PEOPLE, PRACTICE, ATTITUDES AND PROBLEMS IN THE LOWER COURTS OF ETHIOPIA

*by Thomas Geraghty**

Introduction

Today, the woreda and awradja courts in the large towns of Ethiopia hear the kinds of cases that in the "old days" were decided in small villages by respected elders or local judges under a tree.

Now a courthouse provides the shelter once given by the tree, large towns have taken the place of villages, and the judges are assigned by a central government to hear cases in one locality for awhile and then move on. Elders continue to exercise their traditional arbitral power when disputes are submitted to them.[1]

This article follows the evolution of the present day "lower court" and describes the lower court system as it exists today, discussing the backgrounds and attitudes of the people who compose it towards the system and towards each other. Finally, in the Appendix, cases taken from two representative courts are analysed for the purpose of ascertaining the basic problems that exist today in the administration of justice.

Hopefully, this article identifies some problems which are susceptible to fairly superficial solutions – solutions that do not require a completely new start. While administration of justice will continue in somewhat better form if these measures are taken, real improvements, as will be seen, require a fundamental change in spirit among all concerned.

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1. In Ethiopian society there are a number of institutionalized means of settling serious disputes *outside* of court. The most important of these institutions are the "shamageles", respected persons in the community who are chosen by the disputants, (two are usually chosen by each party with a chairman agreed upon between the parties) to effect a settlement. They are most often resorted to in family disputes but are active in all kinds of cases from petty insults to land disputes, loan cases, assault and murder. In the old days, a decision of the shamageles was respected as law. In the countryside, their disposition of a dispute still carries great weight. Especially in the cities, however, their effectiveness appears to be decreasing. This may be due to the fact that modern work pressure and the monetary economy have made citizens less ready to serve as voluntary arbitrators, and also that people no longer regard the shamageles' decisions as binding in court. (But this does not mean that formal court proceedings always exclude the shamageles' role. In one criminal trespass dispute, a shamagele intervened and asked the judge not to decide the case because it was of great concern to his community and should be settled there. The judge agreed and through his encouragement the parties eventually went back to their community for arbitration.) The proceedings before the elders have no set form. The shamageles may interview the parties separately. If testimony of witnesses is required, shamageles will procure it. Or the parties and the witness may appear together before the elders – often in a church yard on sunday morning – and tell their stories. Shamageles apply their own concept of fairness to arrive at a compromise. They often also apply customary law. In some cases their decisions are written, and courts show respect for these documents.

The Lower Courts: General Description

Most people involved in litigation in the government judicial system of Ethiopia have their cases heard in the woreda and awradja courts – the two "lower" courts of the Ethiopian judicial system. In combination, these courts have jurisdiction to try civil cases involving movables up to a value of E $ 5,000.00 and immovables worth E $ 10,000.00[2] Their criminal jurisdiction ranges from power to punish misdemeanors such as vagrancy to charges of theft. Each of these courts exercises jurisdiction within its assigned administrative subdivision, either a "woreda" or an "awradja" "ghezat".[3] Woreda courts are within the appellate jurisdiction and administrative control of awradja courts.

Below the woreda courts in the countryside and in Asmara, are local judges or "atbia danias." These judges were originally empowered by a 1947 proclamation to hear very minor civil and criminal cases arising within their jurisdiction. [4] Though the Criminal Procedure Code enacted in 1961 gave them jurisdiction to hear minor criminal cases, the Civil Procedure Code enacted in 1965 did not mention them as having any civil jurisdiction. There was some confusion, as a result of the Civil Code's omission, over whether atbia danias were meant to continue to exercise civil jurisdiction. The Ministry of Justice attempted to eliminate the confusion by stating, in a circular sent to all Governorate Generals, that atbia dania courts could continue to exercise civil jurisdiction when parties agreed to submit their disputes to them.[5]

Two judges usually are assigned to metropolitan woreda courts – one who hears civil cases and another who considers criminal charges. Awradja courts outside of Eritrea[6] are composed of three judges – a presiding judge and two associate judges – who hear cases together. In large towns, awradja courts have divisions, each composed of three judges, which specialize in civil, criminal or commercial cases.

The most common kind of civil case in an Addis Ababa woreda court involves a small debt arising from a contract of loan. These debts may also arise from failure to pay debts, or unwillingness to abide by ekub[7] contracts. Rent default cases are also common.

2. Civ. Pro. C. Arts. 13, 14.
3. Civ. Pro. C. Art. 19. "Ghezat" means literally "place governed", "woreda" is the second smallest place governed, "mekitil Woreda" is the smallest place governed. The next largest administrative entity above the "woreda" is the "awradja".
4 Local Judges Proclamation of 1947, Proc. No. 62, *Neg. Gaz.* Year 6 No. 10.
5 *Study of Agricultural Land Disputes in Kuni Woreda and Chercher Auraja Courts (Harar Province), Imperial Ethiopian Government Ministry of Land Reform and Administration*, Addis Ababa 1969, p. 60.
6. In Eritrea awradja courts are constituted by one judge in the first instance and three judges when hearing appeals.
7. An "ekub" is a wage pooling voluntary association. Members pool weekly dues and draw lots. The winner takes the pool. Often a winner one week will refuse to contribute the next. If this happens the "judge" of the ekub will bring the person who refuses to pay to court and force him to pay pursuant to the latter's written or oral agreement when he joined the association to keep up weekly payments for a certain length of time.

The largest proportion of criminal cases heard in woreda courts are initiated by private complaint[8] and most often involve assault, insult, or trespassing. Violations of municipal regulations such as those dealing with public health and traffic are also brought to these courts. Suspects accused of theft are brought to woreda courts by the police pursuant to Article 29 of the Criminal Procedure Code to satisfy the forty-eight hour limit for bringing a defendant to court after arrest provided for in that Article and Article 51 of the Revised constitution.

Most of an awradja court's civil case-load is composed of litigation relating to succession to land, loan cases involving more money than those heard in woreda courts, claims for damages arising out of injury to person or property, petitions for homologation of divorce, and boundary disputes.

Most of the criminal cases heard in the first instance by awradja courts involve theft and are initiated by the public prosecutor. A smaller number of cases heard by an awradja court are initiated by private complainants. These are serious cases of trespass, damage to property, and assault. A substantial number of awradja court cases are civil and criminal appeals from woreda courts within their jurisdiction.

Depending upon their location – even within a city – courts hear different kinds of criminal or civil cases. One judge said that he thought the reason why eighty percent of his cases involved traffic offences was that his court was near a lot of traffic lights. Courts in market or industrial areas hear a great many beating and criminal trespass cases. In the town of Akaki, near Addis Ababa, where there is a large factory, employee-employer disputes were mentioned as being quite common. In the Mercato area of Addis Ababa, criminal trespass cases are common due to close living conditions and undefined boundaries. In another area of Addis Ababa, insult cases seem to predominate. The criminal judge for that area gave as the reason for the many instances of such cases the fact that if a person is insulted there he will usually know where to find the offender because it is a residential neighborhood. In the Mercato, however, where there are proportionately fewer insult cases brought to court, the community is not so tightly knit and people are insulted by strangers who cannot be found for the purpose of summoning them to court.

Courts: Physical Description

Courtroom buildings are usually in a dilapidated condition. In the cities they are usually constructed of stone, in some cases legacies of the Italian occupation. In the countryside they are generally of *chikka* clay construction with dirt floors.

In one courtroom, where there may be as many as three judges hearing different cases at the same time; litigants and spectators crowd the benches. Clerks' desks are located within the courtroom itself, adding to the congestion because people are continually moving to and from them to pay fines or to have pleadings checked for proper form. The registrar's office usually doubles as a judge's chambers. Files are kept in a separate office in what appears to an outsider to be complete disorder, though filing clerks claim they can find any file in five minutes. Scribes, who write out pleadings for litigants, sit outside the courthouse at tables or in small huts.

8. Crim. Pro. C. Art. 13, Pen. C. Arts. 217-222 and 721.

Personnel In and Around the Lower Courts

All litigation in Ethiopian courts must commence with the submission of written pleadings to the court. Scribes – independent operators who charge around E $ 1.50 for a complete set of pleadings – perform the service of writing statements of claim or defence for litigants who do not have advocates or who are not confident of their legal knowledge.

Generally, scribes know how to read and write sufficiently well to enable them to cite the right code articles for the fairly routine cases that come to woreda and awradja courts. Some of them have made up their own subject matter index to the codes and work out their own forms for pleadings. Others follow the forms in the appendix of the Civil Procedure Code.

Although they have to apply to the presiding judge of the court where they wish to work for permission to set up a table, scribes are not supervised by the court or by the Ministry of Justice. They may however, be reprimanded by a judge if they make a mistake in writing out a statement of claim or defence.

Also working in and around these courts are professional pleaders who appear for litigants. They are of two types. The "advocate" is the professional who appears for individual litigants. He is licensed by the Ministry of Justice.[9] The advocate, in order to practice law, has to take an exam[10] given by the Ministry of Justice and pay a yearly registration fee. Advocates are registered to practice in the various levels of the courts according to their competence as determined by the Ministry.

The other professional legal representative is the so-called "agent"[11] or by more common Ethiopian designation, the "negara fedge" (literally: "a person who handles the affairs of others"). Negara fedges are of two types – one professional and the other not. The professional appears for a government agency, or private corporations whose owners do not reside within the jurisdiction of the court where the appearance is made.[12] They are not required to pass an examination but appear continually for the business or the government agency that employs them. Negara fedges who appear for government agencies such as a municipality or the Department of Inland Revenue have standardized tasks in court. Thus one negara fedge will specialize in prosecuting violations of sanitation regulations for a municipality and another will go to court only to obtain judgments against delinquent tax-payers for the Ministry of Finance.

The other class of negara fedges – non-professionals – appear for family members. They are chosen by their relatives for their abilities as litigators and may handle

9. Courts (Registration of Advocates) Rules, 1952, Leg. Not. No. 166, *Neg. Gaz.*, year 11, No. 11.
10. In 1966, this examination included such questions as, "what is a co-offender?", "when would a contract of sale of immovables have an effect on third parties?", and "when is renunciation of succession valid and when does it have no effect?" Aberra Bantiwalu, *The Position of the Judiciary in Ethiopia*, 1966 (unpublished) Archives, Haile Selassie I University Law Library, appendix.
11. Civ. Pro. C. Art. 58.
12. Id., Arts. 58 and 59.

several cases at a time. These family pleaders are not permitted to accept remuneration for their services.[13]

Each court, too, has a staff of professional court personnel – the judges, copying clerks, file clerks, registrars, and messengers. All of these staff people are hired and supervised by the Ministry of Justice.

The Process of Litigation: Civil

The first step for a litigant, when he takes a case to court as a plaintiff or is summoned to court as a defendant is to have his pleading written out, usually by a scribe.[14]

When a litigant comes to a scribe with a legal problem, the scribe attempts to make an analysis of the dispute. He asks questions – much like a lawyer would– which are designed to bring out the true nature of the dispute so that the relevant code articles may be cited. For example, in a money dispute, where one party refused to pay what the other had loaned him, the scribe asked whether the defendant admitted that he had borrowed the money, whether the contract of loan was in writing, why the defendant refused to pay, and for the purpose of jurisdiction, where the contract was made and where the defendant resided.

The scribe writes the pleadings usually while the litigant waits. The pleading must contain the relief which the plaintiff demands[15] and information required by Article 222 of the Civil Procedure Code – basically the names and addresses of the plaintiff and defendant, "the facts constituting the causes of action and when and where it arose", "the facts showing the court has jurisdiction", and "the facts showing that the defendant is or claims to be interested in the subject matter and is liable to be called upon to answer the claim".[16] Required to be attached to the pleading is an annex[17] containing the names of witnesses to be called and documents if any upon which the plaintiff relies.

Statements of defence must contain objections to jurisdiction and facts upon which the defendant relies for his defence. The defendant is also required to attach an "annex" to his statement containing the names of his witnesses and documents upon which he relies for his defence.[18]

If the litigant is a plaintiff, the scribe writes out rough copies of the pleading for service upon each defendant. The litigant takes these copies to the registrar who checks them to see if they are in the form provided for by Articles 222 and 223 of the Civil Procedure Code. The registrar may reject the pleadings if they do

13. Id., Art. 58.
14. Civ. Pro. C. Art. 213 requires that "every suit shall be instituted by filing a statement of claim in the registry of the court." Arts. 233 and 234, Civ. Pro. C. require statements of defence to be brought to court by a defendant who has been served with summons.
15. Civ. Pro. C. Art. 224.
16. Id., Art. 222
17. Id., Art. 223.
18. Id., Art. 234.

not conform to requirements[19] without prejudice to the litigant's right to file a new statement of claim.[18]

If the plaintiffs' pleadings are accepted by the registrar, upon payment of court fees[20] the case will be officially opened.[22]

The plaintiff attempts to bring his adversary to court by persuasion rather than by court order because summonses cost money - both in fees and in the financial encouragement required by some clerks who are responsible for issuing them. If the adverse party does not respond to the informal request, the plaintiff obtains a summons and serves it on the defendant himself. The police are called in to bring the defendant to court when the summons is of no avail.

Witnesses are officially summoned to court[23] only after the party has failed to produce them. If a summons is necessary for a witness in a civil case, it is served by the party who desires his attendance.

The procedure for scheduling cases is basically on a first come - first served basis. When the litigant has his file accepted by the registrar he is told when his case will be heard. The time between filing a case and appearing before the judge for the first time can range anywhere from one day to a month.

When the case is called for hearing, if both parties are present, the judge first reads the file containing the statements of claim and defence as most judges do not prepare for the day's work by reading cases beforehand. Once the judge has familiarized himself with the case, both sides give their version of the dispute and if necessary, witnesses are called. The judges naturally dominate the proceedings, doing most of the crossexamination of parties and witnesses. During this hearing the judge records the testimony given, sometimes syllable by syllable.

If the case is uncomplicated and the judge feels that he can render a decision without thinking very long about it, he does so immediately after both sides have presented all their evidence. Otherwise he will consider the facts and issues of law and give the decision at a later date. Writing the decisions takes a great deal of time and the judge usually does this after the parties have finished presenting their cases, before the cases are heard in the morning, or sometime during the afternoon when the caseload is lighter.

It usually takes three to four hearings before a case is finally decided. In most cases quite a few continuances are granted for various reasons–the absence of one of the parties, absence of a witness, or the sheer number of cases which come before a judge in a day.

19. Id., Art. 229.
20. Id., Art. 232(2)
21. Id., Art. 215.
22. Civil cases may be instituted by paupers pursuant to Articles 467-480, Civ. Pro. C.
23. Crim Pro. C. Article 111.

If the losing party wishes to appeal, he usually makes his desire known to the judge immediately after the judge has read the decision.

The appellant then has to have a copy of proceedings in the trial court made by the court clerks (for which there is a set court fee as well as a frequent "donation"). A memorandum of appeal, stating the grounds upon which the party appeals, is written out by the scribes. The copy of the file and the memorandum of appeal are taken to the appellate court by the litigant.

The Litigation Process : Criminal

"Criminal prosecutions initiated by private complaint to the police compose a large proportion of the case load in the woreda and awradja courts. These cases are initiated pursuant to articles in the Penal Code and Code of Petty Offences which proscribe acts resulting in personal injury, property damage, or insult of a non-serious nature. The public prosecutor may not institute proceedings for this class of offences he must wait until the injured or offended individual complains to the police."[24]

A person desiring to make such a complaint, thereby initiating an investigation which may lead to a criminal prosecution, goes to a local police station to have his accusation recorded. The complaint is written down by police officials[25] and signed by the complainant. The investigating police officer has the power to summon the person "he has reason to believe...has committed the offence...to appear before him,"[26] to interrogate him,[27] and to require that the person summoned execute a bond, with or without sureties.[28]

The results of the investigation are forwarded to the public prosecutor[29] who decides whether or not there are sufficient grounds for prosecution. If the prosecutor decides there are sufficient grounds he will prosecute the case himself.

If the public prosecutor refuses to institute proceedings, he may authorize, among others, the complaining party himself, the injured party's legal representative, or the husband or wife of the injured party to conduct a private prosecution.[30]

Thus the complaining party in a criminal case initiated by private complaint can have a public prosecutor as his advocate. Very few private complainants bring their cases to court if the public prosecutor refuses to institute proceedings. Complainants who find that they will have to proceed on their own may be deterred by court fees and the time and effort required to present their cases by themselves.

Defendants in criminal cases – both those in cases brought upon private complaint, and those in cases initiated by the public prosecutor – have a difficult time

24 See P. Graven, "Prosecuting Criminal Offences Punishable Only on Private Complaint", *J. Eth. L.* Vol. II No. I, p. 121.
25. Id., Art. 14.
26. Id., Art. 25.
27. Id., Art. 27 (1).
28. Id., Art. 28 (1).
29. Id., Art. 37 (2).
30. Id., Arts. 44 and 47.

in court. The first problem for either one of these types of defendants is production of money for bond or locating a guarantor (surety)[31] after being arrested or "summoned" to the police station. Most defendants appearing in woreda and awradja courts as criminal defendants in cases brought upon complaint cannot afford to furnish bond money themselves though they usually can find guarantors. However, defendants accused of more serious crimes brought by the public prosecutor on his own initiative are less likely to be able to furnish bond or find a guarantor due to the fact that the latter are often vagabonds accused of theft who have no local ties in the community where they are charged. A great many defendants are, then, obliged to spend long periods of time in police custody awaiting the completion of the police investigation and trial.

Though the Criminal Procedure Code provides that the police shall bring the accused before the nearest court within forty-eight hours after his arrest[32] (for the purpose of deciding whether the accused will be released on bail or held in custody and/or to grant the police more time to investigate the accused's case if needed) in practice this procedure is not followed religiously and even if the accused is brought to court within the prescribed time limit, the police may ask the court to allow them more time (up to 15 days) to complete the investigation.[33] The police may ask for this extension as often as they like.

Once the case is brought to trial, the defendant is asked for his plea. If he pleads guilty, sentence is given and the case is closed. But if he pleads not guilty the prosecutor is never ready to present his case and the defendant, if he is in custody, is sent back to jail to await the prosecutor's preparation of his case and his next appearance before the court.

Of course, it is often the defendant who causes the delay because he has been unable to have his witnesses in court. Judges give continuances liberally to defendants to enable them to produce witnesses so that they may present their cases in the most favorable light.

Ninety percent of criminal defendants charged in the lower courts are not represented by counsel. It is likely that many of these defendants can not afford to retain counsel. Article 52 of the Revised Constitution of Ethiopia of 1955 provides that a criminal defendant has the right to "have the assistance of counsel for his defence, who, if the accused is unable to obtain the same by his own efforts or through his own funds shall be assigned and provided to the accused by the court". The usual procedure for appointing counsel for indigent criminal defendants, when they are appointed, is for the judge simply to appoint an advocate who happens to be in court. But such appointments are infrequently made for two reasons:

First, there are many poor defendants in criminal cases who do not know that advocates are available for them without charge. These people, therefore, do not ask to have one appointed for them, and the judge does not necessarily bring up the possibility of appointing an advocate unless the litigant does.

31. Id., Arts. 63 et. seq.
32. Id., Art. 29.
33. Id., Art. 59.

The other factor which curtails the fullest application of Article 52 is the number and minute nature of many of the criminal cases brought to court. It is possible, for example, for a defendant to be brought to court on a criminal charge for pouring water on her neighbor's bread. Insult cases, which make up a large proportion of the caseload in woreda courts, are often inconsequential affairs, and usually the defendant in such cases cannot afford an advocate. However, when the public prosecutor appears and speaks for the plaintiff which happens when the public prosecutor prosecutes a case initiated by private complaint pursuant to Article — of the Criminal Procedure Code, the defendant is outmanned. While such unequal representation, in cases brought upon private complaint, may lead to unjust results, it is clear that appointment of counsel in each such case would impose too much of a burden on today's legal profession and would result in more continuances than there already are for the purposes of consultation with newly appointed counsel and production of evidence.

The only form of representation that an indigent defendant in a criminal case has when the court does not provide him with an advocate is the moderating influence of the public prosecutor if he is so inclined. It is reported that judges sometimes order the public prosecutor to cross-examine the plaintiff's witnesses from the defendant's point of view and to speak for the defendant generally.

It must be noted, however, that there are many poor defendants in criminal cases who prefer to represent themselves as opposed to having an advocate either because they have a high opinion of their own argumentative capabilities or because they do not trust advocates they do not know.

This, then, has been a basic description of how the lower courts in Ethiopia operate and the kinds of disputes they hear. The next section describes the historical evolution of these courts.

Historical Evolution of the Present Day Lower Courts of Ethiopia

Before the Italian Invasion, there was no uniform formal judicial system with courts of fixed jurisdiction, requiring court houses or professional personnel concerned solely with the administration of justice. Especially at its lowest levels, litigation was conducted informally and procedural and substantive law lacked uniformity from area to area. Thus generalizations that are made about how litigation was conducted one hundred years ago at levels similar to that of the woreda and awradja courts of today are derived from a few descriptions of what took place in particular localities. However, a general picture of customary procedure, useful for an historical perspective from which to view the current system, can be pieced together from various accounts left to us by early travellers in Ethiopia. A comparison of the old and new ways of formally resolving legal disputes will serve to clarify the reasons for the existence of many of the problems that the new judicial system has both in terms of its internal administration and its effect on the people who now must cope with this new creation.

Up to the Italian Invasion

The general picture that emerges from accounts left to us by early European travellers in Ethiopia is that during the period from the beginning of the 20th century up to the Italian Invasion, there were basically three levels on which formal litigation was conducted.[34]

At the lowest level was a judge who usually had large land holdings and held dual allegiance to the provincial government and Emperor. In many areas, because land was inherited from father to son, this office was hereditary. From early descriptions the functions of this judge resembled that of the present day atbia dania.[35] He heard disputes over land, assault, theft, and insult which arose in his community. Since he was a member of the community where he sat and was acquainted with the people who brought their disputes to him he could often effect a settlement rather than impose a judgment.

The procedure for presentation of a case varied from area to area, and local ways of making an accusation, presenting evidence, or hearing the testimony of witnesses were strictly adhered to. According to one writer, arguments before the judge were not structured by references to substantive customary law. Litigants, rather, depended upon their oratorical skill and knowledge of local procedure to influence the outcome of a case.[36]

When two people decided to litigate, both of them had to find guarantors to assure that either way the case was decided, money would be available to satisfy the judgment.[37] Then both parties, depending on how sure they were of the merits of their case would make wagers – "I wager one sheep that the tree belongs to me and that the court will so find". The other party would counter with a wager of equal or greater value to the same effect and this would go on until the parties had risked as much on the outcome of the case as they thought wise.

Often a wager would be more of a manifestation of feeling than an intended bet on the outcome of a case. Thus a litigant might wager an amount of money or an article which he could not under any circumstances provide should he lose the case. In such situations the judge would decide on a realistic and appropriate wager.

Each party would then tell his story to the judge and present his evidence and witnesses. The judge would decide the case immediately after the parties were

34. By formal adjudication is meant litigation conducted in the presence of a government designee excluding the settlement of disputes by shamageles.

35. "There is in each village one hereditary officer that cannot be displaced on any pretence; and it is this institution that alone preserves some appearance of order, in the absence of all written documents, amidst the whirl of revolutions and the rapid succession of dynasties and governors this humble officer takes one-tenth of all that he collects for his chief". This officer also kept track of boundaries --"the boundaries that he has to define are very simple. A brook, bush, or stone marks the limit of a village, but when their neighbor's fields, as often, are interlaced, it is a complicated task and gives rise to endless litigation, often to violence." J.C. Hotten, *Abyssinia and its People*, 1868. p. 157

36. "An Abyssinian suit is much more a trial of wordy skill than an elucidation of the truth..." Id., p. 185.

37. Id., p. 183.

through presenting their cases. The judge would either give his decision without deliberation or after hearing the opinions of members of the public present in court.[38] The losing party would have to pay his wager to the judge.[39] If an appeal were taken from the decision of this judge, payment of the wager might be suspended until the decision of the next highest judicial official was received.[40] In some areas where the wager system was not practiced, the judge could impose arbitrary court costs on the losing party which, of course, the judge would receive himself.[41]

But in civil cases a litigant sometimes had to take the initiative in bringing a recalcitrant defendant into the adjudicative system described above. Debtors, for instance, if they did not come voluntarily to court, would be accosted by their creditors and the initial dispute to determine if there was cause to bring the debtor to court would be heard by any person who happened to be passing by.[42] If it was discovered that the plaintiff had a legitimate cause, the debtor would be bound over to the local judge who had people to execute judgments at his command. Methods of enforcement used by this judge included chaining the debtor to his creditor, forcing the debtor to work out his debt, or chaining him to a soldier until he decided to pay.[43] In Asmara, during the 1930's, if a litigant was adjudged liable to pay a certain fine but did not have the money to do so he was kept in custody in the judge's house until the judgment was satisfied.[44]

If, after a certain period of time, the judgment debtor was found not to have the resources to satisfy the judgment against him, he was set free, the time spent in chains or in service being a sort of punishment for not fulfilling his obligations.

Criminals suspected of serious crimes were seized by local people led by the chiqua shum and brought before the judge. The people were encouraged to enforce the laws against their fellow townsmen because it was the practice of the local

38. S.D. Messing, *The Highland Plateau Amhara of Ethiopia*, 1963, p. 330.

39. The wager system as practiced in 1935 in Asmara before district judges appointed by the governor has been described as follows : "Another reason for the popularity of these law courts is that here the native passion for gambling is officially linked with the search for truth and justice. Either or both the plaintiff and defendant, when he has made a statement, may lay a bet that he is right and that the court will so find. Half a sheep, a pound of flour — even a white horse may be wagered depending on the importance of the dispute. If one litigant offers such a bet, the other can only "take the bet", or else retract his own statement and then lose the suit. Often in the end, these bets are worth more than the trifling object which started the quarrel. Judges in these street courts receive no salary; they live solely from the proceeds of wagers. Whoever loses must pay their fee, and the judges seem to earn a good living as some had large houses."
H.P. Lechenperg, "Open Air Law Courts of Ethiopia", *National Geographic Magazine*, (Vol. LXVIII No. 5), Nov. 1935, pp. 633 et. seq.

40. S.D. Messing, cited above at note 38, p. 331.

41. "The sum is arbitrary; and the only check upon their capacity is the fear that if too exacting, the country people will cease to dispute, or will decide all cases before elders and friends." J.C. Hotten, cited above at note 35, p. 183

42. "In small affairs, such as a sudden dispute on the high road, the meeting of an absconded debtor, or any civil matter, the first decent person to be found is obliged to act as a temporary judge..." J.C. Hotten, cited above at note 35, p. 186.

43. R.P. Dimotheos, *Deux Ans De Sejour en Ethiopie*, 1871, p. 27.

44. H.P. Lechenperg, cited above at note 39, p. 36.

chiefs to impose fines upon whole communities who refused to deliver up the guilty to the authorities.[45]

Another way of insuring that murderers and thieves were brought to justice was by means of an "afarsata" — an assembly convened by the local administrator to which all people in a locality, often excepting the clergy, were obliged to come after a crime had been complained of. There the people of the community would be obliged to produce the criminal, the assumption being that someone in the area must have seen the crime committed or know the criminal. The procedures at these afarsatas differed from area to area. In some localities each person present was interrogated until the evidence pointed to one man or until the guilty person confessed due to public pressure. In other areas, the afarsatas were merely discussions among the people but they were not recessed until the criminal was found.[46] Today, where afarsatas exist, they are unpopular among the people and a community may chose to pay the collective fine imposed by the woreda governor rather than attend the time consuming assembly.[47] In one community it was reported that the fine is sometimes paid in advance so that an afarsata will not be called.

Though the payment of these local judges came from the parties themselves, the financial rewards of the job were sufficient to encourage persons of stature who knew the people in their communities to become judges. The system also made it possible for the government to appoint judges without having to pay them. It has been suggested, however, that the administrative advantages of this system were outweighed by the fact that the amount of the wagers necessary to bring a case prevented poorer peasants from initiating legal action without the assistance of many relatives, though measures were taken by the central government towards the end of the 19th century to prevent this situation from arising.[48] One writer has, however, suggested that this system was advantageous to the poor, since a judge would naturally prefer to call the giver of the highest wager, usually the wealthier of the two, the loser, in order to receive the greater fee for his services.[49]

Few of the early European travellers in Ethiopia suggest that bribery was a serious problem under the customary system. Arbitrariness of the judge, as opposed to his dishonesty, seemed to be the system's most serious defect.[50] Also the influ-

45. J.C. Hotten, cited above at note 35, p. 186.

46. S.D.Messing, cited above at note 38, p. 326. Afarsatas are still held in rural areas today.

47. In some areas, in addition to paying a fine in order to dispense with an "afarsata" the woreda governor needs to be persuaded monetarily.

48. One writer, speaking of the area around Gondar, states: "Until very recently, and in remote rural districts even today, the wager, or bet on the outcome, was an essential factor in litigation. It took the place of court fees, for the loser forfeited his bet to the judge. This was the salary of the judge. Without this wager, it was not possible to go to court. The poor man was at a great disadvantage since he could not, even with the help of his kinsmen, keep raising the bets equal to those of his wealthier adversary. To limit such judicial excesses, Emperor Menelik II decreed that wagers had to consist of tangible items such as honey, a horse, or a mule, with a fixed cash equivalent...and judges were urged to exercise fairness." S.D. Messing, cited above at note 38, p. 329.

49. "This is occasionally a safeguard to the poor, inasmuch as it is the interest of the judge to decide against the one that can afford to pay." J.C. Hotten, cited at note 35 above, p. 185.

50. "The judge has certain perquisities, varying as usual in each province; on each slip of the tongue, on each oath that is taken on the Gospel, nay even should excitement cause a movement of the hand or change of position during the pleadings.." Ibid.

ence of governors and rases on judicial proceedings caused suffering to litigants. There was little concept of an independent judiciary.[51]

But bribery was occasionally a problem. One writer in 1868 was of the opinion that the fines which judges could exact from litigants when the latter made oratorical mistakes, plus the opportunities for receiving bribes, made it in the judge's interest to keep the case going for as long as possible.[52]

Though the opportunities for corruption under the wager system were many, since most judges were large land holders and respected persons in their communities it is likely that their susceptibility to improper influence was slight.

Appeals from the judge of first instance could be taken to a "meslanie" who was originally, when first appointed by Emperor Theodore in the 1850's and 1860's, a tax collector with no roots in the community to which he was sent by the Emperor for the purpose of gathering funds.[53] It is apparent that over the years the term "meslanie" has come to be a term applied to a local official, appointed by the provincial governor, with a mixture of administrative and judicial duties.[54] According to one present day atbia dagna from Menz, in that rich area landlords used to bid for the job, the highest bidder paying his bid to the provincial governor and receiving the appointment. Thereafter, this atbia dagna said, the meslanie collected as court fees ten percent of the amount recovered from the losing party.[55] An appeal from the meslanie was taken to the "wombar" appointed by the governor general of the province. This judge was part of the governor's retenue and although he spent most of his time in the provincial capital, he also rode circuit.[56]

The jurisdiction of these three officials, — dagnas, meslanies, and wombars, — was not fixed. One could, if it was desired, start a case by going to the meslanie or wombar. Of course it was usually more economical and convenient for parties to initiate proceedings before the nearest judicial official and the practice therefore was to proceed step by step through the hierarchy with the hope that each step would be the last.[57]

51. Litigants who were denied justice in their local courts because of the influence of administrators were forced to endure hardships to obtain justice at the court of the provincial ras or governor: "Almost all the subordinate governors being rapacious, the justice must be sought at the fountainhead; and then with the distance they (poor litigants) have to travel... they seldom return home without, in some shape, repenting their success." Id., p. 183.

52. Id., p. 185.

53. S.D. Messing, cited above at note 38, p. 256.

54. Now the governors of mekitil woredas, who collect taxes, are called meslanies by some of the rural population. In Eritrea, meslanies still unofficially exercise some judicial power and settle a great many disputes according to customary law.

55. In some areas, "melkegnas" exercised the same power that meslanies exercised elsewhere. Melkegnas were appointees of emperors before the reign of Theodore who collected imperial taxes and who received land in return for their services and who settled in the localities where they were sent by the Emperor. Meslanies began to be appointed by Theodore for the same purpose of tax collection as his direct emissaries where local melkegnas proved to have too many local ties to do the job effectively; they were salaried deputies of the Emperor and were shifted from locality to locality to prevent creation of local ties. S.D. Messing, cited above at note 38, p. 256.

56. Id., p. 326.

57. M. Perham, *The Government of Ethiopia*, London, 1948, pp. 144-45.

Appeals from any court's decision to the next highest court and all the way up to chilot were quite common. Apparently there was no limitation on this right of appeal and it appears to have been used without restraint — even excessively.[58]

In addition to pressing appeals all the way up through the judicial system to the Emperor — the ultimate judicial authority — litigants often applied to local governors for assistance in their cases even though the governor was not officially part of the judicial system. Still he had the power to appoint, remove, and direct the judges under him and was not hesitant in exercising that prerogative.

Judgments by any court — no matter how high in the judicial hierarchy — were executed by agents of the governor or ras of a province as well as of the central government, called "chiqa shums." These officers were village head men, whose duties also included the collection of taxes and proclamation of the central government's deorees.

Thus, even lacking detailed information about the judicial system, as it existed before the Italian Invasion, some generalizations about it may be made.

First, though the system was centralized at the top in the person of the Emperor and though the governors who appointed the judicial personnel owed allegiance to him, Ethiopia's legal system was not unified enough fifty years ago to ensure that judicial practices were everywhere the same. Therefore, it is likely that the judicial system, especially at its lowest levels, employed procedures and applied substantive laws which reflected local customs. Even in the larger cities — which were then considerably smaller than they are now — people brought their customs in from the countryside[59] and were allowed to practice them with only minor variations resulting from cultural amalgamation caused by city life.

No written pleadings were required to be filed by the parties. Thus there was no need for scribes or of any professional personnel to help litigants through the initial stages of litigation.

When the litigants appeared before the judge all they were required to do was to tell their story. The oratorical powers of which many observers tell us was learned as part of growing up by many litigants,[60] and so in court litigants behaved as they thought natural under the circumstances.

There were local procedures to be followed in every case for presentation of evidence and witnesses. Judgment on substantive matters of law was given on the basis of local practices and equity. Thus a party to a land dispute, might have to

58. "...In some parts of the Empire it was possible to take appeals through fifteen courts and much weight was given to whether or not the litigant received a favorable verdict from majority of these courts". *Ibid.* p. 143.

59. The litigation described by one traveller in Asmara in 1935 resembles that observed by earlier travellers in the Ethiopian countryside in the latter part of the nineteenth century: "These courts use no regular court building, but meet for trials on any convenient street corner or village plaza. There like shopkeepers or pedlars, they may sit down and wait for cases to come." H.P. Lechenperg, cited above at note 39, p. 633.

60. "The Ethiopians are fond of litigation and most of them skilled in the quibbles and proverbs that are essential to success in any dispute. It is the favorite sport of boys and children, and the smallest difference of opinion furnishes matter for a long and sometimes expensive lawsuit..." J.C. Hotten, cited above at note 35, p. 137.

know the geneology of certain people in his locality and certain local rules regarding succession, but that would come naturally to him. This knowledge — of both substantive rules and procedural practice — would be part of his upbringing.

Litigation before the lowest governmental judicial officers was basically spontaneous and summary. A whole case was heard in one sitting and the judges gave their decisions immediately after hearing the evidence of both sides.

The next generalization that can be made is a deduction from the one above. Generally the government officers assigned to handle litigation were not too busy to give prompt and adequate attention to every case. Litigants could have their disputes resolved when the need arose under unhurried conditions.

The power of governors to appoint and remove judges meant that the executive and judicial branches of governments were not separate. Judges were considered delegates of the local governor and of the Emperor — of men and not the law. In most instances, the governor of a locality sat with his judges as he still does in some localities today and had power to influence their decisions.

As a result of their knowledge of customary law and procedure, the spontaneity of litigation, and the calibre of the judges, litigants enjoyed litigation. They were not restrained by European manners and could present their cases according to their own traditions, taking pride in their ability to quote old proverbs and clever sayings.

Advocates were not a necessity for illiterate litigants with no knowledge of courtroom procedure since most litigants — aside from women or persons under incapacity — could plead by merely saying what they had to say.

Bribery was not a great problem. Judges were proud of their positions and received fees from litigants adequate to maintain a respectable standard of living for the countryside.

Judges were respected and powerful men in their localities. Generally they could decide cases and issue orders as their discretion dictated, so long as they did not offend the conscience of the community too often.

Finally, jurisdictional limits of the courts were not fixed. Thus all kinds of disputes, involving people of different status in the community, came to the same courts to be resolved.

The Italian Occupation

Though the Italians did attempt to restructure the upper levels of the existing Ethiopian court structure, customary substantive and procedural law remained, for the most part, untouched at the lower levels. However, Italian criminal courts were established for each Italian Administrative entity. Though the Italians promulgated a code for Ethiopia and were avowedly committed to making sweeping administrative changes in the administration of justice, there were few attempts at reorganization.[61] Thus the Italian period was not a particularly formative one for the administration of justice in the lower courts of

61. cited above at note 57 pp. 152-153.

Ethiopia. At the levels of the court system discussed in this article, practices continued as before.

After the Italian Invasion to the Present

The present judicial system in Ethiopia was basically provided for by the Administration of Justice Proclamation of 1942, and later by the promulgation of substantive and procedural codes by proclamation.[62] Of course, the proclamations having the greatest effect upon the structure of the court system are those dealing with the establishment and administration of the courts and those dealing with the procedure to be followed in them. But in Ethiopia, since 1942, the laws establishing the various courts (and thus the court system itself) have been modified not by subsequent laws expressly providing for changes in that structure, but rather by inference from articles of the Civil Procedure Code granting jurisdiction to certain courts and not mentioning the jurisdiction of other courts still formally in existence by statute.[63]

The Proclamation of 1942 was promulgated by the Emperor before Parliament retired to its postwar sessions upon the advice of the Council of Ministers and on the recommendation of the Minister of Justice.[64] The Emperor acted without the advice or consent of the legislature pursuant to Article 9, 10, 11, and 16 of the Constitution of 1931 which in general gave the Emperor power to act independently in times of national need when the legislature was not sitting. Throughout these proclamations and rules, discussed below, it is clear that the Emperor retains the power to appoint judges and generally to regulate their number and qualifications requisite for appointment. And just as important, it is the Emperor who by formal enactments creates the courts, delegating the power to administer them to the Afe-Negus, Minister of Justice, and the President of the High Court.[65]

Thus, under the system created in 1942, the central government took primary responsibility for the administration of justice throughout Ethiopia. That responsibility, as discussed above, was traditionally held by the provincial governors.

The Administration of Justice Proclamation of 1942[66] established the Supreme Imperial Court with appellate jurisdiction to hear cases appealed from the High Court,[67] a High Court with "full criminal and civil jurisdiction in Ethiopia according to law",[68] and teklay ghezat or provincial courts with jurisdiction to try civil cases involving

62. A "proclamation" is legislation passed by parliament and approved by the Emperor. See K. Redden, *The Law Making Process in Ethiopia*, 1966 p. 5 et. seq. A Penal Code was promulgated in 1957, a Civil Code in 1960, a Criminal Procedure Code in 1961, a Commercial Code in 1960, a Civil Procedure Code in 1965, and a Maritime Code in 1960.

63. Civ. Pro. C. Arts. 14, 15, 16.

64. Administration of Justice Proclamation, 1942, Preamble, Proc. No. 2 *Neg. Gaz.* year 1, No. 1. This proclamation was Subsequently amended by No. 102 of 1955.

65. Administration of Justice Proclamation, 1942, cited above at note 64, Article 20.

66. This Proclamation was originally an annex to the Anglo-Ethiopian Agreement of 31st of January, 1942. See M. Perham, cited above at note 58, pp. 154 and 423.

67. The Administration of Justice Proclamation, 1942, cited above at note 64 pt. II.

68. Id., pt. III.

up to E $ 2,000.00 and criminal jurisdiction to impose imprisonment for not more than five years and fines of not more than E $ 2,000.00.[69]

The Supreme Imperial Court as provided by the Proclamation was composed of the Afe-Negus as President and two High Court judges.[70] The High Court and each teklay ghezat court were to be comprised of three judges appointed by the Emperor.[71] Teklay ghezat courts were to be established in each teklay ghezat of the Empire. The Proclamation established one High Court which could sit in any part of the Empire.[72]

The Proclamation of 1942 did not describe the jurisdiction of the awradja ghezat, woreda ghezat, or mekitil woreda ghezat courts though it did in effect "establish"[73] them. The Proclamation merely mentioned that these courts were established and that "warrants" could be issued by the Emperor desoribing their constitution, local and subject matter jurisdiction, and appellate jurisdiction, as well as the "law to be administered by them".[74] Pursuant to the 1942 Proclamation, lower courts — awradja, woreda and mekitil woreda — were established and their powers enumerated probably by a circular issued by the Ministry of Justice.[75] Governors and meslanies could sit as presidents pursuant to a later decree.[76] This power today is generally not exercised in large cities but is sometimes invoked by administrators in the countryside.

Court procedure rules, applicable to all existing courts were issued in 1943. [77] Due to the influence of British judicial personnel on the formation and administration of the legal system — three judges of the High Court were British in 1943[78] — the rules were cast in the manner of English procedure. These rules gave the High Court first instance jurisdiction of disputes involving more than E $ 2,000.00 and covered such aspects of court procedure as the manner in which a suit could be instituted, allowance of advocates to practice before the courts,[79] joinder of parties and cause of actions, issue and service of summons, pleadings, appeals etc.

These rules provided that all suits had to be commenced by presenting a "statement of claim to the registrar of the appropriate court"[80] but that "pleadings could not be attacked for want of form"[81] and that "a court (could) for good reasons dispense with pleadings".[82] This provision, of course, allowed courts with insufficient personnel to operate without the necessity of following these procedures.

69. Id., pts. III, IV.
70. Id., pt. II.
71. Id., pts. IV, and III(8).
72. Id., pt. III (9)
73. Id., pt. I(2) d-q
74. Id., pt. V.
75. R. Sedler, *Ethiopian Civil Procedure*, 1968, p. 9.
76. Administrative Regulations, 1942, Article 10, Decree No. 1, *Neg. Gaz.* year 1, No. 6.
77. Court Procedure Rules, 1943, Legal Notice No. 33 *Neg. Gaz.*, year 3, No. 2.
78. M. Perham, cited above at note 57, p. 156.
79. At this time advocates were not licensed.
80. Court Procedure Rules, 1943, part II (1), cited at note 77 above.
81. Id., Rule 30 (1).
82. Id., Rule 30 (11).

These rules also provided that any person who was a party to a suit in any provincial (teklay ghezat), regional (awradja ghezat), or communal (woreda) court could have his case transferred to the High Court. This provision may have been the result of lack of confidence in the lower courts as far as educated litigants were concerned and was probably designed to prevent foreign nationals from being subjected to litigation in the lower courts.[83]

Further rules governing appeals to the Supreme Imperial Court from the High Court were issued in 1951.[84] Rules governing the admission of advocates to practice, their licensing and discipline were promulgated in 1952.[85]

Later, rules for execution of judgment, applicable to all courts provided various ways of enforcing the judgments of the courts through an "execution officer" (a judge or person appointed by the Ministry of Justice) such as arrest and detention of judgment debtors,[86] and attachment and sale of property.[87] However, the Execution of Judgments Rules of 1953 provided that a judgment debtor should not be sent to prison if the court believed that he could not pay[88] and that in situations where the enforcement of the payment of the debt owed would deprive the debtor of his means of subsistence, the creditor should pay the debtor a subsistence allowance determined by the court.[89] The Rules go on to specify methods of sale of property to satisfy judgments and the priorities of the competing interests for the proceeds of the judgment.

There were also rules enacted pursuant to the Administration of Justice Proclamation of 1942 according to which the costs of a suit, to be assessed to the losing party, were determined.[90] Other rules were issued which set out the schedule for court fees.[91]

Public prosecutors were governed, as far as the methods and standards for appointment, by the Public Prosecutors Proclamation of 1942.[92] Provision was made by this Proclamation for their appointment by the Emperor through the Minister of Justice and they were made subject to the directions of the Ministry of Justice.[93] According to this Proclamation, prosecutors were required to have a sound knowledge of the law and had to have backgrounds in law as advocates, service as

83. M. Perham, cited above at note 57, p. 154.
84. Supreme Imperial Court Procedure Rules, 1951, Leg. Not. 155, *Neg. Gaz.* year 10, No. 11.
85. Courts (Registration of Advocates) Rules, cited above at note 9,
86. Execution of Judgments Rules 1953, Rule 6(a), Leg. Not 176, *Neg. Gaz.* year 12. No, 12.
87. Id., Rule 6(b).
88. Id., Rule 8.
89. Id., Rule 2. This rule may refer to the practice of having judgment debtors work out their debts by performing services for their creditors. Rule 6 of the Execution of Judgments Rules provided that judgments could be executed by arrest, attachment, and also "in such other manner as the nature of the relief may require." This last provision could include the practice of imprisoning the judgment debtor referred to.
90. Costs and Advocate Fee Rules, 1953, Leg. Not. No. 176 *Neg. Gaz.* year 17. No. 14.
91. Courts (Fees) Rules, 1952, Leg. Not. No. 177, *Neg. Gaz.* year 11. No. 123.
92. Public Prosecutor's Proclamation 1942, Proc. No. 29, *Neg. Gaz.* year 1.
93. Id., Art. 5.

a government official, or police experience obtained above the rank of Assistant Inspector of Police.[94]

Moslem courts were established or recognized by proclamation in 1945. These courts were given jurisdiction to handle family matters – marriage, divorce, and succession,[95] but the Proclamation also provided that the jurisdiction of these courts and the procedure to be followed in them could be regulated by the Minister of Justice.[96]

Another product of this judicial system created by a series of proclamations was the "atbia dania". Pursuant to the Local Judges Proclamation of 1947, local judges, called "atbia danias", with civil subject matter jurisdiction of up to E $ 26.00 and of criminal charges punishable with a fine not exceeding E $ 15.00[97] were to be appointed in each locality. Appeals from their decisions were to be taken to the nearest mekitil woreda or woreda ghezat court.[98] Basically these men, appointed for the purpose of settling disputes in areas remote from the official courthouse, were to be powerful men in their localities – usually fairly large landholders in their communities.[99] Often those judges appointed had exercised unofficially the power given them by the Local Judges Proclamation.

The most recent proclamation dealing with administration of the courts was the Administration of Justice Proclamation of 1962.[100]

Though this Proclamation was suspended from operation everywhere in Ethiopia except for Eritrea before it was implemented,[101] the court system it described is essentially the system as it exists today and for the most part implementation of this Proclamation's reforms has been achieved despite its suspension, by other means, as will be seen below. This Proclamation abolished the mekitil woreda ghezat courts and the teklay ghezat courts[102] leaving four levels of jurisdiction – the woreda courts with jurisdiction to hear cases involving movables of a value not exceeding E $ 500.00 and land not exceeding a value of E $ 1,000.00[103] awradja courts with jurisdiction to hear appeals from woreda courts[104] and to hear cases involving movables worth between E $ 500.00 and E $ 5,000.00 and immovables of a value of above E $ 1,000.00 but not exceeding E $ 10,000.00[105] the High Court to hear appeals from the awradja courts and original jurisdiction to hear cases involving immovable property worth more than E $ 5,000.00 and immovable

94. Id., Art. 4 (a-c).
95. Kadis and Nabias Councils Proclamation, Article 2, Proc. No. 62, *Neg. Gaz.* year 3, No. 9.
96. Id., Art. 6.
97. Local Judges Proclamation of 1947, Article 3 (a-b), Proc. No. 62, year 6 No. 10. where the English version of the Proclamation says that atbia danias have civil jurisdiction up to $ 25.00, the Amharic says $ 26.00 and the latter has been applied by the ministry.
98. Id., Art. 5.
99. Id., Art. 7.
100. Courts Proclamation, 1962, No. 195, *Neg. Gaz.*, year 22, No. 7.
101. Courts (Amendment) Proclamation, 1963, No. 203, *Neg. Gaz.* year 22, No. 16.
102. Courts Proclamation, 1962, cited above at note 100.
103. Id., Art. 7(1).
104. Id., Art. 8(a).
105. Id., Arts. 7(2), 8(a).

property above the value of E $ 10,000.00.[106] The Supreme Imperial Court was constituted to hear appeals from the High Court.[107]

The High Court and Supreme Imperial Court, according to this Proclamation, would exercise jurisdiction throughout Ethiopia and divisions of these courts could be convened wherever in the Empire the Minister of Justice thought it necessary and proper.[118] Woreda and awradja courts could sit only within their woreda and awradja ghezats and were looked upon as separate courts exercising local jurisdiction.

The Proclamation of 1962 also provided that awradja courts could be fully constituted by only one of the three judges provided for in the Proclamation of 1942 when sitting as courts of first instance, and by three judges only when hearing appeals.[109] A judge could be disqualified from sitting in cases where there was a conflict of interest either by his own motion[110] or by application of one of the parties in a case.[111]

The jurisdiction of atbia dagnas as set forth in the Local Judges Proclamation of 1947 was affirmed by the 1962 Proclamation.[112]

Pursuant to this Proclamtion all cases both civil and criminal were to be heard in open court except under circumstances where public safety, general security, the unhindered giving of evidence, or the protection of the interests of young people demanded that closed sessions be held.[113]

Thus the changes that this Proclamation was to make were:

1. The abolition of two courts, the mekitil woreda and the teklay ghezat courts;

2. The reorganization of the jurisdiction of the remaining courts to compensate for the abolition of the mekitil woreda and teklay ghezat courts;

3. The reduction of the number of awradja court judges needed to constitute fully an awradja court hearing a case on first instance; and

4. The authorization of the creation of divisions of the High and Supreme Imperial Courts to sit in the provinces.

As suggested earlier, though this proclamation was suspended from operation in all of Ethiopia except for Eritrea[114] all of the changes whch it was designed to implement have taken place except for the provision that awradja courts be fully constituted on first instance by one judge.

106. Id., Arts. 7(3), (1).
107. Id., Art. 8(c).
108. Id., Arts. 2 and 5.
109. Id., Art. 4.
110. Id., Art. 16(2).
111. Id., Art. 17.
112. Id., Art. 23.
113. Id., Art. 14.
114. Courts (Amendment) Proclamation, cited above at note 101.

Mekitil woreda and teklay ghezat courts no longer exist. Their abolition was effected by the fact that they were not given jurisdiction by the Criminal Procedure Code of 1961 nor by the Civil Procedure Code of 1965. The civil jurisdiction of the woreda, awradja, High and Supreme Imperial Courts, now defined by the Civil Procedure Code,[115] is the same as that set forth in the 1962 Proclamation.

The High Court presently has divisions in the capitals of the governorates general of Ethiopia and the Supreme Imperial Court has a branch in Asmara.[116]

The Civil Procedure Code and the Criminal Procedure Code sections dealing with jurisdiction of the four levels of courts – woreda, awradja, High and Supreme Imperial Courts – is the legislation which now in effect dictates the number and competence of the courts in Ethiopia.

In summary, then, there are four levels of courts of general jurisdiction in Ethiopia. The civil jurisdiction of the two courts with which this paper is concerned set forth in the Civil Procedure Code of 1965 is as follows:

"Article 13 - Woreda ghezat courts shall have jurisdiction to try:

(a) all suits not regarding immovable property where the amount involved does not exceed E $ 5,000.00; and

(b) all suits regarding immovable property where the amount involved does not exceed E $ 1,000.00.

Article 14 - Awradja ghezat courts shall have jurisdiction to try :

(a) all suits not regarding immovable property where the amount involved does not exceed E $ 5,000.00; and

(b) all suits regarding immovable property where the amount involved does not exceed E $ 10,000.00."

All suits have to be tried in the "lowest grade" of court competent to try them.[117]

Article 18 of the Civil Procedure Code provides that awradja courts shall also have jurisdiction "where the subject matter of a suit cannot be expressed in money. Such suits generally include review of the decisions of family arbitrators in diverse proceedings, the granting of a petition for homologation of divorce, and recognition of the right to succeed to property.

Presently there is a woreda court in each woreda ghezat and an awardja court in each awradja ghezat. These courts hear cases against defendants who reside or

115. Civ. Pro. C. Arts. 13-15.

116. Thus it might be asked why the 1962 Proclamation was suspended when the reforms it embodied are a reality today. The Proclamation was passed by Parliament, approved by the Emperor, but the Minister of Justice wrote a circular to each of the provinces asking that the Proclamation not be applied because the Ministry of Justice could not afford to implement it. The Senate and Chamber of Deputies officially suspended the 1962 Proclamation after the Minister of Justice's action. Eritrea, however, then changing its judicial system from that left by the British to the Ethiopian system, had already implemented the 1962 Proclamation and it was allowed to remain in force there with the consent of the Emperor. See N. Metzger, *Administration of Justice in Eritrea*, (unpublished) Asmara, 1965, p. 7, Haile Sellassie I University, Law Faculty Library.

117. Article 12, Crim. Pro. Code.

do business[118] within their ghezats and that arise within their ghezats.[119] Awradja courts have jurisdiction to hear appeals from woreda courts within their jurisdiction.[120] The awradja court of Addis Ababa for instance has ten woreda courts under its jurisdiction, all located in Addis Ababa, from which it hears appeals. Other awradja courts have an average of three or four woreda courts over which they exercise appellate jurisdiction.

The criminal jurisdiction of the woreda and awradja courts is set forth in the Criminal Procedure Code of 1961. Generally an offence is to be "tried by the court within the local limits of whose jurisdiction it was committed".[121]

Courts are given jurisdiction over certain offences by Article 4 of the Criminal Procedure Code according to a schedule published at the end of the Code; basically the graver the offence, the the higher the court that is competent to handle it. Woreda courts, for instance, have jurisdiction to try petty assault cases,[122] offences concerning brawls,[123] intimidation,[124] threat of accusation or disgrace,[125] insulting behavior and outrage,[126] traffic offences,[127] seduction,[128] vagrancy,[129] damage to property caused by animals[130] and disturbance of possession.[131]

In large measure, criminal offences heard in woreda courts are initiated by private complaint.[132] Generally they are offences which arise out of disputes between people, from acts committed without premeditation, offences resulting from negligence, violations encompassing the concept of disorderly conduct, and breach of municipal regulations concerning sanitation and hours of places of entertainment.

The awradja court has criminal jurisdiction over such offences as theft,[133] aggravated cases of damage to property,[134] adbuction,[135] abortion,[136] grave

118. Civ. Proc. C. Art. 19.

119. Civil Procedure Code Article 24 grants jurisdiction over a contract dispute to the court where the contract was made or executed unless some other place was mentioned in the contract. According to Article 27, suits regarding wrongs to movables or persons may be instituted in the place where the wrong was committed or where the defendant resides.

120. Civ. Pro. C. Art. 321.

121. Crim. Pro, C. Art. 99. Other provisions govern cases where the act was committed in one jurisdiction and its consequences ensued in another (Art. 100 Crim. Pro. C.), where the place of the offence was uncertain (Art. 102 Crim. Pro. C.), and where the offence was committed outside of Ethiopia (Art. 104 Crim. Pro. C.).

122. Pen. C. Art. 544.

123. Id., Art. 549.

124. Id., Art. 552.

125. Id., Art. 533.

126. Id., Art. 583.

127. Id., Art. 783.

128. Id., Art. 596.

129. Id., Art. 471.

130. Id., Art. 649.

131. Id., Art. 650.

132. Arts. 13 and 40 Crim. Pro. C., Arts. 217-222 and 721 Pen. C.

133. Pen. C. Art., 630.

134. Id., Art. 654.

135. Id., Art. 558.

136. Id., Arts. 529-530.

willful injury,[137] forgery,[138] disclosure of scientific, industrial, or trade secrets,[139] and bigamy.[140]

Awradja courts hear criminal appeals from cases brought in the woreda courts under their jurisdiction.[141]

Eritrea

Since this paper will on occasion allude to the administration of justice in Eritrea –especially in Asmara– and since the judicial system evolved differently in Eritrea since 1900 than in the rest of Ethiopia, a short discussion of the background of administration there is in order. The discussion will concentrate on the evolution of the woreda and awradja courts currently exercising jurisdiction in Eritrea pursuant to the Administration of Justice Proclamation of 1962.

The Italians occupied Eritrea in 1900 and made it an Italian colony. They established courts for two groups of people –one system for Italians and assimilated Eritreans and another for native Eritreans.[142] The colonial administration gave civil jurisdiction over native Eritreans to "native chiefs"[143] but these chiefs could only pass judgment upon people of the same regions and who had silmilar customary laws.[144] The Italians also allowed the Moslem courts to function in similar fashion.[145]

Italian regional commissioners and district officers could hear cases involving disputes of native Eritreans of different customary backgrounds and appeals from the native chiefs with the assistance of native Eritreans. These officers also heard criminal cases involving Eritreans.[146]

Above the regional commissioners and the district officers was the Italian Commissioner's tribunal which had jurisdiction over serious criminal offences committed by Eritreans, feuds between tribes, and offences against the Colonial Authority.[147] Eritreans sat with the commissioner as advisors.[148]

The Governor of the Colony heard appeals from the Commissioners' Tribunal with four Italians and four native assessors.[149]

Customary law was applied to disputes between Eritreans, the Eritreans having codes of customary laws in the Tigrygna language.[150] Much of the procedure

137. Id., Art. 538.
138. Id., Art. 383-384.
139. Id., Art. 409
140. Id., Art. 616.
141. Crim. Pro. C. Art. 182 (1) (a).
142. N. Marein, *Ethiopian Empire Federation and Laws*, 1964, p. 371.
143. Id., p. 373.
144. Ibid.
145. Ibid.
146. Id., p. 374.
147. Ibid.
148. Ibid.
149. Id., p. 375.
150. Id., p. 376.

followed in those courts was like that described in the section of this paper dealing with the evolution of courts in other areas of Ethiopia.

In 1941, the British conquered Eritrea. Under the British administration village headmen were given jurisdiction of first instance.[151] District and tribal chiefs heard appeals from these headmen.[152] A so-called "standing court" composed of British personnel heard cases of Eritreans accused of serious crimes.[153]

The British established a system of "native courts" to take the place of the jurisdiction over Eritreans exercised by the Italian Commissioners. These were staffed by native Eritreans and had broad civil but limited criminal jurisdiction. In criminal cases these courts applied Italian law as modified by British administrators.[154] In civil matters these courts heard appeals from native chiefs and applied customary law.

In 1952 Eritrea was federated with Ethiopia. The day before the Federation, an Administration of Justice Proclamation was issued. The Proclamation emphasized in strong terms the fact that the judiciary in Eritrea was to be independent of the executive.[155] The proclamation made provision for the application of customary or Moslem law to be applied where the parties to a suit were of such similar backgrounds.[156] In case of conflict of laws, the parties could either decide by themselves what law should be applied or the court would decide for them.[157] Criminal law to be applied was statutory.[158]

The Proclamation created a Supreme Court, High Court, District courts, Magistrates courts, court of conceliatori, and special courts.[159]

District courts and magistrate's courts administered customary law, and both had only limited jurisdiction in criminal matters. This system was altered by subsequent amendments from 1952 to 1962. In final form, the system which was the precursor of the present judicial framework consisted basically of :

1. A Supreme Court which reviewed decisions given by the various divisions of the High Court -customary, Moslem, and statutory law divisions.
2. A High Court with the above mentioned divisons which heard appeals from district courts.
3. Customary and non-customary district courts which heard civil and criminal cases of first instance and applied statutory penal law. The customary district courts heard appeals from meslanies.
4. Meslanies who heard a variety of "customary" civil disputes and cases involving disputes over collective land between villages, tribes, and individuals. Meslanies heard appeals from chiqas.

151. Id., p. 381.
152. Id., p. 382.
153. Id., p. 384.
154. Id., p. 387.
155. Id., p. 392.
156. Id., p. 395.
157. Ibid.
158. Id., p. 396.
159. Id., p. 397.

5. Chiqa courts which applied customary law in the first instance to "civil" disputes.[160]

In addition to these courts, the Moslem courts also exercised jurisdiction pursuant to statute.

The union between Ethiopia and Eritrea took place in 1962. The Administration of Justice Proclamation 1962, discussed below, was promulgated December 31, 1962, to become effective May 5, 1963. Adaptation of the old system created by the British in Eritrea to the system required by the Proclamation was put into the hands of a "Legal Committee". This Committee decided that chiqas would continue to function under the new system as atbia dagnias pursuant to Article 23 of the 1962 Administration of Justice Proclamation, that meslanies would no longer exercise judicial functions, the Customary District Courts were renamed "woreda" courts and given the jurisdiction provided for them in the last named Proclamation, awradja courts were established in district capitals, and the various divisions of the High and Supreme Imperial Courts were consolidated.[161] When the proclamation was suspended by the Minister of Justice on July 8, 1962, Eritrea had already implemented it at considerable expense and was allowed by the Emperor to continue administering its courts under the 1962 proclamation.

Thus Eritrea has quite a long history of outside influence in all aspects of her judicial system and her substantive procedural law. During the Italian and especially during the British Administration, native Eritreans were trained as judges and advocates and the independence of the judiciary from the executive was stressed. Also, during the British Administration there was an advocate's association which had effective disciplinary powers. Despite the complicated set up of courts with overlapping jurisdiction, administration of justice in Eritrea was generally efficient, guided by colonial administrators.

Only since 1952 has the judicial system in Eritrea been controlled by Eritreans and even for a few years after that with foreign assistance. Now, with the union, the judicial system in Eritrea, though it has a different tradition for the last seventy years than the system throughout the rest of Ethiopia is according to law identical in structure to that of the rest of Ethiopia. And the influence of the central government on the administration of justice there means that Eritrea's court system is rapidly taking on the characteristices of judicial administration throughout the rest of Ethiopia.

The Ministry of Justice

The Ministry of Justice supervises and controls the judicial system in Ethiopia. It has four key divisions. Of primary importance, of course, is the office of Minister of Justice. He is appointed by the Emperor and his powers are described as follows:

> "The Minister of Justice is the head of one of the Departments transacting state affairs, namely, the Ministry of Justice. The Minister of Justice, in accord ance with the law, shall:

160. N. Metzger, cited above at note 116, pp. 3-4.
161. Id., p. 6.

(a) ensure that the nomination, reappointment, promotion, transfer, removal and retirement of judges are accomplished in accordance with the law;

(b) make all arrangements for the establishment and administration of appropriate courts throughout the nation;

(c) ensure and supervise the impartial administration of justice;

(d) ensure the enforcement of the law and compliance of all forms and procedures prescribed by law or regulations for the administration of justice;

(e) be responsible for the conduct of all criminal actions prosecuted by the Government;

(f) supervise the conduct of all civil actions and claims brought by or against the Government;

(g) advise and assist prosecutors and advocates acting in any case brought by or against the Government;

(h) provide for the maintenance of proper and appropriate records of all proceedings brought or defended on behalf of the Government and for the appropriate and systematic publication of the decisions of the courts, including the opinions of judges;

(i) submit to Us the record of each case in which sentence of death has been passed, together with his recommendations ;

(j) submit to Us petitions concerning pardons, together with his recommendations;

(k) issue to persons of high moral character and proper educational qualifications licenses to practice as advocates and ensure the continued suitability of such persons as advocates; and

(l) upon request, prepare drafts of legislation required by any Ministry."[162]

Under present practice, the Minister has control over all aspects of a lower court judge's employment.[163] He may investigate their work, promote them, demote them, or discharge them as he sees fit. He exercises this power through the various divisions of the Ministry.

One of these divisions is in charge of recruiting judges for the lower courts Applications for positions as judges are taken by this office. The character and background of each applicant is investigated and if the applicant passes the preliminary character screening, he is allowed to take an examination composed by the Ministry. However, many lower court judges are appointed without going through these formalities.

The Inspector General's office, headed by an Inspector General also appointed. by the Emperor, checks on the work of judges by sending inspectors to the courts to read decisions and observe courtroom procedure. These inspectors read case files to determine if decisions are being made according to the law in response to complaints made by litigants who feel that they have been wronged due to improper influence brought to bear upon the judge or because of an obviously erroneous decision. If the inspectors find fault with the decision making or administration

162. Ministers (Definition of Powers) (Amendment No. 2.), Order No. 46 *Neg. Gaz.* year 25, No. 32.

163. A. Bantiwalu, *The Position of the Judiciary in Ethiopia*, 1966 (unpublished) Archives, Haile Sellassie I University, Law Library, pp. 24 et. seq.

of justice in a court, they are to discuss the problems or irregularities they have unearthed with the vice-president of the court in which the decision was made and make a report to the Inspector General's office. The Inspector General's office forwards these reports to the Minster of Justice who may write letters to or take disciplinary action against court personnel who have been neglecting their duty.

In 1966 none of the staff of the Inspector General's division had any formal legal training.[164] The present Inspector General has no legal training, but all members of this division have had long experience working within the Ministry.[165] At present there is one graduate of the Haile sellassie I University Faculty of Law and law students on university service working for the Inspection Department.

The Ministry has an office which considers complaints filed by individuals against court personnel and which disciplines those who are found to have behaved improperly. The Ministry is also in charge of all government prosecutors through one of its divisions, the Attorney General's office. Each major division of the Ministry is headed by an individual appointed by the Emperor upon the recommendation of the Minister of Justice.

Conclusion

Thus the process of concentration of judicial power in the central government and of standardization of substantive and procedural rules is the main theme of the development of the administration of justice in Ethiopia since 1942. This move towards uniformity caused problems especially in the lower courts where more substantive and procedural diversity existed before the process of systematization of the judicial system began.

Scribes

Scribes are the most important independent legal practitioners in Ethiopia. Without them, illiterate litigants and people who have no knowledge of substantive law or courtroom procedure could not present their cases. The existence of scribes also permits the judicial system to have a written foundation in the form of files which contain statements of claim and defence that put the facts into concise form so that when a case comes before the court the judge does not have to spend an excessive amount of time getting a picture of how the dispute arose.

Scribes also tell litigants such practical things as where they have to go to file a pleading, what the judge is like, what the jurisdiction of the court is, and the litigant's chances of winning the case.

Most of the scribes interviewed had been in that profession for more than ten years. Before they became scribes many were employed by various government agencies and either retired from these jobs, were fired, or found they wanted more

164. Id., p. 33.
165. Ibid.

independence than those jobs accorded them. Some also had been businessmen whose undertakings had failed.

Hardly any of the scribes interviewed began their working lives writing out pleadings and all of them, while they seemed to enjoy their jobs, would have preferred to be working in another occupation had their former careers turned out as planned.

A few of the scribes interviewed had some education in government schools --at the most up to seventh grade-- but most had only been to Church School. Their knowledge of the law was gained entirely through reading on their own and from on-the-job experience.

In Addis Ababa, Harar, and Asmara, most scribes have the relevant codes at their disposal even if they do not always bring their volumes to work with them. Usually scribes said they had the Civil Code and Civil Procedure Code. The Penal Code and Criminal Procedure Code were not in the possession of many scribes. The Civil Procedure Code was most popular because of the forms for pleadings contained in its appendix.

In the countryside surrounding large towns, scribes were less likely to have or have access to the codes. These scribes relied upon copies of code provisions most commonly used and upon advice from advocates.

The scribe's "legal knowledge" consists of an ability to write the facts of a case so that a judge can understand them, ability to cite a few code provisions which seem to relate to the problem at hand, and an acquaintance with the operational procedures of the court where he sits.

The main function of a scribe in writing a statement of claim or defence is to see that the pleading contains what is required by Articles 222 and 223 of the Civil Procedure Code. Scribes do not engage in any substantive legal arguments in their pleadings nor do they attempt to interpret substantive code articles relied upon for recovery. The code provisions are merely cited and it is up to the court to discover why they are relevant.

The following is an example, in a relatively uncomplicated case, of pleadings written by scribes working in Addis Ababa.

– Plaintiff : Zemheret Bereket-Ab
Defendant : Girma Wolde-Mariam
Civil Law Section involving six dollars.

According to the contract we entered on 28-1-61 defendant borrowed $ 6.00 from me to alleviate his financial need. He gave me three bullets as a guarantee that he would pay me back by 3-2-61. At the appointed date he refused to return my money.

Therefore, according to Article 2005 of the Civil Code, I plead that he should pay me back the $ 6.00 and, in addition, my expenses for a lawyer and other costs of this suit. I am willing to and ready to give him back the three bullets.

If the defendant denies our contract of loan I will present according to Article 223 of the Civil Procedure Code a copy of the contract. And according to Civil Procedure Code Article 92 this will be my only evidence.

Signed : *Zemheret Bereket-Ab*

Some scribes rely on the forms in the appendix of the Civil Procedure Code for the format of their pleadings. Reliance on substantive articles of the codes, however, has to be accomplished either through memory, consulting the codes themselves, or as one scribe managed it, with code subject matter indexes which he prepared. The following is a translation of that part of the index relevant to the Civil Code. The reason for quoting it here is that it represents the knowledge that most scribes have of the substantive codes.

Index

Civil Code of Ethiopia

		Code Articles
1.	When the lender does not get his money back.	2005
2.	If witness is another person.	2002
3.	When a tenant refuses to pay his rent.	2945
4.	If one insults another person in court.	480, 481
5.	When a defendant claims he was wrongly accused and wants compensation.	2028, 2090
6.	When husband and wife ask for their property.	652, 653
7.	About power of attorney.	2205
8.	About disregarding agency.	2226
9.	About a person who does not carry an accusation.	2028
10.	When I claim that rist (land) belongs to me.	896, 996, 999
11.	When one files an accusation concerning an ekub.	1911
12.	When pleading insanity.	339
13.	When the plaintiff says he does not have any evidence but that he will swear to the facts he alleges.	2006
14.	About denying a contract.	1771
15.	About house rent.	2951
16.	When the guarantor demands that the debtor's assets be realized.	1934
17.	When two people live together as husband and wife without a record of marriage.	699
18.	When one fails to give prior notice.	2571
19.	When to dismiss an employee.	2573, 2574
20.	Presumption of payment after two years.	2024
21.	Period of notice and amount of compensation.	2571, 2524
22.	Special agency.	2205
23.	Making use of another person's property.	2896
24.	When the guarantor says I don't have to pay - - the principal should pay.	1934
25.	About a child five years old.	680

This index should be referred back to when reading the section of this article dealing with case files . It is an accurate picture of how the codes are used by scribes. Each section stands for a legal situation rather than a principal. If the situation arises, the code article is mentioned, usually without a glance at its provisons.

In conclusion it must be remembered that statements of claim and defence are meant to make the parties focus on the relevant issues of their disputes and

get the facts straight before appearing in the courtroom. The scribes do their duty in this respect quite well. Lack of ability fully to understand and interpret code provisions does not prevent scribes from perfoming a valuable, inexpensive service for anyone engaged in litigation.

Advocates

Definition

The words "advocate" or "pleader", as advocates are called in the Civil Procedure Code, are nowhere defined in Ethiopian legal literature or legislation. But the Courts (Registration of Advocates) Rules of 1952 provide for licensing and regulation of the conduct of advocates who "practice" before the courts. Nowhere in those rules is the word "advocate" used. But "practice" is defined by Rule 14 of the Courts (Registration of Advocates) Rules as follows:

> "Practice means, by way of profession as a legal advisor:
>
> (a) to conduct or plead an action, cause, suit or similar legal process before a court, or before an official of a court, on behalf of another person;
>
> (b) to write or prepare for another any act [sic] or document in a legal matter of any kind;
>
> (c) to give legal advice."

It should be noted that part (b) of the definition would apply to the scribes who write out pleadings for litigants in all the courts. But in practice they are not considered to be "advocates" regulated by the rules.

In 1966 there were 2149 advocates in Ethiopia. Almost half of them were working in Shoa Province, 61 in Eritrea Province and 90 in Harar Province. 45% of these advocates were admitted to practice in the woreda courts, 31% could practice in the awradja courts, 18% could practice in the High Court and the Supreme Imperial Court.[166]

Advocates or "pleaders" are licensed by the Ministry of Justice and are admitted to practice in the various levels of courts in Ethiopia ostensibly on the basis of their competence and character as determined by the Minister of Justice.[167] The Courts (Registration of Advocates) Rules of 1952 provides that the Minister of Justice may compel registrants to take a test to demonstrate their competence, or that he may make his judgment independently of examination.[168]

166. Statistical Abstract, 1967, 1968, Central Statistical Office, Addis Ababa, 1969, p. 206.

167. "No person other than a person holding an office wherein he is bound to practice only for the Crown, shall practice unless he is registered, and then not before such courts as are specified in the Register as those before which he is prohibited from practicing". Courts (Registration of Advocates) Rules, 1952, Rule 2. Leg. Not. No. 166, *Neg. Gaz.*, year 11.

168. Courts (Registration of Advocates) Rules, 1952, Rule 5 (cited at note 169 above) provides that the "Minister of Justice, for the purpose of satisfying himself as to the skill and knowledge of any person necessary to enable him properly to practice may require any person registered or who has applied for registration from time to time to undergo such test as the Minister or such person shall authorize shall think fit". Currently exams are given to those applying to be admitted to practice and those who seek to qualify to practice in Higher Courts. Recently, however, few advocates have been admitted to practice by the Ministry.

Also, according to these rules, yearly registration fees have to be paid by registered advocates according to the level of court to which they are admitted to practice. The higher the court in which an advocate is allowed to practice, the more the yearly fee.

An "Advocates' Disciplinary Committee" is established by Rule 10 of the Rules. It consists of five persons appointed by the Minister of Justice or his designee and its job is to investigate matters pertaining to the character and conduct of advocates. A majority of this Committee has the power to recommend revocation or suspension of advocates' licenses to the Minister of Justice if it finds that there has been conduct which indicates that a person is "not of a character suitable for assisting in the administration of justice."

The Minister of Justice is permitted by Rule 4 of the Rules to suspend an advocate from practice when he has reason to believe that the advocate has behaved improperly but he must refer the case to the Advocates' Disciplinary Committee. It is unclear whether the Committee must then investigate the matter or not. However, the Committee's function is probably to investigate the matter and make a recommendation concerning final action to the Minister of Justice as it would in cases where it initiates the inquiry.

A further check on behavior of advocates is contained in the power of a court to suspend an advocate for one month or to impose fines up to E$ 250.00 for misbehavior.[169] This power is independent of and additional to any action which the Minister of Justice may see fit to take after it is informed of the court's action pursuant to the rules.[170]

Presidents or presiding judges of courts are given broad power to discipline advocates by Article 481 of the Civil Procedure Code.[171] The precise circumstances under which judges may punish advocates and the type of punishment which may be imposed are not mentioned in Article 481 of the Civil Procedure Code and judges usually confine themselves to giving small fines for bad behavior. The power to suspend advocates, which judges believe they have under this article, is invoked only rarely and for very serious offences.

There is no association of advocates in Ethiopia with disciplinary power over its members.[172] There is, however, an advocates' association — the Advocates Association of Ethiopia. This Association has its headquarters in Addis Ababa and has branches in the provinces. Presently it has sixty active members who pay dues and attend meetings. According to one of its officers, the Association in addition to providing the mutual benefit services for its members discussed below, meets to discuss problems of the legal profession. These problems are referred to the Ministry

169. Courts (Registration of Advocates) Rules cited above at note 168, Art. 8.

170. Id., Rule 9 (3).

171. "Any president of a court or presiding judge may take such action as may be necessary to ensure order in court and the administration of justice in accordance with the provisions of this Code and may summarily punish with a fine any party, pleader, or other person who is guilty of improper conduct in the course of any proceedings". Art. 481 of the Civ. Pro. C.

172. During the federation, Eritrea had an advocates' association which had disciplinary power over all advocates. Since the Union, however, this association's disciplinary power has been taken over by the Ministry of Justice.

of Justice which is requested to take action on them. Currently, two problems are being considered by the Ministry of Justice as a result of the Association's initiative. One is the Association's claim that judges are too domineering in court, do not give advocates a chance to speak, and are generally disrespectful towards the legal profession. Another complaint of the Association is that the appointment of counsel for indigent defendants is becoming burdensome on the profession. The Association feels that advocates should be compensated for this service.

The Association also refers complaints it receives concerning an advocate's malpractice to the Ministry of Justice for action.

However, none of the advocates interviewed when asked about the activities of the Association mentioned its above discussed activities. According to the advocates interviewed, the Association is largely a benevolent society — something like an "edir"[173] — which cares for advocates if they are ill, pays for funerals of advocates' family members, and acts as a guarantor for advocates who find themselves in legal trouble.

Of the advocates interviewed in Addis Ababa, only a few belonged to the Association. The others not only did not belong to the Association but had no idea what its functions were. Some advocates had never heard of the Association.

Those who had heard of the Association or who were members of it thought that the organization was concerned too much with the social welfare of its members and not enough with problems of the legal profession related to the present state of the administration of justice in Ethiopia. Many advocates thought that the Association should spend more time holding discussions on topics of professional interest. They thought that the Association had untapped potential for helping to bring about judicial reform and for upgrading the profession.

Thus advocates who practice in the lower courts find themselves without much of a feeling of professional brotherhood and spirit which could be fostered by an effective association. They are in large part lone practitioners and have no way of learning desirable rules by which to structure their relationships with clients or other advocates.

And the realities of an advocate's practice in the lower courts do not allow these ideals to grow. Attitudes of court personnel, litigants, and, in turn, of the advocates themselves prevent it from flourishing. The disrespect which the various groups of people involved in the judicial system—advocates, scribes, litigants, judges —have for each other caused by professional and official dishonesty results in a lack of constructive spirit on the part of all groups. Until this vicious circle of antagonisms is replaced by a sense of service toward one another, it is doubtful that proper attitudes and honesty will develop.

Advocates who are admitted to practice in the High Court generally do not frequent woreda courts though they go to awradja courts often. Similarly,

173. Edirs are, in general, community-level mutual assistance and burial societies. Members contribute to them periodically. When a person in a member family dies, his funeral expenses are borne by the edir. Edir officials also take charge of making the arrangements for the funeral usually in the form of providing food for mourners and a large tent to house them. Large edirs are influential organizations whose interests often extend into more general political and welfare activities.

advocates who practice in the higher courts do not as a rule practice in woreda courts—but they may have cases in the awradja courts. The influence of these supposedly better qualified advocates on the woreda and awradja courts could be beneficial but for the fact that advocates seem to associate themselves with the highest court to which they are admitted to practice and consider going to a lower court as an inconvenience to be avoided. Lower court problems are, to them, to be put aside and avoided rather than solved.[174]

Advocates or "pleaders" are one category of professional legal representatives in Ethiopia. The other type of professional legal representative is called an "agent" by the Civil Procedure Code and "negara fedge" in common usage. These representatives are not governed by the Courts (Registation of Advocates) Rules and thus do not have to go through any licensing procedure.

Agents or negara fedges, as discussed above, are divided into two categories. One type are professional legal representatives of corporations and government agencies. They do not represent individuals.

The second class of agents are non-professional. They are permitted by the Civil Procedure Code to represent only members of their immediate families. These negara fedges are remnants of an Ethiopian tradition according to which individuals had the right to appoint any person to argue for them in court. Now this right has been restricted by Article 58 of the Civil Procedure Code to appointment of either professional registered advocates or of agents who must be the spouse, brother, son, father or grandfather of the person they represent. Agents, or negara fedges, who appear for family members are not permitted to accept remuneration.[175]

The prohibition against wider representation is designed, of course, to ensure that qualified professionalism reigns in the courts. In addition, the restrictions imposed upon representation by Article 58 must also be attributed to the Ethiopian advocate's desire for a closed shop. If agents were allowed to practice indiscriminately, they would have the advantage of using the court without paying for the privilege as advocates are required to do since it would be virtually impossible to discover whether or not agents were being paid.

It is reported that one of the reasons why the Civil Procedure Code of 1965 has never been approved by parliament (though the code is presently operative) is the opposition of some members to the limitation upon representation which Article 58 imposes upon the customary practice. However, the limitations which Article 58 of the Civil Procedure Code imposes upon representation are not always adhered to in practice.

Advocates: practice

Advocates who work in the lower courts are lone practitioners. In general, they do not have offices but rather meet their clients either at their houses or at

174. In Asmara, this stratification does not seem to be present. The most qualified advocates there practice in all of the courts—even the woredas and awradjas—quite frequently. Practicing in those courts however, is not as much of an inconvenience as practicing in the equivalent courts in Addis Ababa. Woreda courts in Asmara are not as congested and are better organized than those in Addis Ababa.

175. Civ. Pro. C. Art. 58 (b).

court before appearances are due to be made. Since most advocates who practice in the lower courts handle fairly routine cases[176]—the same kinds of cases day in day out—preparation time can be limited to getting an explanation of the facts from the client, writing a draft of the pleading required, and waiting for the scribes to make a final copy of it. Preparation for a routine case in this manner should not take more than two hours. A good deal of this time too, if the meeting is the first one between client and advocate, is spent in deciding on the appropriate fee.

There seem to be basically two arrangements for payment of advocates' fees. In cases in which there is to be recovery of a certain amount of money or land, the advocate may get a certain percentage of the recovery. This percentage usually runs between twenty and thirty percent. The most prevalent fee system, however, is that in which the litigant pays the advocate a relatively large initial fee and small amounts at each appearance thereafter. This system, as explained in the section of this article on litigants below, does not encourage the advocate to seek a speedy resolution of a case—the longer he keeps a case pending, the more fees he is likely to collect.

The economic status of the advocate and the litigant in the lower courts, however, may require this kind of fee arrangement if its abuses could be eradicated. The litigant who is involved in a case in the lower courts often does not have sufficient ready cash to pay the advocate. The advocate, on the other hand, cannot wait until the end of a case to be paid and many of the cases filed are settled before they are litigated or after a few appointments without the assistance of advocates. In such a situation the advocate may have already given his client a number of hours of his time. To have the litigant settle without his knowledge could mean loss of the fee for his work as the litigant would be difficult to locate and the difficulties of extracting payment for such work would be more trouble than it is worth.

The advocate needs a somewhat constant flow of income to exist. His employment is spotty and depends on chance. Most of the advocates interviewed said they had only two or three clients at one time.

Lower court advocates in Ethiopia spend eighty percent of their working day waiting for court appointments, ten percent actually before the judge, and the other ten percent preparing for the case. Thus, their productive hours are few and they have to charge a fairly high rate per productive hour to make a reasonable income. This of course means that litigants eventually pay for the time which the present system forces the advocate to waste.

The amount of unproductive time of advocates that the present system fosters is another reason for the present fee system based on court appearances. Appearing before the judge is the only service an advocate can perform for his client which his client can appreciate since the advocate spends little time preparing for the case and less negotiating with the other side. Further, he sees his clients only on days when court appearances are to be made.

176. See appendix of this article containing the case file survey. The type of cases referred to here as routine are insult, defamation and trespass cases. Of course, cases involving succession to land can be terribly complex but the courts in Addis Ababa and other metropolitan centers do not handle as many of them as courts in the rural areas.

Advocates say that as a rule they make two to three court appearances per day -- usually in the space of four hours in the morning. Some appearances can be made in the afternoon but courts are not always open then.

In order to make three or even four appearances in a day, the advocate must be on his toes. First he must try to have all his hearings for a day scheduled in one court. If he is unable to do this, as is often the case, he must negotiate with the judges and clerks of the courts to have his cases ready at a certain time or to hold cases ready until he appears. Since the advocate's income depends on the number of court appearances he can make in a day, he has to get this co-operation in order to make a reasonable living. Further, since appointments are given for days and not for specific times during the day, an advocate can never know at what time — even approximately — his case will be called. If his case is called when he is not there, it will have to be postponed to later in the day or even to some other day. Such postponements can be time consuming to the court because the parties have to be called before the judge to explain that they wish a continuance due to the absence of their advocate. The litigant's time is wasted because the case may be continued to another day even if the party assures the judge that his advocate will be in court later in the day. In addition to all this, the advocate loses the fee he could have made had he been able to appear.

Most of the advocates interviewed said that they handled all kinds of cases. Those that did say they specialized, concentrated on civil cases. Only two advocates said they specialized in criminal matters. Both of these advocates practiced in the lower courts and handled cases for both plaintiffs and defendants involved in cases concerning insult, beating, and defamation initiated by private complaint. Other criminal cases, of course, are handled entirely by the public prosecutor on the plaintiff's side and since the defendants in the lower courts charged with crimes usually cannot afford advocates, few of them are represented by counsel.

Few of the advocates interviewed said they ask scribes to write pleadings for them without supervision. But a significant proportion of the advocates interviewed said their usual practice was to draft the pleading and give it to a scribe to make a final copy or to dictate the contents of pleadings to the scribes. About half of the advocates said they usually write the pleadings themselves. The remaining advocates, usually those who were admitted to practice in the higher courts, had clerks and assistants responsible for making drafts to be approved by the advocate.

Very few of the advocates interviewed expressed negative attitudes towards scribes. Most said, "They do a good job." Since many advocates are retained by litigants after the litigant has had his pleadings written out by scribe, advocates are well acquainted with the work of the scribes and thus have a basis upon which to make a judgment as to their competence.

Thus the relationship between scribes and advocates, at least as far as the advocates were concerned, was a fairly friendly one.

Advocates: Background

All but two of the advocates interviewed in Addis Ababa and Harar could read and write.[177] Approximately fifty percent of them had a basic Amharic

177. These two advocates were interviewed in Harar and had been practicing advocates before the Italian Invasion. They obtained special dispensation from the Ministry of Justice to continue practicing because of their long membership in the legal profession. No illiterate advocates in Addis Ababa or Asmara were interviewed.

education and approximately thirty-two percent had a combination of Amharic and formal education ranging from the second to the eighth grade. Others had more education; eighteen percent of the Addis Ababa advocates interviewed were attending or had attended the University law certificate or diploma courses. The law certificate and diploma programs are both night basic legal education extension programs designed to acquaint legal practitioners with the new codes. Instruction at the certificate level is most basic. Diploma instruction is at a higher level and secondary education is a prerequisite for entrance. Most of the advocates attending the University courses had little education beyond basic Amharic church school before attending the law school.

In Asmara only one of the eight advocates interviewed had no formal education beyond church school but they had progressed quite far in Amharic and Geez. Three of the advocates there had Italian law degrees and one had a law degree from Lasalle University extension program. Others had at least been through the sixth grade.

It is a rather striking fact that no advocate interviewed in Addis Ababa practicing in the lower courts finished government high school.

Advocates then, are not able to command any particular respect either from court personnel or from litigants as a result of educational achievements They are men who have, or think they have, a special talent for handling other people's affairs; they are naturally shrewd and for the most part self-schooled in court procedure. The fairly routine nature of the cases they handle for their clients does not require much knowledge of substantive law. In addition, the judges before whom they appear do not know much more law and have about the same or less impressive educational backgrounds. The only factor which sets judges apart from advocates as far as legal qualification is concerned is that the former generally have previous lengthy government administrative experience.

Advocates live by their wits and most earn their livings with no educational stamp of approval. The manner in which they entered the legal profession as well as their present way of earning a living reflect a relatively independent, lone existence. Approximately twenty-five percent of the advocates interviewed said that they were induced to become advocates after being involved as parties to litigation themselves. In many instances this litigation involved a family dispute over succession to land after the death of their father or other near relative. Some forty percent of the advocates interviewed were employed in occupations before they became advocates which naturally produced some litigation experience. Many of these advocates, for example, had worked as scribes before they decided to become more active professional legal representatives. Two of the advocates interviewed had been woreda court judges and decided later to become advocates.[178] One advocate had been a police prosecutor and others had been legal representatives for government agencies. Also among the advocates who had frequent occasion to come into contact with courts before they became professional legal practitioners were two former ekub

178. One possible reason for this seemingly irrational shift of employment was given by an awradja court judge: "In the old days judges rode mules and litigants followed begging for justice. The advocates walked beside the judge's mule with rifles to protect him. Now the advocates drive cars and we walk".

"judges" who came to court often to enforce the payment of dues on behalf of their association.

Forty percent of the advocates interviewed did not indicate that they had had any experience that could be considered peculiarly conducive to a decision to join the legal profession.[179] No generalizations can be made about these people. They occupied jobs such as lower echelon clerks for companies and government agencies, policemen, simple merchants, farmers and so on. Two of the advocates, however, did mention that their fathers had been members of the legal profession.

Generally, however, persons become advocates with the hope that they will make more money than they did in their former jobs. In addition to the possibility of an increase in income, the courts offer a varied and exciting life for advocates in contrast to their former occupations.

In Addis Ababa, it seems to be a general rule that one enters the legal profession after having been in some other occupation for quite awhile. The average length of time spent in the legal profession for the advocates interviewed was about nine years. Sixty-six percent of the advocates interviewed had been advocates for ten or fewer years and thirty-five percent had been advocates for five or fewer years.

From observation of courtroom activity it is apparent that there are not many elderly advocates practicing in Addis Ababa. This is probably due to the fact that many advocates who practiced in Addis Ababa before the Italian occupation were illiterate or so used to the customary procedures that they could not adapt to the new court sytsem which was established by the Administration of Justice Proclamation of 1942.

It is in Addis Ababa that the new codes are most strictly applied. Advocates must have a minimal acquaintance with them or they would be unable to practice -hence another explanation for the high proportion of young advocates in our sample. Illiterate advocates still practice in Harar and most probably in other provinces, but it would be impossible for them to do so in Addis Ababa.

Advocates who practiced in the lower courts were generally of the opinion that their clients knew nothing about the present codes before coming to court. At the most, advocates gave their clients credit for knowing the codes existed. At the same time, however, most advocates thought that their clients preferred the new laws to custom.

Though it is possible that the attitudes of litigants as expressed above by advocates is an accurate appraisal, it is also possible that it is not. One factor which may affect the accuracy of the advocates' appraisal is that advocates in general tended to be reluctant to offer criticisms of the judicial system and they may have been reluctant, too, to mouth the dissatisfaction of others. Another possible factor is lack of candor between client and advocate, caused by the disrespect in which most litigants hold advocates.

181. In Asmara, advocates generally started their working lives by being advocates. Many, of course, are Italians with Italian law degrees. Others were trained during the British Adminstration by the British Native Courts Administration. Some apprenticed themselves to practicing advocates and worked their way up. The legal profession in Asmara does not seem to be something to be taken up in middle age.

The advocates thought that litigants usually had respect for judges, but they suggested that this respect was usually demonstrated only in court and was motivated more by fear than by actual respect.[180] Although a certain amount of comparative self-esteem may have been hidden in their statements, the advocates generally said they thought that many litigants' respect for a judge ended when the litigant left the courtroom. Outside of court, advocates said, litigants often held judges in contempt because of their reputed lack of learning and dishonesty.

Most advocates thought more education for all court personnel –especially the judges– was the key to improvement of the judicial system in Ethiopia.

Elimination of bribery and unnecessary delay was mentioned by only a few advocates, as opposed to the majority of litigants, as being of primary importance for the betterment of the administration of justice. The advocates' emphasis on general lack of education as opposed to other problems may be explained by the sensational nature of bribery, which tends to be exaggerated by the man on the street and by the fact that the hardship which delay causes is directly felt and therefore primarily noticed by litigants.

In addition, it has been suggested that advocates are often the intermediaries between the litigants and judges when a bribe is given. In fact, there is some evidence to show that in some cases, prolonged with many appointments, part of an advocate's fee goes to the judge.

Thus it is clear that advocates are fairly contented with the judicial system at its present stage of development They are often beneficiaries of confusion that the new system creates in ill-informed and uninitiated litigants.

Court Administrative Personnel

In each woreda and awradja court there are a number of personnel, hired, promoted, and transferred from court to court by the Ministry of Justice and the municipalities in which their courts are located.

In woreda courts in Addis Ababa which have a criminal and civil division, there are, aside from the judge, usually five professional court workers receiving salaries from the Ministry of Justice or the municipality. The distribution of functions of these employees, though it is supposed to be standard from court to court, varies somewhat. But a typical set of employees consists of the following:

Supervising most of the administrative aspects of the court's business is a registrar who reads pleadings to see that they are in proper form before the suit is officially commenced. His other duties are to write out orders after they have been authorized by the judge, and to handle correspondence between other courts and government agencies. He also is responsible for organization of the case archives. This position is sometimes combined with that of the chief archivist who is in charge of the filing system.

180. One advocate responded to the question "Do litigants usually respect the judges before whom they appear?", by saying, "According to Article 480 of the Civil Procedure Code, judges can punish litigants who do not show proper respect for them in court".

If the position of chief archivist is held by a person apart from the registrar' the latter is likely to have the same background as his immediate superior except for the fact that he is not transferred so often. Since the filing system is not uniform from court to court, each archivist is invaluable in his position because he knows his own filing system and no one else does. Though these people claim to be able to find any file in minutes, files are often lost even when the archivist operates under his own system.

Most people who hold the positions as registrar and archivist have only a basic Amharic church school education. Their past experience has often been in Addis Ababa, for the most part, as clerks within the headquarters of the Ministry of Justice. They are paid between E $ 65.00 and E $ 100.00 per month depending on their length of service.

Below these two officers of the court in rank are the clerks who serve as their assistants. These clerks are hired both by the municipalities and the Ministry of Justice but are supervised by the Ministry. One clerk may be responsible for setting up the judge's agenda for each day and copying and issuing orders authorized by the judge regarding execution of judgments.

Another clerk may be responsible for copying proceedings for appeal and for filing decided cases.

There are also an assortment of messengers and employees who do nothing but call litigants when their cases come up on the agenda.

A group of people called "dedji tengni" are also present in woreda courts. They are not officially employed by the court but hang around to assist clerks in the hope of getting a permanent job. Some of these dedji tengni wait quite awhile for a full time job –a few as long as six or seven years.

The clerks are paid between E $ 40.00 and E $ 100.00 according to their seniority. Thus our survey revealed instances where these clerks were supervised by registrars and chief archivists who make less money than the people they supervise.

Also in the court, but not employed by the Ministry of Justice, are a cashier for the Ministry of Finance and a cashier for the municipality where the court is located. The cashier for the Ministry of Finance receives court fees paid by litigants opening their cases. The cashier for the municipality collects fines imposed for the violation of municipal regulations. These two employees are usually paid more by their government agencies than the court clerks employed by the Ministry of Justice or the municipality.

Personnel are transferred quite often, to hold down corruption as some of them readily admit. However, it seems that registrars and clerks in Addis Ababa are not often transferred outside of the city. Nor are similar personnel often transferred to Addis Ababa from the countryside.

In awradja courts, the number of employees below the registrar and chief archivist increases due to the number of divisions. One awradja court in Addis Ababa with four divisions employs nineteen clerks. The bulk of these clerks have a Church School education. and are paid between E $ 50.00 and E $ 60.00 per month for their services. Awradja court clerks were more likely to have had longer experience

in the judicial system than clerks filling similar positions in the woreda courts but they are not paid any more.

Though exams are given to qualify personnel for these posts, other factors play a part in appointment. Family ties and previous government service have some influence in getting a job and this contributes to over-staffing in some places. While positions such as court clerks used to be sought after when there were not as many literate people to fill those positions, and when the position of a clerk was respected and well paid, these jobs are no longer attractive ways to begin a career.

Thus those who desire to be court clerks now are people who desire security and an eventual pension. For the most part, they are not looking forward to an increase in salary or more prestigious positions. They receive low salaries and get along as best they can.

Judges[181]

The interviews of judges were not intended to be examinations to elicit their legal knowledge. Rather, the questions asked of them were designed to find out what kinds of people present day lower court judges are, what they think of their jobs, of their role in Ethiopian society, and of the judicial system of which they are the most important components.

Personal Backgrounds

Present lower court judges, generally speaking, have worked their way up from average socio-economic backgrounds to their present positions.

The average age of the judges interviewed was around forty-five. This means that they were of school age during the 1930's, a time when Ethiopia's literacy rate was lower than it is at present and when less than the current three percent of the population under twenty-four was being formally educated.[182]

Few of the judges had had any education beyond primary Church School where they learned to read and write Amharic and, if they progressed further, Geez. Rote memorization and recitation of religious texts compose the church school curriculum, whose basic course lasts three years.[183] Almost all lower court judges outside of Eritrea had only this basic church education.

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181. Sixteen judges were interviewed in Addis Ababa, six of them awradja court judges. Eight judges from outlying areas surrounding Addis Ababa (i.e. Sebata, Genet, Fiche, Ambo, Akaki and Debre Zeit) were interviewed. One of these judges was an awradja court judge. In Harar, three awradja court judges and two woreda court judges were interviewed. The woreda court judge in Alemaya and the two woreda court judges in Kambolcia were also interviewed. In Asmara we interviewed thirteen judges. Eight of these judges were woreda court judges.

182. Presently three percent of the population twenty-four or below attends government schools, private schools, mission schools (following Ministry of Education curriculum), or specialized schools such as agriculture, commerce, health or teacher training. More than eighty percent of these students were in grades one through six.
Figures taken and deduced from *Ethiopia Statistical Abstract*, 1967 and 1968, Central Statistics Office (1969) Addis Ababa, pp. 190 et. seq.

183. S. D. Messing, p. 350 cited above at note 38.

Where there are few opportunities for formal education and many responsible government positions to be filled, practical experience gained in service for the government agency must take the place of formal education. With their ability to read and write, these future judges were able to get work with the Ministry of Justice as clerks in courts, as scribes, or as office workers for government agencies. After long periods of service, they either decided to take the exam given by the Ministry of Justice or merely were recommended to the Ministry of Justice by their superiors and were appointed on the basis of that recommendation alone.

In an administative framework that depends for its rules of operation more on day to day practicalities and personal relationships than on precise, written procedures, there could be no more adequate preparation for becoming a mainstay of such a system than fifteen or twenty years experience in its inner workings. Many of the judges interviewed had just that experience – especially woreda court judges who generally seemed to be appointed from the ranks of court personnel.

Long service for government agencies other than the Ministry of Justice was also fairly common among woreda judges. Usually these judges had been clerks for the Ministry of Interior working with local government officers such as woreda or awradja governors. These people were usually recommended by their superiors to the Ministry of Justice. Generally the change from another ministry to a judgeship within the Ministry of Justice was either a reward for long and faithful service or a way of working a fairly capable person out of a system in which he could not advance for personal reasons as opposed to lack of competence.

Woreda court judges in Addis Ababa, while they usually had manned various posts outside of the city, generally seemed to have spent most of their time before they became judges working for the Ministry of Justice or other government agencies within Addis Ababa. And after they became judges they were not usually transferred outside of the city.

Woreda judges just outside of Addis Ababa had been transferred more often both before and after they became judges than their brethren inside the city. They had manned more remote posts than their urban counterparts and their proximity to Addis Ababa was to them an improvement of position and status. Most of these judges hoped eventually to be moved into Addis Ababa where the salaries are higher and where opportunities for education are close at hand.

Judges manning woreda courts in remote rural areas seemed to be kept in positions away from large towns and were generally transferred often within their native provinces both as judges and lower echelon court personnel.

Thus it seems that woreda court judges are kept in surroundings that are familiar to them and there seems to be little interchange of judges between the city and remote rural areas. This is probably due to the fact that city posts are more desirable than rural appointments. Therefore, vacancies in urban centres are not often available and the competition for them is intense.

Of the awradja court judges interviewed, less than one-third had been woreda court judges before they became members of the awradja court bench. Appointment to an awradja court judgeship was generally a reward for good performance on a higher level of government service than sufficed for a woreda court appointment.

One awradja court judge spent his life in the Imperial Bodyguard where he attained the rank of lieutenant. When he was about to reach retirement age, the Bodyguard recommended him to the Ministry of Justice. Without taking an examination, he was appointed to an awradja court, possibly because appointment to a woreda court would have been beneath his dignity and previous salary level. When the Eritrean Assembly was dissolved after Eritrea's union with Ethiopia, many former members of that body were appointed to serve in awradja courts and the High Court. A judge who had been the equivalent of an awradja judge before the Italian Invasion, a patriot during the war, and thereafter a high level Imperial servant was appointed to an awradja court three years ago.

In the awradja courts in the relatively large cities of Asmara and Addis Ababa, there seems to be an especially high proportion of judges who have been brought into the judicial system from outside of the Ministry of Justice. This is very likely due to the fact that those cities contain high concentrations of people who work for government organizations or who otherwise have backgrounds suitable for the bench. Judges in the much smaller town of Harar, in contrast, tended more to have worked themselves up through the ranks of the Ministry of Justice in a succession of rural posts.

After their appointments to the bench, awradja court judges in Addis Ababa and Asmara had, as a rule, never been assigned to courts outside of those metropolitan areas and in general there seemed to be little interchange between rural and metropolitan posts.

Thus like woreda court judges, those in the awradja courts were appointed to their positions as a reward for faithful government service. However, on the part of awradja judges, a recommendation from another ministry or government agency was more likely to be deemed an accurate enough indication of a person's ability and legal knowledge so that the examination given to most woreda court applicants for judgeships was waived.

Difficulties in Filling Judgeships

There are approximately fifteen hundred judgeships in the lower courts of Ethiopia. It is clear from the description of judges' backgrounds given above that either there are not enough educationally qualified people to fill these positions or that men with more than local church school training do not want to become judges.

The present situation can probably be attributed to both factors. Ethiopia does not have many well educated people. And when a certain level of education is attained, becoming a judge seems to be out of the question for various reasons.

A woreda court judge's salary in the provinces is E$ 80.00 per month. In Addis Ababa, because of the higher cost of living, he may receive as much as E $ 150.[184] Although this is considerably above the annual income of the average Ethiopian, it is less than the income say, of a primary school teacher, of a garage mechanic, bank clerk, even in some cases of a factory worker.

Though a judge's job would seem to be a more important and responsible position than any of those mentioned above, the salaries offered to judges discourage

184. Interview, Personnel Office, Ministry of Justice.

people who desire to maximize their earning capacity from looking to the judicial system as a career.

A further possible source of discouragement to educated young people coming out of primary school who might aspire to become judges is the fact that up until now judges have, for the most part, been appointed from the ranks of clerks in the Ministry of Justice who have comparatively little formal education. Undoubtedly some people with over an eighth grade education would think it socially undesirable to take a position traditionally manned by people with less education.

Absence of a conscientious and effectively organized legal profession also forces reliance upon experienced employees of the court system to fill vacancies in the lower court bench inasmuch as the judicial system cannot readily look to its advocates for that purpose. In fact, only two of the forty-two judges interviewed had been advocates before they became judges.

The appointment of selected advocates to positions as lower court judges would raise the educational level of the lower court bench. And independent views concerning the problems of the judicial system, which are now a rarity among judges because of their long association with the system, would be fostered. But advocates do not want to take a cut in pay (most people who become judges are stepping up financially).

So, with no significant financial rewards to offer qualified personnel from outside the Ministry, and no profession that is aligned with the judicial system to which it can look for talent, benches are mainly filled with formally uneducated, but practically experienced products of the court system who often think nothing more of the importance of their jobs than would any other white collar worker.

Role

Several of the questions asked of judges were designed to elicit attitudes of the lower court bench towards its job. Attempts were made to discover what judges thought their "role" in society was and whether they thought there had been any changes in the role of judges over the past few years – especially since the introduction of the codes. Other questions were asked which encouraged judges to compare a judge's present position in society – with reference to status, respect for judges in and outside of the courtroom, and power as resolvers of disputes – with that of a judge in the "old days", meaning the last part of the 19th century up to the Italian invasion.

Attitudes of the population towards judges are well known by the judges themselves. They know that they have reputations for being corrupt and poorly versed in the law. And naturally enough, judges blamed corruption on a society which in their view places so little importance on their jobs that it forces them to undergo the unpleasant process of earning part of their living by taking bribes from litigants.

In addition to what the judges know people think of them as far as their honesty is concerned, the new codes have engendered in them feelings of inadequacy. Lower court judges know that they are presently incapable of mastering the new laws. Though in practice they can get along in court on what they learn from practical experience, they are supposed to know, by virtue of their position, how

to deal with the complex new codes and to follow new procedures which they do not really understand or accept wholeheartedly.

Throughout Ethiopian history, as discussed above, judges have been the masters of the proceedings before them. Now a set of written laws rule them; laws to which any litigant who appears in court can have access. Thus the judge's independence as master of his own court is gone and he feels the loss both of the power he once could wield and the respect he had from the population due to his unchallengeable position.

People know now that a judge's power does not extend out of the court-room. Further, he is no longer a local landowner. He is usually transferred from one place to another and develops few local ties. Judges in Addis Ababa, for example, generally do not live in the locality in which their court is located. Furthermore, communities with strong cohesive forces do not develop in urban centers. The judge, then having no local ties, is no different from any other government official. Most judges felt this loss of status, respect, and power, and its loss gave them a rather mercenary attitude towards their jobs.

Another factor which disturbed judges and created feelings of inadequacy in them was the supervision of the Ministry of Justice. While judges have a certain direct control over the personnel in their courts, all court clerks, registrars, even messengers owe ultimate allegiance to the Ministry. If a litigant is disatisfied with a decision given by a judge he may — and often does — complain to the Ministry of Justice. In response to this complaint, the Ministry may send inspectors to the court of the judge complained against to read the decision and make a report back to the Ministry on the legal propriety of the judge's interpretation of the law. Though the Ministry has no power to reverse the decision, the inspector's report certainly has an effect on the judge's chance for advancement and may even affect the likelihood of keeping his present job. One judge remarked that the inspectors merely come to his court unannounced, request to see a file, read it, and leave without discussing the problem which prompted the investigation.

Thus the judge, who remembers or has heard talk of what it was like to be a judge before the age of a rigidly structured court system, feels that he has been dispossessed. He has lost the respect of the population, and because of the new codes, he has lost confidence in his ability to decide a case correctly. As a result of the Ministry looking over his shoulder, he feels as if he is being treated like any other bureaucrat.

Judges: The Courtroom

Most of the woreda court judges interviewed said they heard about twenty cases a day. They usually sit from nine in the morning to one in the afternoon. If there are many cases to be heard they also sit for a few hours in the afternoon.

The fact that judges hear twenty cases a day does not mean that they finally dispose of that number. From observation it seems that the maximum number of contested cases that a judge decides in a morning is between five and six. All other cases are continued for various reasons.

Awradja court judges hear fewer cases in a day than woreda judges. It is not clear why this is, but it might be due to the fact that most cases on the

awradja level involve relatively substantial claims, prompting more deliberation on the part of all concerned.

The judges conduct the hearings and do not depend on the parties or their advocates to bring out the issues and do most of the examination of the litigants and their witnesses themselves. They also act as reporters taking down all the testimony.

In awradja courts, three judges sit in one courtroom. These judges, though they are supposed to give their attention to one case at a time, often listen to three simultaneously, each judge concentrating on one case. Needless to say, this situation creates much confusion in the courtroom.

Judges do not seem to feel any pressure to eliminate backlog. Their concern seems to be, rather, with the number of files they can take from one pile and put into another in a day, making a little progress in each case. Perhaps this attitude is induced by the difficulties involved in getting the parties to bring all of their evidence and witnesses to court at one time and in convincing litigants to present their cases in the most expeditious manner.

Judges: Attitudes Towards Advocates

A majority of the judges interviewed were of the opinion that advocates were not sufficiently acquainted with the codes to do a thorough job of applying and interpreting them. For instance, it was said that they often apply irrelevant code articles to fact situations. The judges also thought that advocates generally do not present the crucial issues in a case clearly.

Judges attributed those failings to lack of formal education and to overeagerness to present a client's case in the most favorable light at the expense of cogent arguments and even of accurate presentation of the facts.

In addition, judges said, advocates seldom discuss cases thoroughly with their clients and often conceal facts from them which might induce an out-of-court settlement. Judges thought that advocates had no real sense of duty towards their clients and that clients often suffered because of an advocate's greed.

The judges saw themselves as exercising a superior, supervisory role over the conduct of advocates in court. Not only did they say they knew more law than advocates, but they also felt that the legal profession was an unruly, overly-contentious, and irresponsible group which constantly needed to be reminded that a court of law is more than a place to make a bargain.

The above described attitude of judges towards advocates was pervasive but few judges said they had ever disciplined an advocate for improper behavior in court. However, most of the judges interviewed said that they warn advocates often when the latter over-step the bounds of propriety.

The fact that formal disciplinary action is seldom initiated by judges against advocates may be due to the fact that the judge runs the hearing. He does most of the examination of the parties and witnesses and often tells the advocate how to frame his question. Judges usually have little patience with back and forth arguments of contestants and cut them short. Thus the advocate has little chance to say enough to get himself into trouble. Judges, then, generally look upon advocates

as parasites who earn their living by doing a lot of fast talking and convincing litigants that their services are required.

Unfortunately, there is seldom an exchange between advocate and judge during a hearing which could be called cross-educational. Judge and advocate do not work together.

Judges and other Personnel

Almost every pleading that a judge reads is written out by a scribe. The consensus of the judges was that scribes do not know the law thoroughly but that they perform a valuable service for all litigants.

Judges, though they exercise token control over the personnel in their courts, do not spend much time supervising registrars or filing clerks. These people are told what is expected of them by the Ministry of Justice and they work independently of the judges. Few of the judges take any interest in how cases are filed or how litigants are processed. Each person is left to do his job, though if someone is dissatisfied with the work of another a complaint can be made to the Ministry of Justice. There is, because of this independent set of responsibilites to the Ministry of Justice, a great deal of suspicion running back and forth between judges and the court personnel.

Judges and Litigants

Though most judges interviewed avowed compassion for the people who appear before them in court, the reported existence of corruption suggests that some judges, at least, have acquired a rather hardened attitude towards litigants.

Judges generally thought that litigants expected code provisions to be applied to their cases and were often surprised when they were asked whether litigants ever expected customary rules to apply to the disputes they brought to court. The suggestion that some people might expect rules other than those contained in the codes to be applied to their disputes seemed to some judges an almost treasonous thought. However, it should be noted that judges see litigants after they have been to a scribe, advocate or the court registrar. These people may isolate the judge from what the litigant really thinks about the codes.

Judges and Indigent Criminal Defendants

A large proportion indigent of criminal defendants have no professional representation though they are guaranteed it by Article 52 of the Revised Constitution of 1955.

A factor which limits the fullest application of Article 52 is the attitude of judges in criminal cases. Though most of the judges knew that the Constitution imposes upon them the duty of appointing advocates for indigent criminal defendants, their view is often that the evidence speaks for itself. Judges feel that the truth can be discovered just as easily without an advocate involved in the case as with one representing the defendant.

There are no precise rules to be followed when the appointment is made. It seems that the judge merely asks any advocate who is present to do the job. Nor do judges really know under exactly what circumstances advocates should be appointed inasmuch as an appointment is impractical in all cases. Clear enunciation of

a policy governing appointment would be a great service to judges and indigent defendants.

Judges: Conclusion

Judges are men of great practical experience and of very little formal education. Before the introduction of the codes their qualifications might have been adequate for the job. Now, due to the fact that the public has access to the laws and due to the complexity of the new codes, education has become a necessity if judges are to gain the popular respect which they desperately need.

Litigants[185]

The way a person confronts the judicial system depends on the resources available to him. Different classes of litigants — literate, illiterate, rich, and poor — approach the lower courts in different ways. These differences in approach produce different attitudes towards judges, advocates, scribes, and other court personnel.

The first step for a litigant when he comes to court either as a plaintiff or defendant is to have his pleadings—statement of claim or defence — written and given to the court. This process was described in the section concerning scribes.

Literate Litigants

Almost half of the litigants interviewed had their pleadings written out by scribes. This group included both literate and illiterate litigants. Thirty five percent of the literate litigants interviewed had their pleadings written out by the scribes, and an equal number wrote out their own pleadings. Advocates wrote pleadings for the rest.

Basically, there was little difference between the group of literate litigants who wrote out their own pleadings and the group who retained scribes for the job. However, the former group contained people who claimed to be fairly well acquainted with the law. But when these people claimed to have some legal knowledge they meant that they knew how things were done at court rather than that they were possessed of substantive legal learning. Since most of this group who claimed to know some law had been to court before, it is likely that they learned what they knew through practical experience.

However, the fact remains that in a pleading, code articles have to be mentioned or else, in Addis Ababa at least, the pleading will be rejected. Though code provisions can be and usually are cited mechanically to satisfy the judge or registrar, mentioning them in one's pleading, if just in passing, requires a glance through the relevant code, knowing certain provisions from memory, or receiving assistance from someone who has legal knowledge. Since documents concerning previous cases are often kept by litigants, and many litigants have the same type of cases over and over again,

185. One hundred and sixty litigants were interviewed mainly in Addis Ababa woreda and awradja courts.

it is also likely that after a few times in court one may dispense with a scribe's services in routine litigation.

These litigants who wrote out their own pleadings expressed a certain pride when they professed to know the law well enough to handle their cases from beginning to end. Many were genuinely interested in litigation. In fact, one litigant, a tailor, bought his own codes and read them in his spare time. One retired soldier said he came to court often just to listen to cases.

But many litigants who wrote out their own pleadings claimed to know little more than that the codes existed. However, nearly all these litigants had been to court many times before and thought they could do a better job than the scribes even with their admittedly limited legal knowledge.

There were a few litigants who wrote out their own pleadings who claimed never to have heard of the codes. One would think that such persons would seek drafting assistance. These people, however, were employed in high status jobs and probably preferred to rely on their innate intelligence as opposed to the practical experience of the scribes.

Of the literate litigants who had their pleadings written out by the scribes, none said that they had any substantive knowledge of the codes. In fact, a large proportion of them said they had never heard of the codes. Almost half of the literate litigants who employed scribes had never been to court before and a large proportion of them had been to court only once previously.

But litigants who had their pleadings written out by scribes were employed in occupations which demanded as much educational background as those who wrote out their own. It seems that the main reason why educated and literate people go to the scribes is lack of confidence in their knowledge of court procedure, knowledge which could be gained through courtroom experience.

There does not seem to be any difference in the types of cases in which these litigants were involved which might lead some, but not others, to seek professional advice at the inception of their cases. The suits in which both classes of litigants were involved were on an equal level of complexity.

About one - third of the literate litigants interviewed had their pleadings written out by advocates. The cases in which these people were parties usually involved substantial claims. A disproportionate number of the litigants who hired advocates from the beginning of their cases had cases in an awradja court.

The relatively high income occupations of litigants who retained advocates from the start plus the fact that many of these litigants had been to court quite often in the past indicates that they were used to having an advocate's services in all phases of litigation. This may indicate that there is a certain class of people who come to court often, usually when fairly sizable interests are at stake, with a realistic view of their own legal capabilities. While they may be better qualified to write out their pleadings than most of the people who do so, they can afford to be careful and thus hire an advocate to take care of everything.

Another identifiable group of literate litigants who hired advocates from the start had little experience in court. They claimed little knowledge of the codes except for the fact that they existed.

One conclusion that can be drawn from a comparison of these two groups of people who hired advocates at the beginning of their cases is that in general a person does so either because he knows enough about law and court procedure to recognize that his knowledge is not adequate compared to that of a professional or because he is ignorant of the laws and workings of the judicial system and admits it.

It should be noted here, however, that not having an advocate to write pleadings does not mean that the litigant who is so deprived will not eventually retain one. In fact, most litigants do not retain advocates until some difficulty in the presentation of their cases has arisen. This is true of literate and illiterate litigants alike.

Illiterate Litigants

Illiterate litigants, of course, have to depend on either an advocate or a scribe to write out their pleadings. Approximately two - thirds of illiterate litigants interviewed had their pleadings written by scribes. Roughly one-sixth of them had pleadings written by advocates and the rest had their statements of claim written either by friends or in cases brought upon private complaint, by the police. Most illiterate litigants interviewed had never heard of the codes and, as a rule, had not been to court as often as their literate brethren.

The combination of not being able to read and write, small financial resources, and lack of practical experience would seem to put these litigants at a disadvantage as opposed to literate parties to disputes.

However the scribe, at the initial stages of litigation, is the great leveler as far as these differences are concerned. Although illiterate litigants go to scribes involuntarily, that does not mean that they do not derive some benefit from doing so. First, scribes do at least as good a job of writing out pleadings as those litigants who venture to do so without any great familiarity with the law. Second, scribes give free legal advice to litigants which may be as good as they could obtain from advocates and certainly even better than deliberations of literate litigants who decided to make a go of it on their own.

The availability of money — to one literate or illiterate — can make the difference between winning and losing a case. It does away with the levelling influence of the scribes. And since literate litigants are likely to have more money than illiterate ones, the combination of education and financial resources should spell victory. Money gives a party a certain staying power — ability to get on with the clerks, judges, and police.

Litigants: Attitudes Towards Advocates

Litigants who wrote their own pleadings generally did not hire advocates in the latter stages of litigation. Even the group of literate litigants who had their pleadings written out by scribes tended not to hire advocates after the litigation had begun. Thus literate litigants hired advocates at the beginning of their cases if they hired them at all.

The opposite was true of illiterate litigants. Though only a small percentage of illiterate litigants (sixteen percent) had advocates when they began their cases, more than two-thirds had advocates when they were interviewed.

The general attitude of both illiterate and literate litigants who started their cases without advocates was that the case was not complex enough to require an advocate's assistance. "It is a simple case. I can handle it myself" was the usual response to the question why these parties did not have advocates.

The fact that illiterate litigants were more likely to hire advocates after their cases had progressed past the initial stages of litigation can be attributed to two factors. First, illiterate litigants are naturally less likely to have confidence in their knowledge of the law when a crisis arises. Second, they are less likely to make an accurate assessment of the complexity of a case in its initial stages than literate litigants. The words "I can stand for myself" from an illiterate litigant is likely to be the result of an objectively superficial consideration of the issues involved.

One-third of all the litigants had previously hired or planned to hire advocates at the time that they were interviewed. Considering the opinion most litigants expressed towards advocates, this is a large percentage. Only a very small number of litigants interviewed relied on negera fedges to represent them. This is probably due to the restrictions which Article 58 of the Civil Procedure Code places on such representation.

Most litigants were of the opinion that advocates purposely try to prolong cases so that extra fees may be collected. Litigants said one technique advocates used for this purpose was to raise petty procedural objections to the opposing party's pleadings. If the fault in the pleading requires correction, the case will be continued pending rewriting. The advocate who raised the objection will then ask his client for more money due to the prolongation of the case. Some advocates, litigants alleged, come to court purposely unprepared so that the case must be continued. Others spend so much time making irrelevant arguments that the rest of the case has to be postponed for another day.

Other litigants said that advocates have too many clients at one time and that they often postpone hearings or even fail to appear when conflicts in their schedules arise. Considering the fact that most of the litigants interviewed work for daily wages, failure of an advocate to appear could mean the loss of considerable income.

Litigants also said that advocates were not to be trusted because they sometimes can be bribed by the opposing party to divulge confidences or "throw the case".

It was the consensus of litigants that advocates never try to settle cases outside of court but encourage people with hopeless cases to go to court just to get the fee for representing them. Some litigants, in fact, said that when an advocate is retained by one party and the other party wishes to settle out of court, the advocate will encourage his client to be unreceptive to settlement proposals.

Litgants' attitudes towards advocates can best be explained by quoting some of their responses to the question, "In general, what do you think of advocates?"

> "The Ministry of Justice should supervise advocates to prevent them from dragging out cases and mulching their clients."
>
> "Advocates accept money from both sides."
>
> "Advocates do not have sufficient training."
>
> "The advocate's profession has a bad reputation. It is regarded as a commercial business rather than as an honorable profession."

The most complimentary opinion of advocates given by any of the litigants interviewed was that of a lady who said she had complete confidence in her counsel: "My advocate is duty conscious," she said.

The general view of those who did not express entirely negative attitudes towards advocates was that "advocates know the law so we give them cases." One litigant summed up in most accurate fashion the general attitude towards advocates and the reason why litigants hire them: "I don't trust them. I have one only because the judges seem to listen to them. In court, however, I often have to correct my advocate when he says something I don't like."

The attorney-client relationship in the lower oourts is structured by suspicion running from client to attorney and allegedly by lack of candor from advocate to client. The question which naturally arises out of all this is why litigants hire advocates at all when they have the attitudes described above. In response to this question, it should first be noted that more illiterate than literate litigants hire advocates. These are the people who find it most difficult to present their cases, who profess practically no knowledge of the law, and who have little experience with court procedures. Thus the ignorant litigant is almost helpless in court. Though in the lower courts the procedure is fairly routine and easy for a literate person to grasp, one who cannot read or write will not know how to deal with the various papers that are given to him. Thus advocates are retained to tell the litigant what is happening to him and what is expected of him.

So when a litigant says he hired an advocate because the advocate "knows the law," the litigant really means that the advocate knows how to read and is acquainted with the judge and courtroom procedure in general. His job is to communicate this knowledge to his client. It is likely that this unbalanced relationshp in which the client is, so to speak, at the mercy of his counsel if the latter attempts to manipulate proceedings to his advantage, fosters the lack of trust expressed by litigants in the legal profession. Although the "unbalanced" relationship described above between client and professional is by no means peculiar to Ethiopia, advocates in Ethiopia often tend to take excessive advantage of their clients' lack of knowledge. The low esteem in which the legal profession is held may also be attributed to the fact that in litigation someone always loses. To a litigant who has been unsuccessful once or twice in litigation the advocate is a convenient person to blame.

Litigants: Attitudes Towards the Judicial System

Litigants were asked what improvements they thought should be made in the judicial system and in general what they thought of judges in order to gain some insight into their feelings about the present court system.

The most common suggestion for improvement was that cases should be decided more quickly than they are now. Most litigants felt that judges gave too many appointments during the course of a case. Other frequent suggestions dealt with the elimination of bribery on the part of all court personnel and improvement of the calibre of the prosecutorial staff.

Some litigants felt that the courts should have more power to execute their judgments and exercise what power they have more effectively. Most complaints about this area of judicial administration centered on the inability of officers of the court to find judgment debtors, and once found, to force them to appear in court. The lengthy procedures that judgment creditors have to go through to get an appropriate court order was also a cause for complaint.

The following are some of the other suggestions and criticisms made by various litigants:

> "The new laws are good. But they are not applied according to their spirit because of dishonest public officials."
>
> "Police should bring criminals to court as soon as possible."
>
> "Files must not be closed by the court because of negligible mistakes made in the pleadings. This is a great financial hardship for poor litigants."
>
> "Judges should be in court promptly."
>
> "Either I should be rich enough to bribe the judge or judges should stop being bribed."

From the examination of the case files in court archives it is clear that delay of cases is a reality. The choice is between handling each case completely on a given date or doing a little on a lot of cases during a morning. The decision seems to have been made in favor of the latter practice and litigants do not find the choice agreeable though it is hard to say what they would think of having to wait a year or two to have their cases heard at all if cases were heard by the courts straight through without continuances.

Litigants: Attitudes Towards Judges

Two-thirds of the litigants interviewed who expressed opinions about judges gave extremely negative ones. Though judges are given great outward shows of respect by litigants in the courtroom it is clear that litigants view judges as being unknowledgeable, corrupt, and even cruel.

The main cause of the judges' ill-repute among litigants was their reportedly common practice of taking bribes.[186] Other complaints ranged from their lack of efficiency in handling courtroom business to heartlessness concerning the problems of the poor.

Litigants who did not express negative attitudes towards judges said such things as "they are all right", "the quality of judges is improving", or "they are appointed by the Emperor and if they fail they will be punished by God".

Literate litigants did not tend to criticize judges as sharply as their illiterate brethren. In fact, a large proportion of the literate litigants interviewed had fairly neutral opinions of judges.

Illiterate litigants voiced their opinions more frankly and were generally negative towards the bench. That a good deal of their opinions come from conversations outside of court is attested to by the fact that many of those expressing extreme disrespect for judges had never been to court before.

The mild opinions expressed by literate litigants towards judges might be the product of a wider understanding of the problems of lower courts than is possessed by

186. The following are remarks made by litigants: "When I had to have a guarantor, the judge would not accept the person I brought forward unless I gave him a bribe. Had I not bribed the judge, I would have had to go to jail"; "I took the judge here two sheep at the end of the fasting period;" "the judge in this court uses my opponent's car".

people who cannot read and write. It might be attributed too, to a literate person's more frequent contact with government agencies and sophistication in dealing with them gained from experience. The literate litigant may in fact be satisfied with the judges. If he has money and the intelligence necessary to cope with the judicial system, the literate person can protect himself.

Litigants: The New and the Old

Attempts were also made to discover what litigants thought of the new court system as opposed to the "old system" which existed prior to the Italian Invasion. Due to the fact that many of the litigants interviewed were not old enough to be aware of the litigation process before 1936, much of what they said about the old system is necessarily hearsay. But whatever their foundation for making a comparison between the old and the new, their present attitudes are important.

Litigants were not responsive to a question which was designed to elicit conflicts between the new codes and customary law. This was perhaps due to the fact that none of the litigants interviewed knew any code provisions well enough to be able to compare the codes with custom. Failure to elicit substantive conflicts between customary and code law may also be due to the considerable extent that the codes embody custom.

But it was evident that procedural differences between the old and new ways of conducting litigation rankled litigants whether or not they knew that the codes produced the changes which they did not like.

Litigants made the following observations:

"Customary procedure was quick. This is slow."

"The new law requires that land be registered and a deed issued from the municipality. Under the old law, the local dania certified that land belonged to a person's father and grandfather. The person who claimed ownership would have to have his right recognized by the local judge — not the municipality."

"Civil Procedure Code, Article 58 limits the persons who can represent litigants to only certain relatives. According to custom, a litigant can choose anyone to plead for him in court."

In woreda and awradja courts in large urban centers, too, cases involving succession to land to which local customs are often most relevant do not constitute a great proportion of the docket. The subject matter of cases heard in these courts may not have any peculiar substantive customary law relative to them. For example, when a person refuses to pay a debt, injures another person, or steals, it is likely that the substantive rule universally applied is that the injured person shall be made whole in some way. The difference from locality to locality would seem to be in the method of protecting the rights of the injured person.

Further, in an urban setting, it is unlikely that a litigant would expect his customary rules to apply when so many of the people living around him have different concepts of customary rules brought to the city from their own localities. A person born and raised in the city may have no contact at all with so-called "customary rules."

And finally, in cases which involve matters outside of inter-family relationships, it can be said that Ethiopians have a tradition of settling disputes by whatever

means is most effective. If local customary procedures such as presenting the dispute to elders for arbitration failed in the old days, the case was taken to a judge who was the designee of the central government. The fondness Ethiopians seem to have had for appealing cases all the way up to the Chilot indicates that people were not reluctant to let their local disputes be decided by judges who were essentially foreigners to their local practices.

Thus litigants interviewed did not feel offended by the fact that they had to have their cases decided in modern courtrooms by alien judges; nor did they harken back to the old days when justice was given under a tree in their own localities. But the old system was nostalgically preferred mainly because it was not time consuming.

Litigants thought that most people preferred to have their cases heard in court rather than to present their disputes to the elders in their communities though seventy-five percent of the litigants interviewed said they tried to resolve their disputes before the shamageles (literally "old men"). All of these attempted settlements failed, they said, due to the inability of the customary system to enforce its decisions. Usually the failure of arbitration was due to one of the parties' failure to abide by the settlement reached. Some litigants blamed this kind of failure on the shamagele sthemselves saying, "there are no good shamageles any more", "shamageles are all one sided", or "they would rather work and make money than spend their time settling disputes." A few litigants even accused shamageles of being corrupt.

Though decisions of shamageles are not binding and often ineffectual, most litigants said they wished that they could have settled their disputes according to custom. One litigant said, "some people prefer custom because disputes are settled quickly. Others prefer the courts because their decisions can be enforced". That sums up well the considerations a person makes when deciding whether or not to take his case to court.

According to accounts of historians and early European travellers in Ethiopia, Ethiopians used to enjoy litigation. It was a form of recreation. The old forms of litigation — when cases were decided the same day they were heard, when litigants knew what was expected of them when they appeared before a judge, when judges were respected members of their communities — could well have been a pleasant pastime.

It is evident now, however, that litigation is not a form of recreation. Litigants feel that the enjoyment has been taken out of it by lack of honesty, long delays, and impersonal relationships between all concerned in the litigation process.

Thus criticisms of the new system were not directed towards substantive unfairness but rather towards the system's failure to operate according to its own rules. In spite of the system's abuses of which the litigants were keenly aware, there was the recognition that the basis of an equitable and efficient foundation for the administration of justice existed.

Atbia Danias

Below the woreda courts there is a judicial officer called an "atbia dania". He is a creation of statute — the Local Judges Proclamation of 1947.[187] This

187. Establishment of Local Judges Proclamation, 1947. Proc. No. 90, *Neg. Gaz.*, year 6, No. 10.

proclamation provided for the establishment of local judges in each "locality" whose duty was to "settle all cases, by the compromise of the parties, within the limits of his jurisdiction."

His subject matter jurisdiction was limited by the proclamation to civil cases in which the amount involved did not exceed E $ 26 and criminal cases where the charge was punishable with a fine not exceeding E $ 15.00. His local jurisdiction was over his "atbia" or locality, usually around fifty gashas. The atbia dania was to sit with two "assessors" and his decisions were appealable to the woreda court.

Appointment of these judges was to be made in two ways. If there was a melkegna (a local government official responsible for collecting taxes who was also usually a large landower) in a locality, he would be appointed. Where there was no melkegna, the atbia danias were to be chosen by presidents and vice-presidents of the awradja, woreda, and mekitil woreda ghezat courts with the help of elders from a list of land owners in the area.[188]

These atbia danias used to earn their income from court fees litigants paid to have their cases decided. The Civil Procedure Code of 1965, however, did not mention atbia danias as having any civil jurisdiction and as a result many atbia danias report that the number of cases they hear, and consequently their income has diminished. This is true despite the fact that the Ministry of Justice, has taken the position that atbia danias may exercise civil jurisdiction where the parties agree to submit their cases to them and that decisions rendered in such cases are binding and can be executed by the local woreda court.[189]

But the atbia danias interviewed still seem to hear civil cases initiated by one party if the subject matter of the dispute is below E $ 26 such as disputes arising out of ekub associations and small loan cases.

Atbia danias still have official criminal jurisdiction. This is given to them by Article 223 of the Criminal Procedure Code. Pursuant to that Article, the atbia dania's fucntion is basically the same as that outlined in the Local Judges Proclamation of 1947. His first duty is to seek a reconciliation between the parties but where he fails to effect a compromise he may impose a fine of E $ 15.00. Atbia danias are also required by Article 223 to keep records of the cases they hear.

Proceedings before atbia danias are initiated by written complaints. While some atbia danias said they referred to the codes for rules of decision, the mandate given them by Article 223 of the Criminal Procedure Code seems sufficient in itself as a basis for reaching decision without resort to other laws — atbia danias are to try to reconcile the parties where a petty offence has been committed. If that is not possible and guilt is established the atbia dania is authorized to impose a fine of E $ 15.00 by Article 223.

The atbia danias interviewed said they heard anywhere from three to twelve cases per month. Most atbia danias said that the bulk of the cases they used to hear - especially the civil cases - are now heard by the woreda courts. There is

188. Id., Arts. 6-7.

189. *A Study of Agricultural Land Disputes in Kuni Woreda and Chercher Awradja Courts*, Department of Land Tenure, Addis Ababa, 1969.

even a tendancy, now, they said, to take petty criminal cases to court, by-passing the atbia dania.

Most of the atbia dania's official time is spent executing orders given by courts who have jurisdiction over his "atbia". Thus he is responsible for serving summons on parties who are required to appear in court or witnesses needed to testify, he estimates the value of land for execution purposes, establishes boundaries, and is sometimes responsible for apprehending and bringing a criminal to the local police station. He is also an agent of other administrative agencies such as the Ministry of Finance for whom he collects taxes.

As mentioned earlier, atbia danias were originally paid from the court fees that litigants in the civil suits they heard had to pay in order to commence the litigation. The fee was a certain proportion of the subject matter of the dispute. Now, with civil jurisdiction denied them by the Civil Procedure Code, their income is limited to the small fees paid by parties to criminal disputes. For the other functions the atbia dania performs he is not paid and the atbia danias interviewed were bitter about this and were generally unenthusiastic about their jobs. Despite the fact that they are not paid, they are often called before a court and reprimanded if they fail to produce a witness or a criminal or if they make a mistake in estimating the value of land.

The atbia danias interviewed had all held their positions for quite a while –at least since before the Civil Procedure Code was promulgated in 1965. Usually these men were the same ones who were initially appointed in 1947 or descendants of the original appointee. Some balabats (landlords), now atbia danias, said they exercised much the same function before the 1947 proclamation as they do now.

The purpose of appointing "local judges" was to provide official sanctions for the settlement of petty disputes convenient for the many people in Ethiopia who otherwise would have to travel for two or three days to reach a court. And the atbia dania's decision was to be effective because of his stature in his own community.

With the new codes, however, that direction seems to be reversed. Instead of resolving disputes himself, the atbia dania finds himself more and more the tool of the centralized judicial system. Thus he is its agent for executing orders and seeing that parties appear before the courts far away. Now he exercises the power of others.

In Addis Ababa and Harar, there are no atbia danias exercising jurisdiction. However, in Asmara there are a number of them, paid by the Municipality. These atbia danias either inherited their positions or were appointed through government connections, and are quite active. They hear from twenty to thirty cases per week –both civil and criminal within their localities whose subject matter is within the limits set forth in the Local Judges Proclamation of 1947.

These officers have various duties in addition to their judicial function. They make announcements from the government to the people, register property, register voters, make public health reports, and organize community development programs.

In dealing with the disputes that come before them they require written pleadings but follow customary procedure and substantive law. Again, their function is to reconcile the parties where possible. Judging from the relatively small number of cases that come before the woreda courts in Asmara as opposed to Addis Ababa, these atbia danias are quite effective.

Official Proposals for Improvement

A move directed towards the improvement of the administrative aspects of the judicial system has been made in recent years but no legislative or administrative action has been taken. From a proposal that was made we may gain some insight into what steps might be taken to improve the administration of justice in the lower courts.

The Revised Constitution of 1955, Article 111 provides:

> "The judges shall be appointed by the Emperor, they shall be of the highest character and reputation and shall be experienced and skilled in the law which they may be called upon to apply. Their nomination, appointment, promotion, removal, transfer and retirement shall be determined by a special law governing the judiciary."

The recent attempt to improve the system was directed towards the enactment of that "special law governing the judiciary" which would set forth requirements that must be met by candidates for the bench and a process which must be followed for selecting them.

In 1962, the Senate inquired of the Minister of Justice whether the "special law" had been prepared.[190] In response to the enquiries of Parliament, the Emperor appointed a Judicial Commission to study the problem of the "special law".[191] The Commission prepared a draft of a proposed law to govern the appointment of judges but it was never submitted to Parliament for unknown reasons.

When no draft was forthcoming from the Commission, elements in Parliament prepared a draft of such a law in 1964. The law was discussed in the Chamber of Deputies but the matter was not considered any further after the Prime Minister reported that a draft law covering the same subject was under consideration in his office.[192] Interested members of Parliament agreed to await the draft proposed by the Prime Minister but only for a limited time. If the law was not submitted soon, they said, Parliament would pass its own law.[193] To date the Prime Minister's draft law has not been submitted to Parliament and no "special law" has been enacted.

The task of the Commission appointed by the Emperor to formulate a new law providing a framework for improvement was set forth in its agenda:

190. A. Bantiwalu, cited above at note 163, p. 45.
191. Id., p. 46.
192. Ibid.
193. Id., p. 49.

"1. **Quality of Judges.**

The Committee shall discuss the appointment of judges who are well versed in the law and have a background of long judicial experience. Such judges also must be honest and persons of integrity. They should be incorruptible and pay great attention to their reputation as judges and who (sic) dispense justice in accordance with their conscience giving every one his due.

2. **Jurisdiction and efficiency.**

The Committee shall discuss the jurisdiction each court shall have so as to provide efficient administration of justice. The Committee shall also discuss the courts to be abolished and the limitation of appeals.

3. **Abolition of corruption.**

The Committee shall discuss and study the manner in which bribes and corruption may be abolished. The Committee shall recommend on (sic) the general efficiency in dispensing justice in accordance with the law."[194]

The principal draft law prepared by the Commission provided that a permanent Judicial Commission composed of the Minister of Justice, the Afe-Negus, the president of the High Court, the Advocate General, and the President of the Chamber of Deputies be established. This permanent Judicial Commission would be charged with the duty of recommending awradja, High and Supreme Imperial Court judges to the Emperor for appointment and investigating judicial misconduct and thereafter making a report to the Emperor through the Minister of Justice in those cases where misconduct was found. Woreda judges were especially excluded from all of these provisions, but a companion draft law provided for their election by popular vote.

The most important article of the principal draft law reads :

"No person shall be confirmed in his appointment as a judge by Us (the Emperor) unless the Commission confirms that he has proved himself to be both of the highest character and a competent and efficient judge."[195]

At present judges are appointed by the Emperor on nomination by the Ministry of Justice. The Emperor has the power to add names to nomination lists forwarded to him by the Ministry and he reportedly does so quite frequently. The principal draft law would have put into effect the terms of the Constitution that, in respect to all judges, "their nominations, appointment, promotion, removal, transfer and retirement shall be determined by special law governing the Judiciary,"[196] though the Emperor's "appointment" power pursuant to Article III would remain as a matter of course.

194. Id., appendix.

195. Art. 4 of the Draft Decree in A. Bantiwalu, cited above at note 163. A literal interpretation of this section of the draft law would mean that no judges could be appointed to the awradja court who had not previously served as judges.

196. Revised Constitution of 1955, Art. 111.

The principal draft law took the power to initiate disciplinary procedures out of the sole jurisdiction of the Minister of Justice and placed it in the hands of the presidents of the awradja and woreda courts. If a judge, after receiving a warning from his president did not mend his ways, the draft decree provided that the president of the court concerned should forward the complaint to the Minister of Justice who in turn would refer the matter to the permanent Judicial Commission. The Commission would then have sole jurisdiction to consider the guilt of the accused and measures to be taken. The Commission would make its decision by majority vote of its members and pass its recommendation on to the Emperor for approval.

"Regulations" that were to be issued pursuant to the principal draft law gave presidents of courts certain precisely enumerated responsibilities:

"1. the distribution of work among the various divisions of the court;
2. the expeditious and smooth working of the court and the court registry;
3. the prompt dealing with complaints concerning the administration of justice in the courts under his control;
4. the reporting to the Commission of judges or to the Minister of prosecutors who have misconducted themselves or shown incapacity in the proper discharge of their duties;
5. the provisions (sic) of copies of the codes and laws and stationery to enable the courts properly to function;
6. informing the Minister where there is a shortage of judges or prosecutors owing to sickness or other causes."[197]

Further, according to these Regulations the registrar and court staff were to be under the direct control of the president of each court.

The Regulations also emphasize the point that the Emperor will act, when appointing judges, upon the recommendation of the Commission and not of the Minister of Justice alone.[198]

The most common abuses in the Ethiopian judicial system at the present time received special attention in the Regulations.

"No judge shall:
(a) unnecessarily delay the conclusion of a case;
(b) absent himself from attendance at his court without good cause;
(c) fail to give effect to the laws of Ethiopia;
(d) do anything which will interfere with the proper administration of justice;
(e) pay any regard to instructions given by an administrative authority in relation to the trial or conduct of any case;
(f) fail to be courteous to advocates, witnesses, and parties;

197. Article 3 of Regulations to be issued pursuant to Draft Decree. A. Bantiwalu, cited above at note 163, appendix.
198. Id., Art. 4 of Draft Regulations.

(g) where a judge wishes to absent himself for a reason other than medically certified serious illness he shall first obtain the permission of the President of the Court."[199]

Suggestions for Improvement

As seen in the preceding section, one approach that has been suggested for improvement is to vest the power of appointment, removal, and discipline of judges in a Commission of qualified lawyers and judges. It is reasonably clear, however, that the implementation of this suggestion would not solve all the problems that exist in the administration of justice in the lower courts.

The basic problem appears to be a shortage of qualified people who are willing to work as lower court judges for $ 80.00 or $ 120.00 per month. A judicial Commission can hardly force qualified people to apply for those jobs.

The first solution to many of the lower courts' problems that comes to mind is the allotment of a larger share of Ethiopia's budget to the Ministry of Justice. If this were done, judges and other court personnel could be paid higher salaries and the physical state of the lower courts could be improved. Higher salaries might do away with the apparent need for judges and other court personnel to supplement their now meager incomes from other sources, including bribes, and improvement of the physical condition of the courts probably would give employees of the Ministry of Justice more pride in their jobs.

However, meaningful suggestions for improvement have to take into account the possibility that more money for the administration of justice will not be forthcoming from the Government. The question then is what can be done to improve the situation with the financial resources available.

Improvement needs to be made in three basic areas. First, the procedures through which judgment in individual cases is rendered have to be made to operate more quickly and efficiently. The second area in which improvement is needed concerns the application of substantive law. How can better use be made of the codes and how can the present substantive law be adapted to the needs of the lower courts? Thirdly, there is no independent source from which useful criticisms and suggestions with regard to the administration of justice can emanate. Thought should be given to the question of how such sources can be developed and made to benefit the system.

Procedure

Each court is composed of a number of personnel present for the purpose of processing litigation at its various stages. Each court worker, from the judge to the lowest messenger, has specific and essential tasks to perform (assuming the court is not overstaffed). It is clear that at the present time, many court personnel, including judges, lack personal dedication to their jobs. They are overworked, underpaid, and harassed. As a result they do not do a good job and the court does not function as it should.

199. Id., Art. 5 of Draft Regulations.

Something should be done to foster in these people a new attitude towards their work. Authorities, for example, could create professional associations for these people and issue periodical publications dealing with professinal problems. The Ministry of Justice should focus more on ways of building their morale. Frequent meetings of all court staff in various localities in which problems common to all could be discussed might foster a new spirit.

Next, the procedures by which courts operate need to be reviewed. Is it better, for example, for a little progress to be made on many cases each day or for cases to be heard to their conclusion without interruption? Would litigants be willing to wait for long periods of time to have their cases heard if they knew that when their appointments occured they could be assured of having the case resolved quickly? Perhaps a system could be effected whereby certain days would be set aside for hearing procedural matters and certain days devoted to full trials. This would enable litigants to have their full trials heard continuously as judges would not feel the pressure to postpone trials to dispose of procedural matters in other cases. Hearing a trial through to conclusion would enable parties to obtain fast relief. And litigation would not hang over the heads of both parties for long periods of time. The split docket system suggested would to some extent provide relief to people who now come to court for minor procedural matters and find that they must wait for lengthy trials to be concluded before their cases are heard.

Of course, this all hinges on a court's ability to require that litigants come prepared to go ahead with a full trial on appointment dates. Courts should make it known that they will deal strictly with litigants, advocates, and witnesses who do not appear on appointment dates with the material that is needed for resolution of the case.

As noted in the appendix, many cases – especially those brought upon private complaint – are dismissed because of the failure of the plaintiff to appear in court on successive occasions. Immediate notification of the court as to a plaintiff's decision not to proceed with a case would save time now being wasted by courts in scheduling and calling cases for hearing which have been dropped. Litigants should be encouraged to communicate their decision not to proceed. A rule could be promulgated to this effect and litigants could be informed of its existence when their suits are filed. Fines could be imposed for failure to appear without explanation.

Another problem in need of solution is the confusion created by crowded courtrooms. Until larger courtrooms become available, congestion could be relieved by clearing the rooms of those who have no personal interest in the litigation taking place in a particular court on a given day, or courtroom seating capacities could be determined and enforced by court personnel.

After an appropriate notice is given to all prosecutors, those who fail to see that cases are prepared at the first hearing of a criminal case should be disciplined by the court. Their practice of waiting to see whether or not a litigant is going to plead guilty before preparing should be changed. Prosecutors could easily ascertain a defendant's plea before the first full hearing in court.

In criminal cases, few indigent defendants have free counsel appointed for them by the court. And when counsel is appointed, there does not seem to be any rationale for their appointment in one case as opposed to another. Judges interviewed were not certain under what circumstances indigents should receive free representation, and in the face of the overwhelming number of criminal cases involving indigent

defendants, they simply ignored the command of Article 52 of the Revised Constitution of 1955. It is suggested that rules relating to the appointment of counsel for indigent criminal defendants be made available to judges telling them when appointments should be made. It is further suggested that rules limit such appointments to certain relatively serious crimes so that the present legal profession will be able to cope with the problem of representation for the poor.

Judges should be given more power to control the personnel in their courts. The Ministry of Justice could make it clear to them that they are primarily in charge of what goes on in their courts and also primarily responsible for the efficient administration of them.

Improvement could also be made in the organization and jurisdiction of the courts. In rural areas, for instance, awradja courts are often located far from people they serve. Some, at least, of their jurisdiction of first instance could be given to the woreda courts or perhaps some awradja court judges could ride the circuit of the woreda courts within their jurisdiction.

When three awradja court judges sit on one case, as prescribed by law, manpower is wasted when judges elsewhere are hard-pressed to keep up with their workloads while operating individually. Furthermore disorderly proceedings often result when three awradja judges in the same room hear three different cases simultaneously, as happens in some awradja courts. These judges should either be separated to hear cases individually or, where there is not enough business for that, some of the judges should be assigned to woreda courts to relieve the heavy work loads that exist there.

The heavy workloads of woreda court judges in large towns might also be relieved by permitting atbia danias to exercise some of the formers' subject matter jurisdiction. These atbia danias, if properly selected with regard to their stature in a community and if endowed with power to compel people to appear before them in civil cases as well as criminal cases and if given power to enforce their decisions, could take as much as one-third of the cases now heard by woreda courts. Small debt, insult and defamation cases, as well as minor assaults could be referred to the atbia dania whose first duty would be to try to effect a settlement between the disputants. All cases within the subject matter of this officer would be required to be submitted to him. The procedure in such courts should be relatively unstructured so as to be manageable by these judges. Only a statement of the facts and the names of the parties involved in the disputes need be presented to the judge. A special code might be drafted for use in this court which would meet the needs of the typical kinds of disputes out of which such small claims arise.

Substantive Law

It is clear from our investigation of court files that code articles are not being properly applied or interpreted. But it is not clear that injustice results from an inability to cope with the codes - especially in civil cases.

In criminal cases, however, where the prosecutor is given discretion to label certain acts as one crime as opposed to another thereby setting possible punishments, injustice may result from inability to distinguish the various elements that go into making a particular offence.

To remedy this situation, it is suggested that code provisions dealing with the types of cases that are heard in the lower courts be compiled into manuals to be distributed to lower court judges, advocates, and scribes. These manuals should contain explanations and examples designed to make the judge consider the relevant issues. Decisions of higher courts relating to the subjects contained in this manual should be circulated to all lower court judges.

Education, of course, is the key to improvement of the application of the codes. But since education is accessible to only a few of the many judges in Ethiopia, the manual suggested above could reach even the rural judge, and could have some effect on the administration of justice throughout the country.

An Outside Viewpoint.

Problems of judicial administration are the sole concern of the Ministry of Justice. Advocates in Ethiopia do not exercise the same critical function with regard to courts as legal professions in other countries. Thus the judicial system in Ethiopia has no outside independent overseers who are at the same time intimately acquainted with its inner workings. Advocates should be brought together by the Ministry of Justice and given some responsibility for making suggestions for improvement which could be considered and acted upon by the Ministry.

The Ministry should also sponsor discussions and meetings participated in by advocates and judges in which these important pillars of the judicial system could be made to feel that they have some control over the machine in which they are now only cogs.

APPENDIX

THE CASES IN THE COURTS AND HOW THEY ARE HANDLED

Introduction

Files in an Addis Ababa woreda court and in the Menagesha Awradja of Addis Ababa were analysed by teams of law students. In the woreda court (hereinafter referred to as the "Woreda Court") every twentieth case for the year 1968 was put into digest form. In the Menagesha Awradja, digests were made of every tenth case for the same year. Estimations of percentages as to types of cases heard are thus based on a random selection and should be deemed approximations.

The information contained in the sections below is designed to give the reader more than a recital of percentages, however. Analysis of cases contained in court archives of woreda and awradja courts helps to identify in detail the problems that exist in the lower courts.

Reference to code articles "cited," "relied upon," or "mentioned" is to articles contained in pleadings written by advocates, scribes, or litigants. Judges, in their decisions, did not usually refer to code articles. It is possible, therefore, that judges in making a decision disregarded the code provisions cited in the pleadings presented to them and relied upon their own unstated rationales when disposing of a case. To the extent, then, that statutory authority is inappropriately used, one can only conclude that *someone* in the lower court system, be it a scribe, an advocate, a judge, or even an occasional litigant, is not fully conversant with the codes.

THE WOREDA COURT

The jurisdiction of the woreda court in Addis Ababa includes a modern business and shopping center, a modern residential area, and a "native" residential and market neighborhood. Cases coming before this woreda court should, therefore, be fairly representative of all the kinds of disputes that are likely to arise in Addis Ababa.

The Woreda Court has two divisions -- a civil and criminal side each manned by one judge.

Civil Cases

Approximately thirty-nine percent of the Civil Cases heard in the Woreda Court involved debts arising out of loans between private individuals and failure to pay bills, thirteen percent involved non-payment of rent, twelve percent were concerend with employer-employee disputes mainly arising out of non-payment of severence pay, eleven percent were claims for non-payment of taxes. The other twenty-percent of the cases were divided rather evenly between disputes over ekub payments, obligations of guarantors, child support payments and marital disputes over division of property, and certification of contracts by the court. Also included in the residue twenty-five percent were cases involving non-delivery of goods and claims for property damage. The cases will be discussed below in order of their frequency in the woreda court. The latter two types of cases - - civil damage claims and non-delivery of goods-- will not be discussed because they composed such a small percentage of the cases heard that no constructive conclusions can be drawn from them.

Debts Arising from Loans

Most debts arose out of small loans between individuals. For the most part, the loan was either admitted by the defendant, proved by a written contract of loan, or the defendant failed to appear and judgment was entered against him in his absence. In other cases the dispute usually revolved around the amount of money that had been paid back pursuant to the lown agreement, the two parties each alleging a different amount.

In such situations the central issue in the case was one of fact to be proved by witnesses or assumptions. Very little interpretation of the law was required and it is clear from a review of the cases that not much was engaged in by the scribes who wrote out the pleadings, by the litigants, or by the judges. Since the basic questions were, was there a loan and, if so,

did the defendant pay the money back according to the terms of the agreement, not much legal interpretation on anyone's part was required.

In order to prove the above assertion, let us take a typical case, analyse the facts and then the articles mentioned in the pleadings and the judge's decision.

The plaintiff brought his case to court claiming that the defendant refused to pay him the E $130.00 that he had loaned the defendant pursuant to a written loan agreement. At the first hearing, the defendant did not appear and the judge ordered the plaintiff to serve the defendant with a summons and copy of the complaint. At the next hearing both plaintiff and defendant were absent. Finally, at the third hearing, four months after the plaintiff had filed his complaint, the judge gave judgment for the plaintiff in the defendant's absence. The judge relied on Civil Code Articles 2005, 1679, and 2028.

Here it is necessary to give a short discussion of the Civil Code Articles which govern loans. Article 2471 of the Civil Code of Ethiopia defines the term "loan":

> "The loan of money and other fungibles is a contract whereby a party, the lender, undertakes to deliver to the other party, the borrower, a certain quantity of money or other fungible things and to transfer to him the ownership thereof on the condition that the borrower will return to him as much of the same kind and quality."

Since a loan is a "contract", the provisions of the Civil Code relating to contracts in general apply to the cases involving loans (Article 1676 of the Civil Code).

Article 1675 defines a contract as

> "an agreement whereby two or more persons as between themselves create, vary or extinguish obligations of a proprietary nature".

It is clear that the judges and scribes keep in mind one cardinal principle when they decide a case such as the one given in the example above : "he who can prove that another has borrowed money from him and has refused to pay pursuant to the agreement made at the time of borrowing, has the right to receive payment from his debtor".

The principle is clear, but the problem is how to state it in terms of code provisions. Aside from resoving the factual issues, a judge must provide some basis in law for recovery.

In our case, Article 2005, dealing with a method of proving the existence of a contract, was relied upon :

> (1) A written instrument shall be conclusive evidence, as between those who signed it, of the agreement therein contained and of the date it bears.
>
> (2) It shall have the same probatory value for persons represented in the act and the heirs of the parties.

Since there was a written contract in our case, this article is relevant to the fact that there was an agreement according to the terms of the writing.

The next article mentioned was Article 1679 which reads :

> "A contract shall depend on the consent of the parties who define the object of their undertakings and agree to be bound thereby". (Article 1679, Civil Code).

The element of consent is necessary to a legally binding contract but the citation of this article seems to have little relevance to this case since consent or lack of it was not an issue.

Finally, Article 2028 of the Civil Code was cited :

> "Whosoever causes damage to another by an offence shall make it good".

However, this provision falls within the Civil Code's Title XIII : Extra Contractual Liability and Unlawful Enrichment. Article 2037 of that Title provides :

> "(1) A person shall not commit an offence involving his extracontractual liability where he fails to discharge his obligations under a contract.
>
> (2) The provisions regarding non-performance of contracts shall apply in such a case (Article 2037, Civil Code)."

Article 2028 of the Civil Code, then, is irrelevant to the case at hand though it certainly states a principle which, without reading the provision in context, seems an eminently just and reasonable one.

Left out of the basis for decision, then, is a basis of law which entitles one to recover money from one to whom he has loaned money when the latter refuses to pay it back.

Code Articles relating to the effect of contracts in general (Article 1731) and of the effect of non-performance of a contract were not mentioned. Instead, other articles which seemed to relate to various aspects of contractual relationship were mentioned, sometimes erroneously so.

It was seldom that any of the loan cases reviewed mentioned Article 1731 (I):

"The provisions of a contract lawfully formed shall be binding on the parties as though they were the law";

Or Article 1771 :

" (1) Where any party does not carry out his obligations under the contract, the other party may, according to the circumstances of the case, require the enforcement of the contract or the cancellation of the contract or in certain cases may himself cancel the contract.

(2) He may in addition require that the damage caused to him by non-performance be made good."

or Article 2482 (1):

"The borrower shall return the things lent in the same quantity and quality as agreed."

The assumption by the courts seems to be that it goes without saying that once the debt is proven to exist, the debtor is obliged to pay what he owes to his creditor.

This assumption runs so deeply that often the only articles mentioned in the pleadings are Articles 222 and 223 of the Civil Procedure Code, those articles concerened mainly with the form and contents of pleadings. (See section on scribes above).

Other cases involving contractual relationships are similarly interpreted using code provisions. Quite a few of these disputes arise from ekub associations. These associations are wage-pooling groups. Each member contributes a certain amount of money per week and then lots are drawn. The person who wins for the week receives all of the money pooled and is not eligible to win another "pot" until everyone in the group has won. But the person who is successful is obliged to keep contributing his weekly share until a complete round has been made of all the members. Various kinds of disputes can arise within these organizations. The two examples below are typical of ekub disputes.

- The plaintiff sued the defendant members of the ekub for his share of the money upon having drawn the winning lot. The defendants did not appear in court for the first hearing because they did not receive a summons. At the next hearing the defendants did not appear and the court ordered the plaintiffff to bring witnesses who could testify to the existence of the ekub agreement and to the fact that the plaintiff had drawn the winning chance. At the next hearing, three months after the case was filed, all the defendants appeared and they were ordered to pay the plaintiff his E$ 15.00. Articles 222,223 of the Civil Procedure Code and Article 2002 of the Civil Code were cited.

- The defendant received the "pot" for the week and thereafter refused to make any weekly contributions. The rest of the members brought him and his guarantors to court to collect arrears in weekly dues amounting to $ 420.00 Eth. At the first appointment the court ordered a summons sent to the defendant. At the second appointment the defendant asked the negara fedge of the ekub to present his authorization to represent the group. At the next appointment the authorization was produced but the defendant demanded a copy of the contract for himself and a continuance was given to give the copies to the defendant. At the fourth hearing the defendant asked that the amount alleged to be owed be verified. At the fifth appointment the plaintiff requested judgment. Six months after the case was filed judgment for the full amount of $ 420.00 Eth. was given in favor of the plaintiffs. Civil Code Articles 2005, 2028 and 1920 were mentioned along with Civil procedure Code Articles 222,223 and 92.

Again, the articles cited do not go to the substance of the matter. In cases where there was a written ekub contract among the members, the plaintiffs often cited Article 2005:

In cases where the association was constituted by an oral agreement to pay weekly dues, Articles 2002 was frequently cited:

> "proof may be adduced by writings, witnesses, presumptions, a party's admission or oath, in accordance with the rules set out in this Chapter and the forms prescribed in the Code of Civil Procedure."

But, as in the loan cases, no article providing a basis for recovery was cited. Proof of a valid ekub agreement automatically meant that the plaintiff could recover against one not abiding by the agreement. And again, Article 2028 of the Civil Code, which provides for damages arising from an "offence", was sometimes cited as a basis for recovery. As stated above, this article is erroneously relied upon when the issue is non-performance of a contract and the damages to follow.

House Rent

The second largest proportion of civil cases heard in the Woreda Court during 1968 involve claims for non-payment of house rent. The following is a typical case:

> The defendant was accused of not paying $ 74.00 Eth. of house rent allegedly due to the plaintiff pursuant to an unwritten contract of lease. At the first hearing, the defendant was not present and so the court ordered a summons to be delivered to him by the plaintiff. At the second hearing, the defendant failed to appear again and was fined $ 20.00 Eth. because of his failure to be present. At the third hearing, four months after the case was filed, the court gave its decision in favor of the plaintiff in the absence of the defendant. Civil Code Articles 222 and 223 were mentioned in the pleadings.

As with contracts of loan, there are special Civil Code articles relating to contracts of lease regarding houses. Article 2945 of the Civil Code defines the secope of these articles :

> "(1) The provisions of this section shall apply where the contract of lease relates to a house, furnished or unfurnished, a flat, a room, or some other building or part of a building.
>
> (2) Nothing shall affect the provisions governing contracts relating to hotels in the title of this Code relating to "Contracts for the performance of services (Arts 2653-2671)."

Article 2951 of the Civil Code provides :

> "(1) Unless otherwise agreed, the rent shall be paid at the end of each quarter where the lease has been made for one or more years.
>
> (2) It shall be paid at the end of each month, where the lease is of shorter duration or made for an indeterminate period.
>
> (3) The rent shall in all cases be paid on the expiry (sic) of the lease.

The article governing the consequences of non-payment of rent when due is Article 2952:

> "(1) Where the lessee is late in paying a term of rent which has fallen due, the lessor may give him a period of thirty days were the lease is for a year or more and a period of fifteen days where the lease is for a shorter period, informing him that, in default of payment, the contract shall be terminated at the end of that period.
>
> (2) The period shall run from the day when the lessee has received the notice of the lessor.
>
> (3) Any stipulation reducing such periods or giving to the lessor the right to terminate the lease forthwith on account of a failure in the payment of rent shall be of no effect."

These are the Civil Code provisions relating to the question of non-payment of rent. It must be remembered, however, that a lease is a contract and the Civil Code provisions governing performance of contracts in general (Arts. 1740-1762), effect of non-performance of a contract (Arts. 1771-1805), and proof in relation to contracts (Arts. 2001-2019) apply to contracts of lease.

With this in mind, let us look at the code provisions contained in the pleadings of most rent cases in the Woreda Court.

In most of the cases involving non-payment of house rent, only Articles 222 and 223 of the Civil Procedure Code were mentioned. These articles, it will be remembered, set forth the requirements for what must be contained in the pleadings.

If, in addition to Articles 222 and 223 of the Civil Procedure Code, other articles were cited, the additional article was usually Article 2005 of the Civil Code relaitng to the conclusiveness of a written contract.

Article 2945, the Article quoted above defining the scope of the special articles relating to leases, was cited next most frequently, though it also does not provide any substantive basis for recovery.

Article 2951 governing when the rent falls due in the absence of agreement and Article 2952 dealing with the effect of non-payment of rent were very seldom mentioned in cases where they were clearly relevant. Those articles relating to the right of recovery upon non-performance of a contract (Arts. 1771-1805) were never mentioned.

Thus in the rent default cases as well as the cases involving contract of loan, the issues considered by the court were whether there was an agreement between the parties, and whether or not the amount due had been paid. This determination was made within a framework of code articles irrelevant to the main issue at hand--what was the basis in law of the plaintff's right to recover ?

Termination of Employment

Disputes between employee and employer were the next most frequently heard type of case in the Woreda Court.

Most of these cases involved the employer's failure to give notice or to pay severence comensation to dismissed employees. Other cases concerned alleged failures to pay salaries when due and failure of the employer to pay hospitalization expenses for which he was responsible.

Again, in these cases, code articles were cited mechanically and a statutory basis for recovery was not included in the pleadings or in judges' decisions.

> The defendant, a large hotel in Addis Ababa, was sued by a worker who was dismissed allegedly without good cause and without notice. The worker claimed three months' salary for his former employer's failure to give notice. The defence of the hotel was that the plaintiff had been fired for good cause since he had been absent from work quite often. After eleven months and seven appointments due to the absence of the defendant's advocate and witnesses on appointed dates, the court decided that the plaintiff had been dismissed for good cause and found that the defendant hotel owed the plaintiff nothing. Articles 222 and 223 of the Civil Procedure Code, and Articles 2002, 2571, and 2573 of the Civil Code were cited.

The basic provisions governing the termination of contracts of employment are Articles 2567-2593 of the Civil Code. Article 2570 of the Civil Code provides in part that "The exercise of the right to terminate the contract shall be subject to prior notice given by the employer or employee". Article 2571 sets forth the periods of notice that must be given under different employment situations. If the employer wishes, he may pay the employee who has served for less than a year one month's salary, or the employee who has worked for more than a year three months' salary without giving the notice required by the Civil Code.

In the cases involving disputes arising out of termination of employment, the most frequent complaint was that the notice required by Article 2571 of the Civil Code was not given and the amounts required to be paid in lieu thereof were not paid.

In these cases, the articles relied upon were more specific and relevant than those relied upon in the cases dealing with contracts of loan and leases. Most of the cases cited Article 2571 (providing for notice) as a basis for recovery. Some also cited Article 2573 providing for damages payable to an employee whose contract of employment had been terminated without good cause. Also mentioned were the articles relating to proof of the existence of contracts in general (Arts. 2001-2019).

However, in none of the cases reviewed where the employer was attempting to avoid liability by establishing a justifiable "cancellation" of the contract for serious non-performance was the code provision dealing with such a defence cited (Article 2579 Civil Code).

The tactics generally used by employers sued for failure to give notice and for compensation arising from termination without good cause was usually to drag the case out for a long period of time and hope that the plaintiff employee would be forced to discontinue the suit. The following is an example of one such case.

The plaintiff worked for a company for one year. The company fired him without giving him notice or three months' salary, and the plaintiff sued his former employer. At the first hearing, the defendant pleaded that the plaintiff's statement of claim was deficient in that it did not specify the locality where the plaintiff worked and the court ordered that the pleading be rewritten. The defendant's negara fedge did not appear at the second hearing. At the third hearing the defendant claimed that it had paid a portion of what was due to the plaintiff and the court ordered the defendant company's payroll records to be brought to court to prove the assertion. The plaintiff failed to appear at the next two hearings and the case was closed elven months after it was filed. Articles 222, and 223 of the Civil Procedure Code, and Articles 453, 2573, and 2574 of the Civil Code were mentioned.

Many other cases involving failure to give notice and claims for severence compensation were dismissed by the court a short time after they were filed for unplained reasons.

The remaining cases involving employee-employer relationships were claims for non-payment of wages. These disputes usually rose out of short term employment relationships and basically the same articles were cited in these cases as in cases involving contracts of loan. And a good many of these disputes were not prosecuted to their conclusions because of repeated failures of the parties to appear in court.

Non-Payment of Taxes

The cases involving non-payment of taxes were usually decided against the defendant in his absence. Most of these cases were claims for non-payment of income and business taxes required by tax proclamations published in the Negarit Gazeta. Often tax claims were dismissed by the court due to the failure of the representative of the Inland Revenue Department of the Ministry of Finance to appear. In some cases, where the defendant could not be located after five or six months of trying, the court dismissed the Revenue Department's claim with right to reopen the action if the defendant could be located. Often suits were dismissed because it was found, after several appointments at which the defendant failed to appear, that the defendant had already paid his taxes.

Child Support and Other Family Problems

City life places a strain on traditional family relationships. The absence of customary family ties among a great deal of the population in Addis Ababa is reflected in the number of cases brought to court involving support claims for children without fathers. These cases arise out of many different circumstances. Two typical examples are given below.

The defendant refused to pay his former wife the amount he agreed to pay in the divorce settlement. The case was closed three months after it was initiated because of the parties' failure to appear in court on two successive occasions. Articles 222 and 223 of the Civil Procedure Code were mentioned along with Articles 2001 and 2002 of the Civil Code.

The plaintiff sued a man with whom she had lived in irregular union for support of the two children which were the result of that relationship. The case was closed three months after it was instituted because the parties failed to appear. Civil Procedure Code Articles 222 and 223, and Civil Code Articles 2002, 2026 and 681 were mentioned.

Cases brought for failure to abide by a divorce settlement were the most common type of situations out of which child support claims arose. The articles usually cited in actions brought to recover sums agreed to be paid by one of the parties in the divorce settlement were those relating to contracts in general.

The plaintiff and defendant were divorced by family arbitrators. A written agreement providing that the husband would pay the wife $ 15.00 Eth. per month for the next three years was executed before the family arbitrators. The defendant husband failed to pay this amount for eleven months and the plaintiff wife brought him to court to enforce the payment of the amount due. The court ordered the defendant to pay the amount specified in the contract relying upon article 2028.

Article 2028 of the Civil Code relates to damages arising out of an "offence" and is clearly inapplicable.

In a similar case, Articles 2002, 681, and 700 of the Civil Code were relied upon. Article 2002 relates to methods of proving the existence of a contract. Article 681 sets forth the principle

that should guide family arbitrators in awarding custody of children after divorce and is somewhat relevant to laying foundation for a right of recovery.

Article 700 provides that proof of status of husband and wife can be made by four witnesses. Another article cited in such cases is Article 659 of the Civil Code which provides inpart that "The causes and effects of dissolution of marriage shall be the same whichever the form of celebration of the marriage." While these articles are peripherally related to a possible right of recovery in that they go to a relationship which if established assumes the child support obligation, the articles do not in themselves afford a right to recover.

Aside from all this and fundamentally, it is clear that these disputes should not be decided by a court at all in the first instance. Article 728 of the Civil Code provides:

> "(1) Disputes arising out of divorce shall be submitted to the arbitration of the arbitrators who have pronounced the divorce."

A wife thrown out of her house but not yet divorced from her husband will sometimes come to court seeking either her property and share of the common property or support for the children of the marriage. These cases, according to this study, are generally referred back to the arbitrators by the court. The pleadings in such cases usually contain references to Article 681, establishing the guiding principle for awarding custody of children, and Article 652 classifying certain kinds of property as "common property". Here again there is confusion among litigants, scribes, and judges as to how marital relationships and obligations are regulated by the Civil Code when there has been no formal divorce--merely an agreement to separate or a separation in fact. Family arbitrators have first instance jurisdiction over disputes of this type. Article 725 of the Civil Code provides that any difficulties that arise between spouses during the marriage shall be submitted to family arbitrators.

Guarantors

Many of the cases involving contracts -- whether for loans or performance of services -- involve guarantors who have agreed to act as sureties for persons who have undertaken to perform an obligation. Often, when the principal has failed to perform or cannot be found the guarantor is responsible for making the plaintiff whole.

- The plaintiff claimed that the defendant was a guarantor of one of her house servants pursuant to a written agreement. The servant stole money from the plaintiff's house and the plaintiff sued the servant's guarantor for $ 50.00. After two appointments in which the parties failed to appear the court dismissed the case. Article 223 of the Civil Procedure Code was the only article cited.
- The plaintiff sued the defendant and the defendant's guarantor for the principal defendant's failure to pay house rent. After one appointment, at which a summons was issued to the defendant, the case was transferred to another woreda because of the Woreda Court's lack of jurisdiction. Civil Code Article 2005 and 2945 were cited.

Articles 2005 and 2945 of the Civil Code deal with the establishment of the basic contract --not with the guaranior's undertaking as surety for the obligor on the basic contract. Few of these cases cited Article 1920 of the Civil Code which provides a basis in law for recovery from a gurantor:

> "Whosoever grarantees an obligation shall undertake towards the creditor to discharge the obligaion, should the debtor fail to discharge it."

The guarantor or "wasse", as he is called in Amharic, is now and has been traditionally an influential institution in Ethiopian society. One traveller in Ethiopia in the last half of the 19th Century noted: "this bail is the prop of Abyssinian society; no commercial or market transfer takes place without it. In this manner is insured the payment of debt or interest, and of the King's revenue". (Hotten, J.C., *Abyssinia And Its People*, 1868, p. 184).

Perhaps the fact that the relationships between debtor, creditor and guarantor are so firmly rooted in the minds of Ethiopians is responsible for lack of reliance on modern Code provisions for recovery from the guarantor. It seems to be assumed that once the basic contractual relationship is proven to the court, the right of recovery from the guarantor on his separate undertaking follows.

Registration of Contracts

When parties enter into a contract affecting rights in immovable property, they must either have their contracts "registered" by a court or a notary pursuant to Civil Code Article 1723.

- The petitioners entered into a contract whereby one borrowed $ 300.00 from the other. In return for the loan one of the petitioners (the lender) was to have possession of the borrower's house for three years. The court approved the contract purusant to Civil Code Article 1723.
- A man agreed to sell his house for $ 800.00 on the condition that he would get it back when he returned the $ 800.00 that the purchaser lent him. The court approved the contract pursuant to Article 1723 of the Civil Code.

These cases are handled quickly -- usually in one appointment. Although no investigation was made to determine how many transactions involving immovable property are registered with "notaries", from the small volume of such registrations handled by the Woreda Court it can be assumed that most of these loans are contracted between people who previously knew each other. Perhaps they are persuaded to settle their differences outside of court by friends.

Though the fact plaintiffs often fail to come to court may be a sign of reconciliation, always preferable to court-imposed resolution of the dispute, the fact remains that such cases are often carried on a court's docket for as long as five months. Even where the plaintiff does not appear at the first hearing, the court may call the case twice within two months time before dismissing the case. Considering the volume of such cases it is certainly a collossal waste of a court's time to have to deal with cases that are discontinued.

Some discontinued cases are clearly brought primarily to punish a defendant who refuses to pay a debt rather than to collect the money due:

> The defendant borrowed $ 2.00 from the plaintiff and refused to pay his debt. The plaintiff had to pay $ 1.60 in court fees to open the case. On the first appointment the defendant was absent. At the second hearing both parties did not appear and the case was dismissed one month after it was instituted.

A few litigants do notify the court that they have settled their cases though the most prevalent practice is to discontinue the case simply by not coming to court.

Delay in Civil Cases

Cases take an average of three months to be decided from the time of the first court appearance. The average number of hearings for each case was a little over three.

The longest case reviewed took twenty-nine months and twenty-three appointments to decide. The shortest took one appointment (approval of a contract pursuant to Article 1723 of the Civil Code). The shortest contested case took one-half month to decide and two appointments were required for its disposition,

There do not seem to be any types of cases which take longer to decide as a rule than others. The factors which determine the length of a case are rather the disposition of the judge to complete the case quickly, the promptness of the parties in coming to court, and the availability of witnesses if they are needed.

It is difficult to say why some cases last longer than others. But often the factors which cause delay seem to combine to cause extremely long litigation.

An example of an especially drawn out case appears below:

> The defendant agreed with the plaintiff to build a house. But the defendant failed to build the house, allegedly causing damage to the plaintiff, and the plaintiff sued the delinquent house builder. After two years and a half and twenty-three appointments, judgment was given for the plaintiff. The reasons for the many appointments were as follows: (1) the defendant was not present because he had not been served with summons; (2) the defendant did not appear and the summons was ordered served again; (3) the judge wanted to examine the case before proceeding; (4) the judge gave the defendant time to prepare his defence; (5) the judge was not present in court; (6) the defendant did not appear; (7) the defendant was given further time to write his defence; (8) the plaintiff was not present due to illness; (9) the court needed more time to review the case; (10) no reason given; (11) the plaintiff had more evidence to introduce; (12) the court needed more time to examine the case more closely; (13) the case was started over again due to a redetermination of the amount claimed by the plaintiff and the defendant was given time to prepare a new defence; (14) the defendant failed to appear; (15) the plaintiff failed to serve the defendant with summons and was fined; (16) the defendant

requested a continuance; (17) no reason given; (18) the defendant was ordered to prepare his defence; (19) witnesses failed to appear; (20) witnesses failed to appear; (21) witnesses failed to appear; (22) witnesses failed to appear; (23) judgment was given for the plaintiff.

Often, however, long delays cause the plaintiff to discontinue the case unlike the persistent plaintiff in the example given above.

Cases that extended beyond one year were rare but those lasting between five months and a year were fairly common. Usually there were from five to seven appointments in such cases.

The plaintiff claimed that the defendant cut down eucalyptus trees which belonged jointly to the plaintiff and defendant but failed to give the plaintff his share of the price he received for them. After nine months and nine appointments, the court found that the case had already been decided in the defendant's favor by an awradja court. The reasons for the nine appointments were as follows: (1) the defendant has not received the summons; (2) the defendant was given more time to prepare his defence; (3) the defendant was given more time to prepare his defence; (4) the defendant was fined for his failure to come with his statement of defence; (5) the court wanted time to prepare its decision; (6) the case was not fully examined by the court and so more time was needed; (7) both parties failed to appear; (8) the court had not prepared its decision; (9) the court rendered its decision in favor of the defendant saying that the awradja court's decision was res-judicata.

It seemed to be a rule that whenever a case required three or more appointments to be resolved, it lasted for over six months.

But often there were many more than three appointments during a six month period. It is not clear why some cases came before the court only two or three times in six months while others were heard as many as eight or nine times. On the other hand, it was fairly common that cases which lasted over six months were cases in which there were witnesses to be called or in which some procedural irregularity arose.

In all cases, one appointment seemed to resolve only one issue due to the fact that the parties were not usually prepared to go beyond what they knew was planned for the hearing. With that issue dealt with, the court usually continued the case for a month to allow preparation for the next stage of the proceedings.

Delay was a burden for all concerned. From the cases studied it was clear that a number of factors contributed to the time it took to decide a case. One factor was the disposition of the judge. If the judge is predisposed not to tolerate the delays caused by litigants, he does not have to. For inexplicable reasons, a judge's attitude toward delay seemed to change from one case to the next.

Leaving aside the judge's conduct of the case, litigants themselves could prevent a case from being resolved within a reasonable period of time: either by not appearing, failing to have their cases ready to present when they appeared, or by not being able to persuade their witnesses to come to court.

Another factor contributing to delay was the fact that summons were never issued to the defendants until after a first hearing. In nearly all the cases reviewed, a first hearing was held at which the defendant failed to appear. This not only causes delays in individual cases but contributes to the general congestion in the court which in turn means that little progress is made in completing the hearings of other cases.

In addition, witnesses are never called to the first hearing. Perhaps this is the result of Articles 241 et seq. of the Civil Procedure Code which provide for a "first hearing" at which only the parties are to appear to have preliminary objections resolved and to "frame the issues". The examples of cases we have seen above illustrate the necessity of getting an early start in bringing witnesses to court. If it is not desirable to have witnesses appear at this first hearing at least they could be notified that a case is pending in which they may be required to testify.

In the woreda courts, where the issues are fairly simple, it is doubtful whether this preliminary hearing is needed at all in many cases. With all the witnesses and parties present at the first hearing it is likely that such cases could be resolved at one appointment.

Civil Cases: Advocates

Ten percent of the litigants in the Woreda Court were represented by registered advocates. Almost half of the advocates who appeared were retained by businesses, associations such as

ekubs, or government agencies. Advocates retained by private litigants were usually hired for representation in fairly large claims. Plaintiffs in employer-employee disputes involving termination without notice were also quite likely to hire advocates.

Negara fedges were involved in twenty percent of the cases. Half of these negara fedges represented either the Municpality or Department of Inland Revenue in suits to collect arrears in taxes, and one-fourth represented ekub associations or businesses, such as a bank in loan default cases or other companies in employer-employee disputes. The remaining quarter of negara fedges represented private individuals in all types of cases on both the plaintiff's and defendant's side.

Thus, approximatley ten percent of private litigants in the Woreda Court had some form of representation — about evenly divided between advocates and negara fedges.

when bussineses or government agencies were involved.

These figures are not in accord with those set forth in the section on litigants above. The lower rate of representation shown by studying court files than that obtained from interviewing litigants may be due to the fact that it was not always clear from the files alone whether or not a person was represented by an advocate or negara fedge.

Criminal Cases.

Twenty-three percent of the criminal cases heard in the Woreda Court involved theft of various kinds-petty abstraction (Article 634 Penal Code), viloation of Article 630 of the penal Code brought to the Court pursuant to Article 29 of the Criminal Procedure Code, and unlawful use of the Property of another (Article 644 Penal Code).

Ninteen percent of the cases involved interference with the physical wellbeing of a person by virtue of either an immediate threat to cause harm or actual infliction of injury - violations of Articles 539 and 544 of the penal Code.

Insult cases brought pursuant to Article 583 of the Penal Code comprised eleven percent of the cases :

> "Whosoever, directly addressing or referring to the victim, offends him in his honor by insult or injury, or outrages him by gestrure or blows or in any other manner, is punishable with simple imprisonment not exceeding three months or a fine not exceeding three hundred dollars, except where the act is of such little account as to justify the application of the relevant provision of the code of petty offences. (Article 798)."

Intimidation of a person was the cause of four percent of the case brough to court. pursuant to Article 552 of the Penal Code :

> "Whosoever threatens another with danger or injury so serious as to induce in him a state of alarm or agitation, is punishable, upon complaint, with simple imprisonment not exceeding six moths, or a fine not exceeding five hundred dollars."

A person who causes damage to another person's property can be prosecuted for a violation of Article 653 of the Penal Code. These cases constituted eight percent of the criminal cases brought to the Woreda Court.

Interference with the physical integrity of persons, insult, intimidation, and injury to property are all initiated by private complaint -- thus forty-one percent of all the criminal cases heard in the Woreda Court are the result of private complaints to the police.

The remaining types of criminal cases heard in the Woreda Court were about evenly divided between disordrly conduct (Article 782 penal Code), violations of curfew hours for bars and hotels selling liquor (Article 775 Penal Code), violations of traffic regulations and other crimes such as gambling, contempt of court, perjury and seduction.

Bringing the Accused Before the Court

As discussed above, custody of persons accused of committing crimes may be obtained in three ways : arrest by authority of a warrant issued by a court (Article 49 of the Criminal Procedure Code), arrest without a warrant where "flagrant" offence hasbeen committed (Articles 50-51 of Crimial Procedure Code), or the police may "summon" a suspect to the police station for questioning pursuant to Article 25 of the Criminial Procedure Code,

The procedure most commonly used -- especially in cases initiated by private complaint -- is for the police to summon the accused to the police station and there, if they deem it necessary, require the defendant to furnish bond. If the accused is unable to furnish bond the police will detain him until trial. "Summoning" a defendant to the police station may in practice mean bringing him by force.

Police sometimes, when the accused does not respond to the police summons, apply for a warrant pursuant to Article 26 of the Criminal Procedure Code:

> The defendants were accused of damaging the plaintiff's property. A summons was issued to the defendants through the plaintiff to come to the police station and give their side of the case. The defendants did not appear at the police station so the police applied for a warrant for their arrest.

Warrants for arrest are also issued by the court when persons accused of violating municipal ordinances have failed to appear in court to respond to charges lodged by public authorities:

> The defendants constructed a house in Addis Ababa without submitting the plan to the Municipality. The defendants were summoned to appear in court but refused to appear and a warrant was issued for their arrest.

Many of the defendants brought to court charged with theft, are arrested without warrants as permitted by Article 50 of the Criminal Procedure Code, because they have committed "flagrant offences", defined in Articles 19 and 20 of the Criminal Procedure Code.

Articles 19 and 20 of the Criminal Procedure Code clearly give the police a wide area for arresting suspects without a warrant. An offence is "flagrant" where the accused is found committing the offence, when the offence has just been committed (Article 19 Criminal Procedure Code) when the police have been immediately called to the scene of the crime, or when a cry for help has been raised (Article 20 Criminal Procedure Code). In theft cases, most suspects are probably apprehended pursuant to those articles.

Few of the files investigated contained applications made by the police to the court for an arrest warrant (Article 53 Criminal Procedure Code), and it seems that the bulk of criminal defendants appear in court because they were apprehended while or after committing "flagrant" offences or because they responded to the police summons.

Theft

Jurisdiction to try violation of Article 630 of the Penal Code is given to the awradja courts by the First Schedule of the Criminal Procedure Code, and most persons suspected of theft come before a woreda court only for the purposes stated in Article 29 of the Civil procedure Code:

> "(1) Where the accused has been arrested by the police or a private person and handed over the police (Article 58), the police shall bring him before the nearest court within forty-eight hours of his arrest or so soon thereafter as local circumstances and communications permit. The time taken in the journey shall not be included.
>
> (2) The court before which the accused is brought may make any order it thinks fit in accordance with the provisions of Article 59."

Article 59 of the Criminal procedure Code provides that the court may decide whether the arrested person shall be kept in custody or released on bail, and that the court may extend the period of time for investigation of the case up to fourteen days upon each application by the police.

The "remands" (time given to the police by the court to complete the investigation of a crime) requested by the police pursuant to Article 59 of the Criminal Procedure Code are usually for three to ten days. Such requests were invariably granted by the Court.

> The defendant was accused of stealing a sheep and was caught while attempting to sell it. He was brought to court pursuant to Article 29 of the Criminal Procedure Code and the prosecutor asked for a "remand" of five days to prepare the evidence against the defendant. The request was granted by the court. Five days later the court was informed that the case had been taken to the awradja court with jurisdiction to try the case.

Woreda courts are also given jurisdiction to try some cases involving theft by the First Schedule of the Criminal Procedure Code. These are cases of "petty abstraction" (Article 634 Penal Code and of "unlawful use of the property of another", (Article 644 of the Penal Code).

"Petty abstraction" is basically "theft" with mitigating circumstances. A fine line divides an offence which could be a "theft" punishable pursuant to Article 630 of the penal Code and an offence which may be characterized as a "petty abstraction", less rigorously punished by law under Article 806 of the penal Code.

The elements of a "theft" which contribute to its characterization as a "petty abstraction" according to Article 806 of the penal Code, are 1) the act must be prompted by need or desire or by lack of conscience, 2) the thing abstracted must be of small value, 3) the article must be taken by the offender for his immediate consumption or use, and 4) there must be no element of act which would indicate an intent to secure an illicit enrichment.

In making a determination of whether to charge a defendant with petty abstraction or theft, the prosecutor must exercise much discretion and his rationale for such characterizations is not always clear from the court files. Examples of cases involving defendants accused or petty abstraction will precede digests of theft cases below.

- The defendant was accused of stealing a blanket from a hotel where he spent the night. He was charged with a violation of Article 634 of the penal Code –petty abstraction– was sentenced to fifteen days arrest.

- The defendant was accused of breaking into a compound and attempting to make away with some property there. He was charged with contravening Articles 27 and 634 of the penal Code --attempted petty abstraction. After ten months and eight hearings, largely necessitated by the failure of the prosection's witinesses to appear in court, the defendant was sentenced to one month's imprisonment.

The following are examples of cases in which the defendant was accused of theft :

- The defendant was accused of stealing clothes from a fence where they were hanging to dry. The prosecutor brought the defendant to court and asked for a three day "remand" period. The request was granted and the case was sent to the Awardja Court.

- The defendant was charged with unlawfully entering a house for the purpose of committing a theft. The case was taken to the Awardja Court after a short remand.

The factual situations in both sets of cases seem similar as far as the value of the item appropriated is concerned. The difference between the two sets of cases may lie in the fact that in the latter examples it was established by the police that the defendant was not going to use the goods he stole for his own immediate consumption.

From our sample it seems that the tendency of the prosecutor, even in cases where the factual situation indicates that petty abstraction should be charged is to characterize the act complained of as a theft. Neither the woreda court before which these cases are brought for premlinary hearing nor the awradja court seem to be inclined to question this determination. Inasmuch as few defendants are represented by counsel in these cases, protection of the defendant's interests is left to the judge. And if someone does not look out for the defendant's interests here two people responsible for committing basically the same act may be charged with different crimes and thus receive different penalties.

Interference with the Physical Integrity of Persons

Cases involving physical mistreatment of one person by another are brought to court, initiated by private complaints, pursuant to Article 539 and 544 of the Penal Code.

The criterion for invoking one article as opposed to the other, according to the Penal Code is the presence of a non-serious "injury to body or health" resulting from physical mistreatment on one hand (Article 539) and the infliction of "simple bruises, swellings or transient aches and pains", on the other (Article 544 (2) of the penal Code). The line between the two offences is a vague one.

The penalites referred to in Article 544 (2) are : not exceeding eight days imprisonment or a fine not amounting to more than $ 100.00. Thus for the infliction of "simple bruises, swellings or transient aches and pains" an offender is subject at the most to eight days imprisonment whereas the person who inflicts a non-serious "injury to body or health" may be subject to a term of imprisonment from ten days to three years or a fine up to $ 5.000.00. There are no other statutory guidelines to distinguish the two categories of injuries dealt with here and perhaps none are possible.

Understandably, this vagueness makes it difficult for acts to be characterized with certainty as violations of Articles 539 or 544 and many cases in our sample could have been termed violations of either Article.

Confusion is also caused by the fact that Article 544 of the Penal Code appears to provide for a lesser sentence where "simple bruises, swellings or transient aches and pains" are caused than in cases where no injury to body or health results from the assault. Logically, it would seem that where even minor bruises result from an assault the offence should be punished more rigorously than where they donot. This is, in fact, the way the public prosecutor and the courts seem to view the matter :

> The defendant was accused of assaulting the private complainant in volation of Article 554 of the Penal Code. He was alleged to have gone to the plaintiff's house, told the plaintiff that he was summoned to the police station, and when the plaintiff refused to respond to the summons, the defendant allegedly tried to strangle the plaintiff. The plaintiff was saved by neighbors. The defendant pleaded not guilty but after three appointments and two and one-half months he was sentenced to pay a $30.00 fine or serve one month in prsion.

In this example, the defendant, in attempting to strangle the plaintiff undoubtedly inflicted "simple bruises, swellings or transient aches and pains" on his victim but he was given a penalty in excess of that provided for in such cases.

As with all criminal litigation initiated by private complaint, many of the physical harm cases were dismissed by the court due to the failure of the complainant to appear in court on successive occasions. Thirty-three percent of the cases charging violation of Article 539 or of Article 544 of the Penal Code were dismissed because of the failure of the complainant to appear in court. Usually in these cases the plaintiff made one or two appearances but seemed to have tired of the proceeding when difficulties arose in connection with summoning witnesses or requiring the opposing party to come to court.

It is also likely that the plaintiff's desire for revenge, where it exists, is satisfied after the police have taken the defendant into custody and in some cases have retained him for two or three weeks to await trial.

Another factor which may influence private complainants not to continue cases is the fact that appointments in all such cases are usually given one month apart. The length of time in between appointments can give the parties a chance to cool off. Many cases brought to court in the heat of the moment probably are therefore not prosecuted to conclusion.

Offences against Property

Many of the criminal cases heard in the Woreda Court involved offences against property initiated by private complaint. One such kind of case alleged violations of Article 650 of the Penal Code, "Disturbance of Possession". This provision deals basically with interference with the "property or quiet possession of another", (Article 650 Penal Code). Cases alleging actual damage to property are brought to the Court initiated by private complaint pursuant to Article 653 of the Penal Code. Similar articles of the Penal Code provide for offences of damage to property by herds or flocks (Article 649 Penal Code), disturbance of another's holdings (Article 651 Penal Code), and displacing and removal of boundary marks (Article 652 Penal Code).

Approximately one-third of these cases were dismissed due to failure of the plaintiff to appear in court after a number of appearances were made. The following cases are typical of disturbance of possession cases.

- The defendant was accused of building a house on land allegedly owned by the plaintiff. In order to build the house, the defendant broke down a fence the plaintiff claimed was his and destroyed some of the plaintiff's crops. The defendant was accused of violating Articles 650 and 653 of the Penal Code. At the first hearing, neither the plaintiff nor the defendant appeared. The defendant appeared at the second hearing and claimed that he was not personally responsible for the act complained of. The defendant did not appear at the third hearing but at the fourth both parties appeared and claimed that they would settle the dispute before the elders in their community and that they would report back to the court on the progress of the arbitration. The dispute was not settled and the parties came back to court. The defendant was ordered to produce the person he claimed was responsible for building the house. The defendant did not appear at the sixth hearing and neither party appeared at the seventh. Eight months after the case was opend the court dismissed it due to the failure of the plaintiff to appear.
- The defendant was accused of violating Article 563 of the Penal Code because he allegedly caused damage to a bar in which he was drinking. There were three appointments. At the first, witnesses were heard and at the second and third the parties failed to appear. The case was dismissed.

Injury to Honour

Injury to honour provided the basis for many of the cases initiated by private complaint. Usually these cases involved violations of Article 583 of the Penal Code, "Insulting Behavior and Outrage", and less frequently "Defamation and Calumny" (Article 580, Penal Code). Frequently allied with allegations of defamation and insult were claims of intimidation (Article 552, penal Code) assault (Article 544, Penal Code), and common willful injury (Article 539 Penal Code). The following are two examples of typical cases of this type.

- The defendant was accused of calling the plaintiff a "slave" and also of allegedly threatening to kill her. The defendant was charged with violations of Articles 583 and 552 of the Penal Code. At the first hearing, the defendant pleaded not guilty and since the public prosecutor was not ready with his evidence, the case was continued. The plaintiff and the defendant did not appear at the second or third hearings and the case was dismissed.

- The defendant was accused of calling the plaintiff a "thief" thereby violating Article 583 of the Penal Code. The defendant did not appear at the first hearing, at the second hearing he asked for time to consult his lawyer, witnesses were absent at the third hearing, and at the fourth appearance the court found the defendant guilty and fined him $30.00.

Fifty percent of the insult and defamation cases in our sample were dismissed because of the failure of the complainant to appear in court. This is a higher percentage of discontinuances than any other type of case initiated by private complaint. The especially high percentage of insult and defamation cases not seen through to conclusion may result from the fact that these disputes are more likely than other private complaint cases to be taken to the police station in the heat of the moment and later forgotten.

The rest of the cases heard in the Woreda Court arose out of acts such as breach of the peace and public drunkenness and violations of municipal licensing and traffic regulations. Included in this category were some cases involving violations of Penal Code Article 471 (1) providing punishments for vagrancy:

> "(1) Whosoever, having no fixed abode or occupation, and being able-bodied, habitually and of set purpose leads a life of vagrancy or disorderly behavior, or lives by his wits or by mendicancy, refusing to take honest, paid work which he is capable of doing, thereby constituting a threat to law and order, is punishable with compulsory labor with restriction of personal liberty (Article 103) or with simple imprisonment not exceeding six months."

Little attention seemed to be paid to obtaining a conviction of the alleged vagrant. For example:

> The defendants were charged with dangerous vagrancy pursuant to article 471 of the Penal Code. At the first hearing the defendants pleaded not guilty to the charges and the prosecutor requested a continuance because he did not have his witnesses in court. At the second hearing, the prosecutor asked the defendants to find a guarantor or remain in prison for the duration of the trial. The defendants could not find a guarantor and thus were jailed. There were four more appointments-- at each one the police failed to produce witnesses to testify to the defendants' guilt. The court found that the police had not even tried to produce these witnesses and therefore set the defendants free.

The more usual charge involving public disorder is "Causing Public Scandal While Drunk or Intoxicated" (Penal Code, Article 774). As opposed to accusations of vagrancy, prosecutions carried out pursuant to this article were prosecuted although suspects were not always brought to court promptly.

In Addis Ababa, there are many bars and hotels. Naturally some amount of a court's time in a large city must be spent in supervising these establishments.

> The defendant was accused of selling liquor at 1 A.M., past the closing time provided for in municipal regulations. She pleaded guilty to the charge and was fined E. $5.00.

The only serious problems affecting the administration of justice that appear to arise out of these violations of municipal ordinances is the failure of defendants to appear in court when required. This is also true of cases involving violation of other municipal regulations such as the licensing of retail establishments, observance of sanitary regulations, and traffic rules.

All told, cases involving violations of such municipal regulations compose approximately twenty percent of the cases heard in the Woreda Court. Very seldom do the defendants in such cases, once they appear in court, plead not guilty. Still a large proportion of the Court's time was spent dealing with these offences. Further the Court was congested with people who were present only to pay a fine. All woreda courts would be less crowded and their dockets shorter if there were some other means of dealing with violations of municipal ordinances in cases where the defendant does not wish to contest his alleged guilt.

Advocates in Criminal Cases

According to the files reviewed, advocates seldom appeared for defendants in criminal cases-- only four percent of the time. Out of the three hundred and thirty-five criminal files investigated, advocates were appointed for indigent criminal defendants only twice. Both of these advocates were appointed for defendants in cases initiated by private complaint.

With only one exception, all the advocates hired were retained to defend persons accused upon private complaint of such crimes as insult, defamation, and damage to property.

The benefits, if any, of an advocate's services were not illustrated by the results of the cases they were involved in. They did not seem to have any great influence on the court's decision. In our sample, advocates lost as many cases as they won for their clients.

Their presence did, however, have some effect on the length of time it took to resolve cases as cases seemed to be resolved more quickly when advocates were not involved. This could be due to two factors.

First is the suspicion, expressed by judges and litigants, that advocates drag out cases for their own benefit. They collect their fees at each appointment and the more appointments the better.

The second possible reason why cases seem to last longer when advocates are retained is that the parties who retain them do so because it is their conviction that the other side intends to see the case through to its conclusion. Or, perhaps, persons hiring advocates have decided that they will not drop the case.

Whatever the reason, neither settlement of cases, nor their final resolution by a court occurs early when advocates are involved in litigation.

Criminal Appeals

According to the records in the Woreda Court archives, appeals from decisions made in criminal cases were rarely made. This is probably due to the fact that most criminal cases heard in the Woreda Court carry small penalties for conviction. This in combination with the lack of means possessed by most criminal defendants in the Woreda Court makes appeal impractical. The most common punishment was a fine amounting to between E.$15.00 and E.$30.00. The cost of an appeal in terms of time and money would be many times that.

Delay in Criminal Cases

Delay in the disposition of criminal cases was caused by the same and some additional factors which contributed to the excessive time it took to decide many civil cases.

First, there is the problem of the attendance of the parties on specified dates. Though this is not as great a problem as it is in civil cases-- the police take greater interest in bringing criminal defendants before the court than civil defendants-- in cases initiated by private complaint, absence of the defendant on one or two occasions is a common practice.

The main cause of delay in criminal cases is the failure of witnesses to appear when they are needed to testify. People seem to be reluctant to testify at criminal proceedings perhaps because of the consequences that may accrue to the one adjudged guilty by virtue of their testimony and due to fear of retribution.

Records in the files indicate, in addition, that the courts are unable to effect the presence of witnesses at hearings. Even when the police are ordered to bring in recalcitrant witnesses, the latter are often absent at the appointed time.

The public prosecutor contributes to the length of many cases by never being prepared to present his evidence at the first hearing if the defendant pleads not guilty. A prosecutor often spends a whole morning in court merely listening to pleas and if a suspect pleads guilty the

prosecutor requests the appropriate sentence. But if the plea is not guilty, the case is usually put off for a month to enable the prosecutor to organize his case. Perhaps this period is also used as a cooling off period in the many cases initiated by private complaint-- the prosecutor and the court hoping that the parties will reconcile within the month. And the delay tactic employed by the prosecutor may save him from preparing a case in which the defendant is going to plead guilty. But ascertainment of a defendant's plea could be made in another way less time consuming to the court and to the defendant.

Finally, as in civil cases, the judge's disposition to see cases to a speedy conclusion has a great influence on the length of a case. His willingness to put up with unpreparedness and the various tactics used by advocates and litigants to put off the final decision, will in the end be determinative.

THE MENAGESHA AWRADJA

Introduction

The Menagesha Awradja court in Addis Ababa has jurisdiction over an area extending fifty kilometers beyond the city's limits in all directions, but no jurisdiction within the city itself. Thus people living within this fifty kilometer radius who have cases whose subject matter invokes an awradja court's jurisdiction must come to Addis Ababa to have their cases heard. Similarly, appeals from woreda courts within this area are heard by the Menagesha Awradja.

There is another awradja court in Addis Ababa which has jurisdiction over Addis Ababa proper. The Menagesha Awradja was chosen for file investigation because the litigation that takes place there gives some indication of the kinds of disputes which arise on the woreda and awradja court level in a rural area adjacent to a large metropolitan city. This, it was felt, would give the survey good balance inasmuch as the Woreda Court discussed above, had an entirely in-city focus.

Civil Cases: First Instance

Due to the fact that the Menagesha Awradja has jurisdiction over rural areas, land is the subject matter of seventy-five percent of the first instance civil litigation it hears. Almost two-thirds of these cases involved the right to succession arising out of various contexts. Most frequently, a succession case merely involved the issuance of a "certificate of heir" pursuant to Article 896 of the Civil Code. Most of these cases were uncontested.

> The applicants requested to be recognized as the heirs of their father who had died intestate. At the first hearing the court required a notice to be published in the newspaper asking all interested parties to present their claims. None of the parties appeared at the second hearing. The applicants appeared at the third hearing with a copy of the newspaper in which the notice was given. The court ordered an adjournment to wait for interested claimants to appear. At the fourth hearing, the court heard witnesses who supported the heirship of the applicants and granted the request for the certificate. Articles 826, 842, and 996 of the Civil Code were cited.

The other most frequent kind of land case brought to the Menagesha Awradja involved disputes arising out of contracts to buy and sell land. These cases constituted one-sixth of the land litigation.

> The plaintiff claimed that the defendant sold him land purported to be 100,000 square meters in the contract of sale. The land turned out to be only 76, 500 square meters and the plaintiff asked for a proportion of the purchase price, proportional to the amount of land he did not receive, to be returned to him. The court granted the plaintiff's request citing Articles 1711, 1731, 1763, 1771, 1776, 2276, and 2028 of the Civil Code.

The remaining civil "land disputes" involved disagreements as to ownership and the right to possession arising out of a variety of contexts. For example:

> The plaintiff requsted that he be recognized by the court as the owner of certain property. The court ordered that a notice be placed in the newspaper summoning interested parties who wished to contest the plaintiff's right. One contestant appeared and claimed to be in possession of the land in question pursuant to a lease from a third party. But the contestant's contract of lease was shown to have lapsed and the petitioner's right of ownership was declared. No code articles were cited.

The other civil cases heard on first instance involved loan defaults, employer-employee disputes petitions for registration of contracts to sell immovable property, and enforcement of the obligations of sureties. Marital disputes were also heard:

> Before they were married, the plaintiff and the defendant made a contract in which they agreed that in the event of divorce the property that each of them brought into the marriage would be divided equally. The husband and wife were divorced but the husband failed to give his wife her share of the property. The Court referred the dispute to the family agitators and ordered the husband to make a provisional payment to the wife, pending action of the arbitrators. The pleadings cited Articles 223 and 468 of the Civil procedure Code.

Delay in Civil Cases

The Menagesha Awradja heard not nearly so many civil cases in a year as the Woreda Court. In addition, in contrast to the Woreda Court's two judges, there are four divisions of the Menagesha Awradja each made up of three judges all sitting at the same time, among whom this work load is distributed. Further, a great proportion of the cases heard in the Menagesha Awradja involve ex-parte petitions regarding land which are quickly disposed of.

Congestion, therefore, is not a cause of delay at the Menagesha Awradja as it is in metropolitan woreda courts. But land cases-- especially those in which there is a contested right to succession or of a right to possession or ownership-- require the testimony of many witnesses and the production of documents. Because the Menagesha Awradja is far away from the areas in which those disputes arise, it is difficult for witnesses and parties always to be in court on appointed dates.

> The plaintff, for a reason not stated, gave possession of some land he owned to the defendant for fifteen years. After fifteen years, the plaintiff wanted his land back but the defendant refused to give it to him because he had given the land to another person. The series of appointments run as follows: (1) At the first appointment, the proceedings were adjourned because the defendant's pleadings were not in order; (2) there was more evidence to be given so the case was continued; (3) the plaintiff wanted time to reply to the evidence given by the defendants; (4) the defendant wanted time to reply to the plaintiff's arguments; (5) the court wanted time to consider its judgment; (6) the plaintiff did not appear; (7) one of the judges was absent; (8) it was decided that more witnesses needed to be heard before judgment could be given; (9) the necessary witnesses did not appear; (10) the defendant did not appear; (11) a document was needed; (12) the decision was given seven months after the case was filed.

The example given above includes a good sampling of the reasons for delay in land cases though it by no means is an inordinately drawn out one.

No matter how well framed pleadings were in such cases, unanticipated issues frequently arose. When these new issues come to the fore, more witnesses and documents were usually required to be produced and delay naturally resulted. Aside from delay caused by surprise issues and missing witnesses, it is also clear from the example given above that the parties who bring these cases to court-- usually without advocates or negara fedges-- were not prepared to go ahead with their cases in an orderly fashion. Even if they had all the necessary evidence at hand, they were unlikely to know the proper order or manner of its presentation. As a result they often failed to notify their witnesses and forgot to bring necessary documents to court.

Advocates and Negara Fedges

A far greater percentage of litigants involved in cases of first instance in the Menagesha Awradja had advocates or negara fedges than did civil litigants in the Woreda Court.

It was especially common for persons involved in land disputes to have negara fedges which is probably due to the fact that ownership of land is a family affair in Ethiopia. Negara fedges, it will be remembered, when not appearing for corporate entities or government agencies, must be members of the family of the individuals they represent and can receive no remuneration for their services. They are very likely willing to perform the service of representing relatives both because of family ties and their own interest in the subject matter of the suit. Advocates represented litigants in the same kinds of cases as negara fedges but the former were nearly always retained in contested cases whereas negara fedges usually were involved in uncontested proceedings such as applications for recognition as heir.

Civil Appeals

Civil appeal cases heard by the Menagesha Awadja originated as woreda court cases in essentially rural areas. It is to be expected, therefore, that most of these cases involve land in some way and almost sixty percent of the civil appeal cases heard in the Menagesha Awradja during 1968 did. Basically these disputes were of two classes --suits having to do with a contract involving land and disturbance of possession.

A father (plaintiff) gave land to his son (defendant), for the purpose of planting trees and building a house. The father gave this land to his son because he expected his son's help with other family land. However, the son damaged the land he was given and the father sued to get it back. The Woreda Court decided in favor of the father and the Awradja Court affirmed the Woreda Court's decision. Articles 1467, 1176, 1177, 1179 of the Civil Code and 250, 355, 480 and 223 of the Civil procedure Code were mentioned.

Where there was no pre-existing relationship between the parties disputes usually involved disturbance of possession of continuous property.

The defendant was accused of growing crops on the plaintiff's land and selling those crops for his own benefit. The woreda court found the defendant guilty and sentenced him to pay the amount he received when he sold the crops. The defendant appealed and the Woreda Court's decision was affirmed by the Awradja Court.

While indefinite boundaries may have been the cause of disputes such as the one above, often where trespass is alleged the issue before the court was ownership.

The plaintiff, a resident of Addis Ababa, claimed he owned land in a rural area outside of the city which had been illegally plowed by the defendant. The plaintiff and defendant first took their dispute to the atbia dania of the locality and some settlement was reached there. But the defendant refused to abide by the settlement and so the plaintff took the defendant to the woreda court.

The defendant claimed there that the land in question had been given to him by a third party who claimed to be the owner and that he did not recognize the plaintiff as ever having owned the land. But the Woreda Court decided in favor of the plaintiff without calling the third party to testify. The defendant appealed.

The Awradja Court remanded the case with instructions to hear the testimony of the third party. Articles 1172 and 1174 of the Civil Code were relied upon by the plaintiff.

Cases involving alleged improper distribution of property after death were often appealed from Woreda courts but curiously these appeals were few compared to those of the type discussed above.

Two brothers bought land a long time ago but there was no document executed at the time which showed what their various rights in the land were. The first brother died without a will leaving a daughter. The second brother died leaving all of the property to his daughter. The plaintiff, daughter of the brother who died without a will, brought an action for her share in the land alleging that the land had been owned jointly by the two brothers.

The plaintiff had no documentary evidence to support her but produced witnesses who testified that the land was jointly owned by the brothers when they were alive. The Woreda Court decided in favor of the plaintiff and the Awradja Court affirmed the decision. No code articles were mentioned.

Appealed cases not involving land concerned loans, failure to perform contracts for services, non-payment of rent, tax delinquency, and disputes over disposition of property after divorce.

The basis for appeal in most of these cases was either that the judgment of the lower court was just, unfair or that the lower court failed to consider some evidence that the appellant tendered, allegedly crucial to deciding the case one way or the other.

Approximately one-fourth of the decisions given on review modified in some way the decision of the lower court. Most appeal cases were sent back to the court of first instance with instructions to hear witnesses or consider documents that had, for some reason, been ignored at the first trial.

- The defendant agreed to paint the plaintiff's house and was paid some money in advance for the job. The defendant painted part of the plaintiff's house but failed to complete the job. The plaintiff sued the defendant in the Woreda Court for the advance payment and the court ordered the defendant to pay the money back and fined the latter $10.00.

- The defendant appealed to the Awradja Court which remanded the case with instructions to have an expert examine the plaintiff's house to see whether the advance payment was fair compensation for the work done. Civil Procedure Code Articles 103 and 223, and Article 2005 of the Civil Code were relied upon.

Only a few cases (ten percent) were reversed without remand, by the Menagesha Awradja. This was due to the fact that appellants usually alleged an error in a determination of fact by the lower court rather than a mistake of law. It is more convenient for the parties if factual inconsistency is found, to have the disputed issue of fact resolved back in the lower court, near the sources of evidence. Only where a clear mistake of law was made usually through some arbitrary act of the lower court, did the Court make a new decision :

> The appellant was a defendant in a civil case. He was adjudged liable in that case but instead of imposing a civil judgment the Woreda Courtd ordered him to pay a $ 200.00 fine and spend six months in prison. The defendant appealed to the Awradja Court relying on Articles 41 and 43 of the Revised Constitution of 1955. The Awadja Court freed the appellant.

Advocates and Negara Fedges

Advocates were involved in about fifteen percent of the civil appeal cases heard in the Menagesha Awradja. Compared with the number of advocates representing clients in civil cases of first instance in the Woreda Court and Menagesha Awradja this was a large proportion.

Negara fedges representing family members appeared in thirteen precent of civil appeal cases though they did not seem to specialize in land cases as they did in cases of first instance. On appeal, negara fedges were involved in just about every kind of case from loan cases to claims for compensation due to property damage.

Thus approximately one-fourth of the litigants involved in civil appeal cases had some form of representation. In the Woreda Court studied, only two or three percent of the litigants involved in cases similar to the ones brought on appeal to the Menagesha Awardja had advocates and relatively few had negara fedges to represent them. Such an increase in the percentage of litigants using spokesmen for appellate proceedings must be an indication that the prospect of appellate litigation in higher courts makes people uneasy about their ability to continue the case on their own.

Delay

Civil appeal cases were disposed of, as a rule, more quickly than the civil cases of first instance. This was undoubtedly due to the fact that in such cases the Menagesha Awradja relied a good deal upon the record of the woreda court and did not hear the case completely *de novo*. Often, however, the woreda court record was so confused or unclear that a basic re-hearing in the Awradja was necessitated. Even where a number of appointments were necessary, however, the time in between them does not have to be great since congestion was not a major problem at the Menagesha Awradja.

Appearing many times within a short period of time, though, can prove a burdensome to parties who live far away from the court:

> The defendants were charged with buying goods pursuant to an oral credit agreement and later failing to pay their debt to the plaintiff. Criminal charges were brought against them and they were jailed. Then, the parties reached a compromise with the help of arbitrators wherby one defendant agreed to pay the bill and the other became his guarantor for performance. The defendants were released from prison. The defendants failed to pay and were sued in the Woreda Court where it was decided that property of the defendants be sold to satisfy the debt. The defendants appealed contending that they only agreed to make the payment under duress while imprisoned for their initial default. Appointments in the appellate proceedings were given for the following reasons : (1) documents were required to be presented concerning the original criminal charge; (2) a judge was absent; (3) the document needed at the first appointment was not available; (4) the document was still not available and the court ordered the woreda police chief to bring it himself; (5) the court needed time to examine the document which was finally brought; (6) the respondents were given time to prepare their case; (7) the court needed time to deliberate; (8) the court needed further time to consider the case before rendering a decision;(9) another document connected with the proceedings in the Woreda Court was required by the court; (10) the appellant did not appear in court; (11) neither party appeared and the court closed the case after four and one-half months of appellate proceedings. Article 2005 of the Civil Code was the only Code Article mentioned in the records of the case.

The case above, it should be noted, is not a typical case in terms of the long time and great number of appointments it required to be decided. But such cases are a common occurrence. Co-ordination between the lower and appellate courts, the courts and the police, courts and litgants, and courts and witnesses is obviously less than perfect. If difficult issues arise which require harmonious workings between these elements of the judicial system for prompt resolution of the dispute, delay is likely to result.

Criminal Cases: First Instance

Sixty-seven percent of the criminal cases heard in first instance in the Menagesha Awradja during 1968 involved theft. As might be expected of crimes arising in rural areas, most of the thefts involved pilfering of livestock. Interestingly, oxen seem to be most popular with thieves. Except for the objects of the theft, the following is typical :

> The defendant was accused of stealing nine goats and nine sheep. He was charged with violating Article 630 of the Penal Code. Prosecution witnesses did not come to court for the first two hearings and at the third testified against the defendant who was sentenced to two years' imprisonment. The harsh penalty was due to the fact that the defendant had quite a few convictions for theft. Articles 630, 193, and 186 of the Penal Code were mentioned.

Other cases involved theft of household goods and agricultral products and only a few cases arose out of theft of cash.

Fifteen percent of the Menagesha Awradja's first instance criminal load was composed of violations of Article 538 of the Penal Code –"Grave willful injury". This crime is set apart from similar criminal matters heard in the Woreda Court by the generally more serious kind of injury the victim receives and the state of mind of the accused. It also should be noted that prosecution for this crime does not have to be initiated upon private complaint. In effect, however, most prosecutions stem from a complaint made by the injured party to the police.

> The defendant was accused of stabbing the plaintiff in the abdomen and chest. The plaintiff started things off by kicking the defendant in the head but the Awradja Court felt that the defendant's response to the plaintiff's act was excessive and sentenced the defendant to three months in prison. Articles 74, 75, 185 and 538 of the Penal Code were mentioned. The case took three months and six days and there were six appointments.

The other eighteen percent of the criminal cases heard on first instance at the Menagesha Awradja were distributed fairly equally between damage to property (Article 653 of the Penal Code), violation of transport rules concerning loading of trucks and buses, and cases brougt before the court to satisfy the requirements of Article 29 of the Criminal Procedure Code (bringing a suspect to court within forty-eight hours after his arrest).

In many first instance criminal cases the court's remoteness from the scene of the crime coupled with difficulties of transportation and communication create a great many problems. Police are not always likely to be stationed in most areas where the crime is committed. Thus they have to rely upon the reports of atbia danias and chiqua shums brought to them where they are stationed in larger towns. Then the report has to be brought to Addis Ababa for consideration by the prosectutor at the Menagesha Awradja. During the time required for all this the suspect is often held in police custody while the investigation and trial run their course.

Advocates

Our investigation of the files did not reveal one case in which an advocate had been appointed for an indigent criminal defendant though most suspects tried at the Menagesha Awradja for theft or willful injury would satisfy indigency standards.

However, in ten percent of the cases reviewed there were advocates for the defendant. These advocates did not seem to specialize in any type of case though they were generally hired to represent defendants in physical injury or theft cases.

Advocates were not particularly successful in gaining acquittals for their clients –the rate of acquittals being about the same for defendants with and defendants without advocates (a little over half of all defendants were found guilty).

Delay

The primary cause of delay in criminal suits was the failure of witnesses --both for the prosecutin and defence-- to appear at appointed times. The machinery for summoning these people to court is awkward. It depends on too many people to carry out their functions quickly and efficiently. Since the court itself has no officers which serve summons on witnesses it has to depend on a chain of delegated responsibility - awradja court - woreda court - atbia dania - chiqua shum - to do the job in rural areas. In addition when a witness refused to appear, the police seemed to be incapable of requiring their appearance. In some cases inability to get a hold of necessary people or documents resulted in dismissal.

> The defendant was charged with theft of $11.00 in violation of Article 630 of the Penal Code. The prosecutor said that he had three witnesses who would attest to the defendant's guilt. The court repeatedly ordered the police to bring these witnesses before the court but the police reported that they could not locate the witnesses. After four attempts to bring the witnesses to court, the case was dismissed.

Criminal Appeals

Criminal appeals from woreda courts outside of Addis Ababa reflected the nature of criminal cases brought to rural woreda courts. –

Most of the appeals (forty-seven percent) involved disputes between neighboring landowners –"Damage to Property of Another Caused by Herds or Flocks" (Article 649, Penal Code), "Disturbance of Another's Holdings" (Article 651, Penal Code), and "Displacing and Removal of Boundary Marks" (Article 652, penal Code).

> The defendant was accused of allowing his cattle to graze on the plaintiff's land in violation of Article 649 of the Penal Code. The woreda court found that the defendant had repeatedly been warned by the plaintiff not to graze his cattle on the plaintiff's land and sentenced him to three months in jail or a $ 50.00 fine.
>
> The defendant appealed to the Awradja Court contending that he had been prevented from presenting his witnesses.
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> The Awradja Court found that the defendant's guilt had been properly established but that the penalty imposed by the trial court was unjust. The Awradja Court ordered the appellant released from jail because it felt he had already served enough time while incarcerated during the litigation.

Fifteen percent of the criminal appeal cases heard in the Menagesha Awradja involved contempt of court -- a rather surprising discovery. These charges were brought pursuant to Article 443 (1) of the penal Code which states:

> "Whosoever, in the course of a judicial inquiry, proceeding of (sic) hearing, in any manner insults, holds up to ridicule, threatens or disturbs the court or any of its members in the discharge of their duties, is punishable with simple imprisonment not exceeding six months or with a fine not exceeding one thousand dollars. In flagrant cases, the court may deal with the offence summarily.

Almost without exception these cases were reversed by the Awradja Court:

> The defendant was accused of violating Article 443 of the Penal Code by insulting his adversary in court. The trial court found the defendant guilty and sentenced him to pay $ 50.00 or spend three months in prison. The defendant appealed to the Awradja Court. The Awradja Court reversed the decision on the ground that the woreda court should have sentenced the defendant without opening a new case against him.

Quite a few contempt of court cases, reversed for the same reason, were found in the files. The requirement that a court not open a new case against a defendant charged with contempt is not stated in Article 443 of the Penal Code although that article does allow a court to punish summarily offences against the dignity and decorum of the court,

The other common cause for reversal of contempt convicitions was arbitrary action by a a woreda court judge:

> The defendant, an advocate, was a guarantor for the defendant's appearance in a case. The advocate repeatedly failed to bring the defendant to court and displayed flagrant

disregard for the court's orders. The woreda court charged the advocate with contempt and suspended him from practice for six months, required that he submit himself to continuous police surveillance, and prohibited him from taking part in any public assemblies. The defendant appealed and the Awradja Court decided that the penalties imposed were not those provided for in Article 443 of the Penal Code. The Awradja Court, therefore, reversed the decision of the Woreda Court.

Appeals of convictions arising from transport regulation violations were the next largest group of cases heard on appeal (eleven percent). Usually these cases involved overloading of buses and trucks. Often the appellate court mitigated the penalties given for these offences by woreda courts.

About the same number of appeals from assault cases, violations of Articles 552, 539 and 544 of the Penal Code, were appealed to the Menagesha Awradja.

Often these disputes arose out of arguments over possession of land and their final resolution by the Awradja Court was contigent upon resolution of conflicting claims of ownership:

The defendants were accused of beating the plaintiff after the plaintiff tried to prevent the defendants from plowing what he claimed was his land. The plaintiff brought the case to court and the defendants were fined $ 100 each. They appealed to the Awradja Court which found that since the defendants had a right to till the land, and since defence witnesses testified that the plaintiff was injured by the yoke of the defendant's oxen when the plaintiff tried to stop the defendant from plowing, the case should be reversed.

The rest of the cases heard on appeal were evenly divided between defamation (Article 583, Penal Code), petty fraud (Article 662, Penal Code), and tax defaults.

Almost half of the criminal cases heard on appeal by the Menagesha Awradja were fully reversed, remanded to the lower courts with instructions, or modified in some way.

Twenty-two percent of the cases were fully reversed --that is, the Awradja Court decided the case finally just the opposite of the way the lower court decided it. Full reversal usually resulted from misinterpretation of essential facts, or an unfair, arbitrary decision.

The appellant was fined E. $ 40.00 in the woreda court for stealing hay belonging to his father. The defendant appealed to the Awradja Court which found that the defendant had actually been convicted because he did not pay his father the respect that the local custom dictated and reversed the case.

Reversal could also result from a woreda court's failure fully to consider all the facts at hand.

The defendant was accused of trespassing on the plaintiff's land by planting eucalyptus trees on it. The issue was to whom the land in question belonged. Both parties had witnesses testifying in their favor as to ownership but the woreda court found ownership in the plaintiff and the defendant was adjudged guilty.

The Awradja Court decided that the woreda court judge who made the decision should have viewed the property himself before deciding the issue of ownership and ordered that the criminal charges against the defendant be dropped.

A slightly smaller number than the fully reversed cases were remanded to the lower court for the purpose of hearing witnesses or evidence that, for various reasons, had not been presented in the trial.

Mere modification of woreda court judgments occurred mainly when the Awradja Court felt that a fine or sentence imposed was excessive. The number of woreda court decisions that required modification suggests that the Menagesha Awradja has a great responsibility in the avoidance of injustice resulting from arbitrary punishments.

Finally, it is interesting to note that issues raised on appeal were almost never different over interpretation of law. Review was nearly always necessitated because of improperly resolved factual issues.

Advocates

Advocates represented criminal defendants in criminal appeal cases fifteen percent of the time. Investigation of records in the archives of the Menagesha Awradja does not reveal that the Court ever appointed an advocate for an indigent criminal defendant appealing his case.

No particular kinds of criminal cases appeared to induce defendants to retain advocates on appeal, and there was nothing from the nature of the case in which advocates were retained that indicated the financial status of defendants who hired advocates at this stage of a case.

Delay

In the Awradja Court's criminal appeal cases, the causes for delay were much the same as the factors which influenced the number of appointments given in criminal cases of first instance. In general, though, since the Court is provided with the woreda court's records of the trial, proceedings were shorter. The need for documents and witnesses not being so great, delays due to their absence were minimized. But the prosecution's failure to prepare cases promptly or a judge's absence usually contributed to at least one extra appointment per case.