

## THE LAW MAKING PROCESS IN ETHIOPIA :

Post - 1974<sup>1</sup>

Part One

### Law Making

#### Under the Provisional Military Government of Ethiopia

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This article tries to depict the process by which law was made in Ethiopia by the Provisional Military Government. In terms of time span, it covers the period between September 12, 1974 and and September 12, 1987.

The process of law making generally involves several stages-intiation, elaboration and coordination, enactment and signing and publication. We will tackle the topic in light of these items.

Most countries have written constitutions and these constitutions usually regulate the making of laws-who makes them and the rules or procedures to be followed by the law maker when it ( in the case of a parliamentary assembly ) or he ( in the case of a monarch ) makes laws. This was true of Ethiopia from the early 1920s up to September 12, 1974.

The provisional Military Administrative Council did away with the Government of Emperor Haile Selassie I and assumed full government powers on September 12, 1974, and by Proclamation No. 1/1974 suspended the Constitution of 1955. <sup>2</sup> The Chamber of Deputies and the Senate ( Parliament ) were also dissolved.<sup>3</sup> Because of this the Constitution of 1955 renders no help in showing how laws are created in Ethiopia for the period after September of 1974.

The Provisional Military Administrative Council (Derg) has not issued any law that directly and exclusively deals with the process of making law. There are, however, some laws that shade some light on the subject. The most important of all is the Redefinition of the Power of the Provisional Military Administrative Council and The Council of Ministers Proclamation No. 110/1977. Article 5(6) of this Proclamation provides that the Congress<sup>4</sup> of the Derg issues Proclamations. The power of enacting primary law (i.e. Proclamations) belonged to the Congress of the Derg. From Article 21<sup>5</sup> of the same Proclamation we know that Ministers as well as Commissioners were given power not only to *initiate* but also to enact regulations. Normally regulations are subsidiary legislation. This is a very common practice. For example the Trade Unions Organization Proclamation No. 222/1982<sup>6</sup> empowers the Minister of Labour and Social Affairs to issue regulations. Article 15 of the National Resources Commission Establishment Proclamation No. 217 / 1981<sup>7</sup>, gives the Water Resources Commissioner power to issue regulations.

The power to initiate legislation is also given to some non- governmental agencies like mass organizations. Article 5(12) of the Trade Unions Organization Proclamation No. 222/1982 can be cited as an example. This Article reads:

**5. Functions common to all Trade Unions**

Every trade union shall, without prejudice to its duties and obligations under the appropriate law, have the following functions:

- 12) Publicize and ensure the observance and proper implementation by members of, laws, regulations, government directives and statements; recommend, subject to democratic centralism, the *enactment of new labour laws and regulations and the amendment of those in force.* (Emphasis added.)

The All - Ethiopia Peasant Association is also given some role in the consideration of laws concerning the peasantry. This is clearly stated in Article 30(3) of the Peasant Associations Consolidation Proclamation No. 223/1982.<sup>8</sup> Article 30(3), in part, reads:

- 3) *to take part in the consideration of laws, regulation and directives concerning peasants . . .* (Emphasis supplied.)

Central Urban Dwellers Associations are also given power to initiate and in some cases, issue laws.<sup>9</sup> The power to initiate laws is given to both chartered and non- chartered urban centers. The relevant provisions concerning this point are sub-articles 1 and 2 of Article 39. This Article reads as follows:

- 1) In the case of a chartered urban centre:
- a) upon approval by the Council of Ministers, levy and collect, urban land rent and service charges and urban house tax and charges;
  - b) upon approval by the Council of Ministers, *issues and enforce laws pertaining to the administration of the urban centre, the management of the property of the association, the security of the urban centre and the health of the urban dwellers;*
  - c) prepare and submit to the Government and, when approved, implement the master- plan of the urban centre; administer urban land in accordance with the approved plan;
- 2) In the case of a non -chartered urban centre:
- a) *prepare and submit to the Minister, urban land rent and service charges and urban house tax and charges;*

- b) prepare and submit to the Minister and, when approved, implement the master plan of the urban centre, administer urban land in accordance with the approved plan . . . . (emphasis supplied. )

The issue of whether the power mentioned in the above indicated Article is given to the Associations in their capacity as mass organizations or local government is arguable. The latter alternative seems favorable - i.e., Central Urban Dwellers Associations are given such powers in their capacity as local governments.

The Revolutionary Ethiopian Women's Association and the Revolutionary Ethiopia Youth Association do not seem to have powers similar to those given to the mass organizations discussed above.

Having looked at the laws governing the initiation and issuance of proclamations and regulations, we will now examine the process of elaboration and coordination, enactment, signing, and publication of proclamations and regulations.

Laws are usually originally drafted by the concerned ministry or administrative organ. Some laws that originate from the decision of the Council of Ministers or from specific order of the Head of State are prepared by the Legal Department of the Office of the Chairman of the Council of Ministers. Either way, the draft law is sent to the Council of Ministers. The Secretary General of the Council with the approval of the Deputy Chairman of the Council of Ministers, either presents it to the plenary session of the Council of Ministers or sends it to the Legal Committee of the Council of Ministers for its consideration. In practice, we find that the draft legislation that are discussed by the Council of Ministers before they are sent to its Legal Committee are the ones that demand major policy decisions or, are those that have to be published urgently. After deliberation on these draft legislation, the Council sends them to the Legal Committee together with policy directives. Draft legislation that do not seem to demand prior policy decisions by the Council of Ministers are, as stated above, directly referred to the Legal Committee by the Secretary General with the approval of the Deputy Chairman of the Council of Ministers.

The Minister of Law and Justice is the Chairman of the Legal Committee. Other members, at the time of writing of this article are:

- a) the Minister of Education<sup>10</sup> ;
- b) the Minister of Foreign Affairs;
- c) the Deputy Minister of Finance;
- d) the Deputy Minister of Mines and Energy;
- e) a representative of the Office of the National Committee for Central planning;

- f) the Head of the Legal Affairs Department of the Office of the Chairman of the Council of Ministers; and
- g) the Minister or Commissioner of the Office sponsoring the draft legislation.

The Legal Affairs Department of the Office of the Chairman of the Council of Ministers gives clerical and technical services this Committee needs. It is also this Department that does the redrafting, in case the need to do so arises at this stage.

The draft approved by the Committee is sent to the Council of Ministers, accompanied by a covering letter signed by the chairman of the Committee. In the said letter, the main changes, if any, made in the draft by the Committee, the controversial issues involved, if any, and the conclusions and recommendations of the Committee are explained.

There are some exceptions to this established procedure. Sometimes draft legislation are referred to a committee specifically set up to study a particular draft legislation. In other cases, the draft law may be referred to a joint Legal and Administrative Committee or to a joint Legal and Economic Committee of the Council of Ministers.

The Legal Committee or the special committee or the joint committee submit the draft legislation they have worked on to the Council of Ministers. The Council discusses the draft proclamation, and if approved, it is sent to the Provisional Military Administrative Council since it is the Congress of this organ that has the power to issue Proclamations.<sup>11</sup> The draft proclamation approved by the Provisional Military Administrative Council is sent back to the Council of Ministers which in turn sends it to the Office of the Chairman of the Council of Ministers for publication in the *Negarit Gazeta*. The copy of the approved law that is sent to the Council of Ministers is signed by the Secretary General of the Provisional Military Administrative Council. Proclamations appear in the name of the collective body-the Provisional Military Administrative Council (*Derg*). Alterations made by the Council of Ministers on a draft legislation under discussion are incorporated or adjusted by the Legal Affairs Department of the Office of the Chairman of the Council of Ministers.

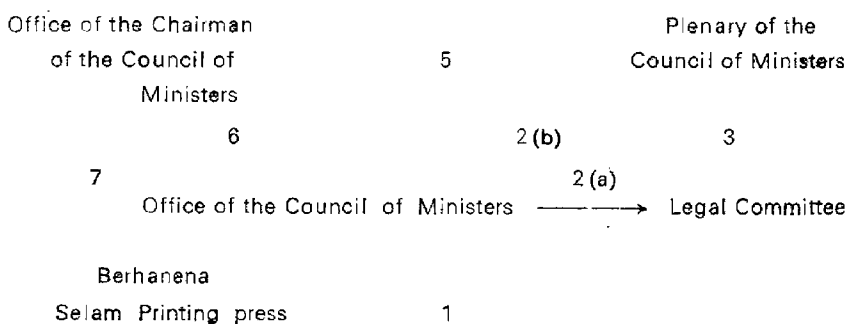
Regulations, that is, subsidiary legislation, issued by ministers by virtue of the power given to them by an enabling legislation, are not sent to the Provisional Military Administrative Council for approval. Once they are passed by the plenary of the Council of Ministers, they are directly sent to the Office of the Chairman of the Council of Ministers for publication in the *Negarit Gazeta*. They appear in the name of the Minister or commissioner that issued them.

The Legal Affairs Department of the Office of the Chairman of the Council of Ministers handles the publication of laws in the *Negarit Gazeta*.

**SCHEMATIC PRESENTATION OF THE LAW ( PROCLAMATION )  
MAKING PROCESS UNDER THE PROVISIONAL MILITARY  
ADMINISTRATIVE COUNCIL  
( EXCEPTION NOT SHOWN )**

Provisional Military  
Administrative Council

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Sponsoring Ministry or Office

**KEY**

1. Sponsoring ministry (office) prepares the draft proclamation and sends it to the Office of the Council of Ministers.
2. At the Office of the Council of Ministers, the Secretary General of the Council of Ministers, with the approval of the Deputy Chairman of the Council of Ministers, sends the draft proclamation either to the Legal Committee (2.a) or the plenary of the Council of Ministers (2.b).
3. The Legal Committee examines and usually redrafts the draft proclamation and sends it to the plenary of the Council of Ministers.
4. The draft proclamation passed by the plenary of the Council is sent to the Provisional Military Administrative Council for approval.
5. The approved draft proclamation is sent to the Office of the Council of Ministers.
6. The Office of the Council of Ministers sends this to the Office of the Chairman of the Council of Ministers.
7. The Office of the Chairman of the Council of Ministers sends it for publication in the Negarit gazeta.

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1. The Law Making Process in Ethiopia pre 1974 will be treated in another Article in the near future.
  2. *Negarit Gazeta*, 34th Year No. 1, Articles 5 and 6.
  3. *Negarit Gazeta*, 34th Year No. 1, Article 4.
  4. The organizational set up of the *Derg* consisted of the Congress, having all *Derg* members as its members, the Central Committee, having forty members elected by the Congress, and a standing Committee consisting of Seventeen members elected by the Congress in both cases from amongst the *Derg* members. (See Article 2 of Proclamation No. 11/1977, *Negarit Gazeta*, 36th Year No. 13.)
  5. This Article reads: Each Minister shall *prepare and submit to the Council of Ministers draft laws* necessary for the proper operation of his Ministry and for the proper carrying out of any other matters confined to his jurisdiction. (Emphasis supplied.)
  6. *Negarit Gazeta*, 41st Year No. 61.
  7. *Negarit Gazeta*, 41st Year No. 3.
  8. *Negarit Gazeta*, 41st Year No. 6.
  9. *Negarit Gazeta*, 40th Year No. 15
  10. The Minister of Education is also the deputy Chairman of the Committee.
  11. See Article 5(6) of the Redefinition of Powers and Responsibilities of the Provisional Military Administrative Council and the Council of Ministers Proclamation No. 110/1977, *Negarit Gazeta*, 36th Year No. 13 (1977).