⁴⁵

The power given to the AVA to invest in public companies without a prior approval in the form of a proclamation or a blanket delegation of such power by Parliament seems to require further legislative action or revision of the Charter.

e) Approving the budget

Article 10 of the Charter provides that the AVA shall have an annual budget which shall be approved by the Board when it is partially financed by the AVA directly out of its resources—presumably from fees and charges collected under Article 6(b) and, for that matter, from loans and credits received under Article 6(c) and (f) of the Charter respectively. This implies that upon approval by the Board the budget of the Authority which is financed from the revenues of the Authority becomes effective.

45. Budget Proclamation, 1959 (E.C.), 1966, Capital Expenditure Head 4 (5), Proclamation No. 239, *Neg. Gaz.*, year 25, no. 19.

As advocated earlier, the financial resources of the AVA are public revenues, and as such none of the public revenues may lawfully be expended unless authorized by a proclamation approved by Parliament and promulgated by the Emperor. Under the Charter, specifically under Article 10, only expenditures not covered by the AVA's own receipts are subject to normal budgetary processes and the constitutional requirements laid down in Articles 114, 115 and 116 of the Revised Constitution.

Since no proper delegation of power is granted to AVA by a proclamation authorising it to use its resources and to fix its own budget annually, Article 10 of the Charter is not valid; it contradicts the provisions of the Revised Constitution, notably Article 114. In other words, the prerogatives enumerated in Chapter II of the Revised Constitution do not preclude the provisions provided in Chapter VII of the Constitution. Consequently, the powers granted to the AVA under Article 10 of the Charter require further legislative action. And the mere fact that the AVA earned its receipts certainly should not remove the receipts from the budgetary processes of the government.

f) Fixing remuneration of the members of the board

Article 20 of the Charter authorizes the Board of Commissioners to fix its own remuneration.

The remuneration payable to the members of the Board of Commissioners should be fixed by a higher authority in the course of the budget-making process. As such it should be approved along with the other items of the budget of the AVA, in accordance with the requirements of the law as pointed out on the preceding page.

E. Internal organization

Under Article 13 of the Charter, the powers, responsibilities and functions of the AVA are vested in the Board of Commissioners, composed of seven members, including the General Manager of the Authority.

On the other hand, Article 19(e) gives to the General Manager a full power to act and give decisions on behalf of the Board, in case of emergency. The test for existence of such emergency as laid down in the Article just cited are:

—delay in taking action on any matter or in giving a decision which in the opinion of the General Manager would adversely affect the operation of the AVA, and

—it is impossible to convene the Board in time to present such matter to it.

Since the test is by the personal judgment of the General Manager, its limitation in effect is not as narrow as it seems. With the pretext of emergency the General Manager might commit the Authority by acting over and above his normal powers.

Besides, there seems that there is a difference between the English and the Amharic version of the proviso, provided in the last part of Article 19(e). The latter provides that "the Board shall give to the General Manager authority to do so" (take such action). The former on the other hand simply reads that "...such acts and decisions shall have the full authority of the Board."

The Amharic version states that the Board shall give a special authorization, presumably by a standing resolution duly adopted by the Board, to the effect that the General Manager shall have full power to act and give decisions

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on behalf of the Board, when in the opinion of the General Manager delay in taking action on any matter or giving a decision would adversely affect the operations of the AVA and it is impossible to convene the Board in time to present the case.

The English version seems to say simply that the action taken or decisions made by the General Manager if they meet the test provided in the same Article shall be taken to have the full authority of the Board without any implication that a special resolution of the Board is required in advance.

Granting such undefined and unlimited power to the General Manager, as provided in the English version of Article 19(e) of the Charter, seems to be inconsistent with the provisions of Article 13 of the Charter, which vests in the Board the powers, responsibilities and functions of the AVA. In such a state of affairs, the Amharic version should have a ruling force, as logical conclusion so requires in the point at issue. As Amharic is the official language of the Empire (Article 125 of the Revised Constitution), what is provided in the Amharic version of Article 19(e) of the Charter should be taken as the true intention of the legislator, and as such should overrule what is provided in the English version.

Granting such special power to the General Manager does not by itself seem to exceed the competence of the constitutional authority, but the language should be clearer and prior delegation of powers or later approval or endorsement of the act or decision by the Board should be made a legal requirement, so that the apparent inconsistency between Articles 13 and 19(e) would be reconciled.

Conclusion

The foregoing analysis of the Charter of the Awash Valley Authority, Article 27 and other relevant provisions of the Revised Constitution, and the relevant articles of the Civil Code of 1960 in summary leads to the following conclusions:

A. Findings

1. The Charter of the AVA

a) Form of the legislation

1. The Charter combines matters that should be enacted under Article 27, in an executive law—order—and those that should be promulgated in accordance with Articles 88-90 by a proclamation, or under Article 92 of the Revised Constitution by a decree if the enactment meets the requirements provided therein.

2. An order rather than a general notice would be the appropriate form of legislation to create an autonomous public authority like the Awash Valley Authority.

3. The non-citation of the constitutional authority for granting the Charter leads to speculation of the sources of authority, as a result of which courts would face difficulty in reaching consistent decisions if ever the authority for legislation is challenged in the courts of law by an interested party.

As pointed out earlier, despite the form, i.e. general notice instead of order, and the absence of citation to Article 27, the source of authority for the enactment

of the Charter of the Awash Valley Authority seems to be Article 27 of the Revised Constitution. The form does not make the legislation unconstitutional.

b) Content of the legislation

1. Some of the powers and responsibilities vested in the Awash Valley Authority, especially the powers to regulate matters of public finance (Articles 4(h), 6(b) and (h), and Article 10) and the power to regulate the use of private lands which are located within the exclusive jurisdiction of the AVA (Article 6(d)), seem to require further legislative action.

Mr. Berman⁴⁶ suggested that Articles 3, 6(c), 6(e) and 7 of the Charter should also be confirmed and approved by Parliament. The writer, however, does not subscribe to this finding for the following reasons:

(a) Article 3, even though it uses the term "exclusive jurisdiction" and "all artificial means of controlling and diverting the flow of water" is not an article giving specific power to the Authority, but an article defining the area over which the Authority may exercise the powers granted to it by the other provisions of the Charter.

(b) Article 6(c) as pointed out earlier, gives the power to borrow as a separate juridical personality (corporate body) within the limits of "law" so special parliamentary approval is required for every AVA loan, and does *not* give independent borrowing power to the AVA. Since the Charter itself states the requirement of law, getting the approval of Parliament for the same provisions serves no purpose.

(c) Article 6(e) does not give extra powers to the AVA, but just affirms that the AVA, as an agent of the government exercises the powers legally vested on the executive branch of the government, in co-operation with appropriate government ministries and public authorities. The power of granting concessions lies within the domain of the executive branch of the Government by its nature, and granting such power to the AVA does not need parliamentary approval.

(d) Finally, Article 7 of the Charter just delegates to the AVA the powers assigned to ministries and other public authorities by administrative law. Again, assignment of power to ascertain land ownership⁴⁷ and to administer all state-owned land⁴⁸ in a given area is an act within the domain of the executive branch of

46. Berman, work cited above at note 38.

48. Even though the rules relating to property and mortgage provided in Articles 1553-1646 of the Civil Code are provisionally suspended by Art. 3363 of the Civil Code, the duty to ascertain land ownership and register the same is assigned to the Ministry of Agriculture by Art. 1554 of the Civil Code. The purpose of Art. 7 of the Charter seems to indicate that the AVA is the keeper of registers of immovable property within its jurisdiction as provided in Art. 1553 of the Civil Code, when Title X of the same becomes applicable; and until then to carry out as stipulated in Art. 3364 of the Civil Code the customary rules relating to the formalities to be complied as to the transfer or extinction of the ownership of immovable property as an agent for other government ministries and public authorities.

48. The Ministry of Land Reform and Administration is given power to administer all government lands, except insofar as specific power therefor has been legally delegated to another ministry or public authority, similarly by an order. See Ministers (Definition of Powers) (Amendment No. 2) Order, 1966, Art. 18 (c), Order No. 46, *Neg. Gaz.*, year 25, no. 23.

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the Government. Thus, granting to the AVA the power to ascertain land ownership and to administer the state-owned land in the Awash Valley needs no approval of the Parliament.⁴⁹

Therefore, the writer of this article does not see the legal basis for suggesting that these particular powers granted to the AVA should be confirmed and approved by Parliament.

2. The exceptional power granted to the General Manager of the Awash Valley Authority under Article 19(e) of the Charter overlaps with the powers, responsibilities and functions vested in the Board of Commissioners of the AVA under Article 13 of the Charter, unless qualified. That is to say, the Board by prior resolution should delegate its powers to the General Manager to act and give decisions on behalf of the Board in emergency situations envisaged in Article 19(e) of the Charter.

The legal deficiencies pointed out in the first paragraph above may be rectified by re-enacting the same delegation of powers in the form of a proclamation with the approval of Parliament and the assent of the Emperor, as they are matters to be enacted in a basic law rather than in an executive law. The deficiency in the internal organization in the second paragraph, i.e. the inconsistency of the powers granted to the Board and the General Manager of the Awash Valley Authority, under Articles 13 and 19(e) respectively, may be remedied by making the language of Article 19(e) clearer, and by requiring prior authorization or later approval by the Board of the acts or decisions of the General Manager.

2. Constitutional authority

a) Article 27 of the Constitution

1. There is a basic discrepancy between the Amharic and English versions of the Article as demonstrated earlier.

2. The discrepancy is a result of bad translation rather than of legislative intent. Thus, the Amharic version should be complemented by the English version.

3. The nature of powers to be granted to administrative agencies by an order under Article 27 should deal only with the internal organization and the determination of duties and powers, which does not involve: (1) regulatory powers, (2) police powers, and (3) powers regulating matters of public finance which are explicitly or implicitly reserved for parliamentary approval.

b) Other provisions

Insofar as powers as in 3 above, which cannot be given by authority of Article 27, are sought to be given to administrative agencies, they should have been given by authority of other constitutional provisions, notably Articles 88, 89, or 90.

B. Recommendations

1. As a rule, administrative agencies should be created by order - the principal legislation within the executive power - under Article 27 of the Revised Constitution.

49. Ibid., Art. 18 (c) - (h) of the Order assigns to the Ministry of Land Reform and Administration the duties to administer, dispose of and distribute government lands; to ensure the establishment and maintenance of registers of land; and to take measures to expedite the settlement of all claims relating to ownership of land.

The scope of such orders should be limited to internal organization of the administrative agencies to be created and to the ordinary powers and duties of such agencies, while the basic law, such as regulatory powers, police powers and powers regulating matters of public finance be enacted in the form of a proclamation or decree.

2. Whenever an order or a general notice is enacted, the constitutional authority should be cited so that courts can know under which article the order or the general notice is issued.

3. By requiring administrative agencies to submit before enactment their proposal of fees and charges to the Council of Ministers for approval, the executive branch of the government should fix at least the upper limit or the ceiling of the fees to be charged by administrative agencies from time to time or adopt the standard laid down in Article 3(10) of the Livestock and Meat Board Proclamation of 1964.

4. Even though Article 113 of the Revised Constitution does not require fees and charges to be fixed pursuant to legislation approved by Parliament, if the delegation of power to fix fees and charges be given initially in the basic law rather than in the executive law, public criticism would be stifled in advance, and the rights of individuals would be safeguarded adequately.

5. The powers granted to the AVA under Articles 4(h), 6(b), 6(d), 6(h), 10, and 20, should be re-enacted in the form of a proclamation pursuant to Articles 88 - 90 of the Revised Constitution, while the rest of the provisions of the Charter of the AVA may be re-enacted in the form of an order, with some clarification of the language.