##  JOURNAL OF ETHIOPIAN LAW



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## CASE REPORTS

## ARTICLIES

The Prerogative of the Emperor to Determine Powers of Administrative Agencies H.E. Ato Aberra Jembere

Language and Law in Ethiopia
Fassil Abebe and Stanley Z. Fisher
CURRENT ISSUE
Public Servants* Right to Organize
William H. Ewing

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The Journal of Ethiopian Law is a scholary publication, addressing itself to all members of the profession. Its purpose in publishing judgments is to make known to the profession interesting decisions which in the opinion of the Board and Editors raise important issues of law. In selecting a particular judgment for publication, the Board and Editors do not wish to convey the impression that the judgment is definitive on any propsition for which it may stand although the quality of the the decision is always an important consideration in determining whether it should be included in the Journal. When, in the opinion of a Board Member or an Editor, a judgment is of interest and raises an important issue of law but there is reason to believe that aspects of the decision are contestable or that the result reached by the court is not clearly the only supportable conclusion, a note on the case is often included. The absence of such a note is not however to be interpreted as indicating complete finality on the issues raised in the case, as it is expected that members of the profession on all levels may hold differing opinions on the merits of any judgment published herein.

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# SUPREME IMPERIAL COURT 

Addis Ababa, Div. No. 1

Justices:

Afenegus Kitaw Yitateku<br>Balambaras Tessema Wondimneh

Ato Tadesse Tekle Giorgis

## HAILE DESTA v. ABEBECH GEBRE SELASSIE <br> AND MAMITE GEBRE SELASSIE

Civil Appeal No. 1186/56
Evidence - Proof of Ownership - Title Deed - Civ.C. Arts. 1195, 2010.
On appeal from the High Court's ruling denying appellant's motion to introduce oral evidence to prove that, despite what was indicated on the respondent's title deed, the latter did appropriate some of his land.

Held: Ruling affirmed.

1. A title deed only raises the presumption that the person it was issued to is the owner of an immovable and is challengeable.
2. Where the deed is in the nature of an authentic deed, the court must not admit oral evidence to rebut the contents of the deed where it is satisfied that it was drawn after proper investigation by the authorities in charge of drawing up title deeds.

## JUDGMENT

Both appellant and respondents own land in the Temenja Yaiz quarter of Bole district. The original suit was filed by the present appellant who alleged that respondents crossed the boundary and took a piece of his land.

The two respondents have divided between them the land they inherited from their father. Woizero Abebech has obtained a title deed for her share of the land from the Municipality. But Woizero Mamite neither obtained a title deed nor did the High Court pass judgment as regards her share of the land. This is because the appellants' land only adjoins that of Woizero Abebech and as such the charge must involve this respondent only.

In the High Court, Ato Haile wanted to introduce witnesses to prove that his land was taken by respondents. But Woizero Abebech objected to this and argued that appellant cannot do so since the extent of her land was determined officially and she has got a title deed to that effect. Her argument was that one cannot by means of witnesses disprove what is established by a title deed.

This appeal was taken from the judgment of the High Court which ruled in favour of respondent. On appeal, Ato Haile requested the court to allow him to introduce witnesses.

## HAILE DESTA v. ABEBECH G. S.

Basically, it is undeniable that a title deed issued by a municipality is a very important document to prove ownership. Still even if we may say that one may not disprove a title deed by means of witnesses it does not mean that a title deed is absolutely unquestionable. Before one makes such a decision one should thoroughly examine whether or not the title deed in question was drawn after necessary investigation had been made.

A title deed is an authentic deed as provided in Article 2010 of the Civil Code. Sub-section (2) of this Article provides that "statements which the public officer personally verified may not be challenged except with the permission of the court."

The question here is: did the officials of the Municipality make the necessary investigatoin before they issued title deed No. 8210? This implies that officials concerned with the issuance of title deeds should make diligent study themselves and make sure that all documents and other means of proof presented to them are valid.

It is not contested that Woizero Abebech owns some land for which she obtained a title deed. The issue, rather, is whether the title deed included a portion of appellant's land.

According to Municipality regulations dealing with boundaries of land, the duty of the officials is to mark the dividing lines after obtaining the consent of all persons who own land adjoining the one in question. This is to prevent later disagreement about the boundaries. The question thus becomes whether or not/this was done before the deed in issue was given to Woizero Abebech.

The appellant argues that the deed is not valid since one of the persons who signed the deed was Woizero Mamite, Abebech's sister. But we do not accept this argument since as an owner of an adjoining piece of land Woizero Mamite was required to sign the deed and was only right in doing so.

Moreover, the respondents argued in the High Court that appellant's sisters, Imahoy Tirunesh and Woizero Jenberuwa Desta, had instituted an action against them (appellants) in the Awradja Court and that Ato Haile's sisters lost the case. The High Court obtained the said record and found out that the above statement was true. We have also understood that no appeal was taken against this lower court judgment given on June 24, 1957.

In was on the basis of the above judgment that the title deed was drawn in 1957.
The officials of the Addis Ababa Municipality required the witnesses who testified in the Awradja Court to identify the boundary in question and carried out the drawing of the deed in line with the decision of the same Court. Since the boundary involving Ato Haile was drawn in the above manner, we find no defect in the procedure of the Municipality. On the whole the Municipality, in the opinion of this Court, issued title deed No. 8210 after all due investigation had been made.

To order that witnesses be heard to challenge the validity of an authentic deed, the court should be satisfied of the existence of falsehood or failure to satisfy rules dealing with deeds. But no such evidence has been proffered.

Thus, the Court finds that the deed was drawn in accordance with the relevant rules and after the necessary studies were made, and rejects the appellant's request to introduce oral evidence. We, therefore, affirm the judgment of the High Court. Cost of litigation to be borne by appellant.
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## HIGH COURT

## Addis Ababa, Div. No. 3

Judges:
Ato Tecola Wolde Kidan
Ato Haile Wolde Giorgis
Ato Tibebu Abraham

## PUBLIC PROSECUTOR v. ASSEFA BEKELE

Criminal Case No. 87/57
Penal Law-Homicide-Causal relationship between act of accused and death-Elements of aggravated homicide-Pen. C. Arts. 24, 522, 523.

Trial on a charge of aggravated homicide under Article 522 of the Penal Code, which alleged that defendant caused the death of the deceased by beating him on the head.

Held: Defendant found not guilty of violating Article 522; found guilty of violating Article 523.

1. There is a causal relationship under Article 24 of the Penal Code where the bodily condition that resulted in the death of the deceased was caused by the act of the defendant.
2. It is the normal course of things for a head injury caused by the defendant to produce a flow of blood into the brain.
3. Where death is concurrently caused by tetanus germs, the germs will not constitute an intervening cause interrupting the relationship between the act of the defendant and the death of the deceased when the germs were caused by the defendant's act and the deceased could not have suffered from such germs had it not been for the injury inflicted by the defendant.
4. A necessary element under Article 522 of the Penal Code is premeditation to kill.
5. Where there is no evidence of premeditation to kill, defendant cannot be found guilty of aggravated homicide under Article 522 of the Penal Code, but will be convicted under Article 523 of the Penal Code.

## JUDGMENT

In the charge brought under Article 522 of the Penal Code, it is alleged that on September 13, 1964, at about 4 p.m., the defendant started a quarrel with the deceased, Yasin Yusuf. The place was near Miazia Twenty-Seventh Square in Addis Ababa. The defendant is said to have thrown a stone at the deceased thereby injuring him on the forehead. Then he knocked him down and beat him with his fist after which he tried to escape. But he was apprebended by neighbouring people. Yasin died on September 23 of the same year, allegedly from the effect of the above beating.

Since the defendant denied committing the crime, the public prosecutor was instructed to produce witnesses. Two prosecution witnesses appeared in court and the following is a summary of their statement.

The first public witness testified that on September 13, at 5 p.m. she saw defendant running, followed by the deceased. The latter was injured on his head.

PUBLIC PROSECUTOR v. ASSEFA BEKELE

After deceased caught the defendant, who was trying to escape, he (deceased) fell down. Then the defendant hit deceased repeatedly with his fist on the back of the neck. After people took them apart defendant tried to escape but was arrested by a policeman.

The second witness said she did not know what the cause of the fight wast She heard the deceased crying as a result of which she walked out of her house and saw the two persons fighting. The deceased carried on his arm a new piece of cloth which was for sale. He was crying for help. Then she took the cloth from him. A little later he was knocked down by the defendant who also beat him repeatedly on the back of the neck. The deceased was bleeding from his forehead even earlier. Thereafter they were separated by bystanders.

Since the third public witness is said to have died, the public prosecutor requested the Court to record the statement she had made at the police station.

The defendant was told to name his witnesses but said he had none.
Following this the doctor who had performed a post mortem examination, Doctor Codoleowoncini of Menelik II Hospital, was summoned to court. He said he examined the corpse on September 23, 1964. His findings included a wound on the left side of the head, caused about two weeks before the examination; the tongue of the deceased showed a black stain, and the corpse was bent at the back. The latter was caused by germs called tetanus which blocked the blood vessels. The lungs were also infected by the same germs. Moreover, blood had run intof: his brain. To sum up, he said that the tetanus germs, which disrupted the normal circulation of blood and the functioning of the lungs, were the result of the injury the deceased sustained on his head. The flow of blood into the brain also contributed to the death. The injury to his head could have been caused by a stone or stick. The doctor could not exactly say what the chances of survival would have been had the deceased been treated immediately after he was injured.

Subsequently, both parties concluded their arguments.
It has been testified by the two prosecution witnesses that the defendant beat up the deceased. Nevertheless, the former did not make any defence. According to the said witnesses the defendant beat the deceased repeatedly and this is further strengthened by the testimony of the doctor who stated that the injury was caused by a stone or stick and that the injury was the cause of death.

Considering the statement of the doctor and the circumstances of the case the court is confronted with the following questions:

1. Is the cause of the death the criminal act of the defendant or an extraneous event?
2. Was there an interruption in the effect caused by the defendant?

To find answers to the above, one should turn to the Penal Code Article 24 which states:
"In cases where the commission of an offence requires the achievement of a given result, the offence shall be deemed to have been committed only if the result achieved is the consequence of the act or commission with which the accused person is charged.

This relationship of cause and effect shall be presumed to exist when the act or omission within the provisions of the law, would in the normal course of things produce the result charged."
In view of this, we see that the beating was the cause that resulted in the death of deceased. This is supported by the fact that blood ran into the brain of deceased because of the head injury that was caused by defendant. This in the opinion of the court is a normal course of things. Although it may be said that the tetanus germs were concurrent causes, it cannot be a valid argument since the germs themselves were brought about by the act of the defendant.

One could say that there was no causal relationship between the act of the defendant and the death of Yasin only if the germs were the result of an extraneous cause-i.e. a cause other than the act of the defendant. If that were true, one could have validly concluded that the death was caused by the extraneous event because then there would be an interruption in the relationship between the act and the death of Yasin.

Nevertheless, since the germs were caused by the defendant's act and since be could not have suffered from such germs, had it not been for the injury that he sustained, there was no intervening cause.

Nor did the concurrent effect by itself cause the death since it has been proved that the flow of blood into the brain and the germs that resulted from the injury caused the death.

Moreover, it was not clear from the statement of the doctor; whether the deceased could have survived had he been treated early.

We, therefore, conclude that the cause of death was the criminal act of the defendant.

However, the defendant is charged under Article 522, a necessary element of which is premeditation to kill. But the charge does not say anything as to whether the defendant killed the deceased after premeditating to do so.

From the testimony of the witnesses it has been ascertained that the defendant was running and the deceased was chasing him. It was after the latter caught him that the defendant beat the deceased. This shows that the fight was only accidental and it has not been proved that the defendant had any revengeful motives. Therefore, we find the defendant guilty of violating a different provision, Article 523 of the Penal Code.

The public prosecutor requested the court that his right to appeal be reserved on the ground that the Court changed the charge, and asked that sentence be passed.

The defendant, on the other hand, prayed that the court consider the circumstances of the case and do him mercy.

## SENTENCE

The deceased is proved to have died from the criminal act of defendant. On the other hand, it has not been shown that there was a prior quarrel between the two and thus we find no ground for aggravation. We, therefore, sentence the defendant to seven years imprisonment from the date he was arrested, September 13, 1964.

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# HIGH COURT 

Addis Ababa
Judges:

# Ato Tefferi Desalegne <br> Ato Asayehegne Adal <br> Ato Haile Sellassie Shiferaw 

# ALMAZ TEFERA v. THE MUNICIPALITY OF HOSAENA 

Civil Case No. 182/58
Expropriation-Payment of Compensation-Civ. C. Arts. 1474, 1478. Agency-Agent's Scope of Power-Civ. C. Arts. 2199, 2205, 2206.

Petitory action to recover expropriated land on the ground that compensation for the land paid to owner's representative in legal actions could not be held to be compensation paid to, the former.

Held: Action dismissed.

1. It is within the scope of power of a person duly authorized to act as one's representative in suits related to land to accept payment of compensation where the land is expropriated.
2. Where an agent acting within the scope of his power fails to hand over to the principal money he received in his capacity as agent, the proper course of action is to sue the agent and not the third party who made the payment to the agent.
3. The payment of the sum assessed by elders as the value of a piece of land constitutes fair compensation for the expropriated land.

## JUDGMENT

In her statement of claim dated December 23, 1965, the plaintiff stated that she owned in the town of Hosaena a big piece of land adjacent to a road and to the lands of Ato Tefera Amare and Woizero Yeshimebet Amare. She claims that the defendant has now taken this from her and fenced it without paying her the proper compensation in accordance with Articles 1478, 1463, 2028, 2053 and 2054 of the Civil Code. She asks this Court to order the restoration of her property and to grant her compensation for damages and costs of litigation. The defendant, who is the Chief of the Municipality of Hosaena, in his statement of defence, No. 56-790-749, of April 23, 1966 claims that the amount of compensation, which is $\mathrm{E} \$ 4,700$, was paid to Ato Delelegn Kassa, the plaintiff's authorised agent and attorney. The defendant argued that Ato Delelegn is the husband of the plaintiff as well as her agent and attorney and the value of the land was paid him on receipt. He claims that if the agent denies this payment he could prove it by evidence, but if the agent admits the payment then he (the defendant) should not pay twice and the suit should, therefore, be dismissed. The defendant produced the following two documentary pieces of evidence in his defence:

1. An agreement dated August 20, 1959 and registered with the Kembata Awradja Court under No. 2733-536, in which the plaintiff and her relatives appointed Ato Delelegn as their agent and attorney to represent

## ALMAZ TEFERA v. HOSAENA

them in suits concerning land or other property, in which they may be involved either as plaintiffs or as defendants.
2. In accordance with an order made by the Awradja Gizat Office, the value of the piece of land under dispute was assessed by elders at its current price. The amount assessed, E\$4,700, was paid to Ato Delelegn by the defendant on payment voucher No. 10433. This payment voucher was also protuced by defendant as evidence, after which he asked the court to pass judgment.
The plaintiff answered that Ato Delelegn was authorised to bring or defend an action, but not to receive payment. She demanded that judgment be given against the defendant for payment of the sum claimed by her, because he is attempting to evade his responsibility by claiming that he made payment to an unauthorised person.

This case involves the question of an agent's scope of power. It is not disputed that Ato Delelegn is the plaintiff's attorney and agent. However, the plaintiff argues that Ato Delelegn's power is limited to representing her in legal proceedings, and that he has no power to receive payment on her behalf. Therefore she claims that the defendant's contention as to payment is untenable. On the other hand the defendant argues that in the circumstances of this case, Ato Delelegn has a power of attorney as well as authority to receive payments. He claims that payment was made to Ato Delelegn bearing in mind the authority conferred upon him and therefore the plaintiff's claim is groundless.

As mentioned above, we say that Ato Delelegn is plaintiff's agent and attorney. Article 2199 of the Civil Code provides that agency is a contract whereby a person, the agent, agrees with another person, the principal, to represent him and to perform on his behalf one or several legally binding acts. Article 2205 provides that the agent, unless vested with special authority, cannot bring or defend an action. From this legal principle it could be deduced that agency and the power of attorney are two independent concepts. When the plaintiff appointed Ato Delelegn as her special agent to see to it that her property gets a fair valuation when she brings an action, this conferred authority upon Ato Delelegn to safeguard the fruits of the litigation on her behalf. We have pointed out the legal provisions dealing with agency and power of attorney. It has also been mentioned that Ato Delelegn is not only the agent and attorney of the plaintiff, but that he is also her husband.

If Ato Delelegn has not banded over to the plaintiff the money he received in his capacity as agent, then he can be held liable for it. Leaving this proper course aside and demanding double payment from the government treasury is not different from trying to enrich oneself without just cause.

The claim would have been proper had there been reason to believe that Ato Delelegn denied receiving the money, and if the suit alleged that either the Municipality had to prove payment, or that it had to be held responsible for the payment denied by the agent.

The chief of the Municipality, Grazmatch Bekele Habte Mariam, has produced enough evidence to prove his contention that the land under dispute was assessed by elders and the proper compensation was paid to the agent of the plaintiff, Ato Delelegn Kassa, who signed the above-mentioned receipt. Therefore we hold that to demand payment of a debt which has already been discharged is improper and rule that the case be dismissed. However, if Ato Delelegn denies receiving the money, the, municipality is bound to prove payment by means of the receipt.

The plaintiff shall pay the defendant $E \$ 100$ for damages. The Awradja Court shall execute this order from the plaintiff's property.

July 18, 1966















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## HIGH COURT

Addis Ababa, Div. No. 1
Judges:
Ato Endalew Mengesha
Ato Feleke Desta
Ato Atsebeha Fantu
KATHERINA IBERT v. TEFERI ASEGEDE


#### Abstract

Civil Appeal No. 323/60 Contractual Obligations - Lease - Termination of contract - Variation of terms - Civ. C. Art. 1763.

An appeal from an Awradja Court decision refusing to permit a lessee to vacate the leased premises without first paying compensation, where the lease stated that four month's compensation must be paid in advance where the lessee terminates the lease before its regular expiry.


Held: Decision affirmed.
Where the contract requires payment of compensation prior to termination, the court will not order the lessor to take over the premises until such compensation has been paid.

## JUDGMENT

The appellant Woz. Katherina has appeared with her lawyer, Ato Getachew. The respondent, as he has not been served, did not appear.

We have carefuily considered the decision on the case of the appellant and the respondent given by the Addis Ababa Awradja Court under File No. 2107/59.

The appellant and the respondent had made a contract whereby the latter was to lease his house for 2 years and the former was to pay a rent of $\mathrm{E} \$ 260$ per month for the same.

Article 5 of their contract states that if the appellant were to terminate the contract before the expiration of the 2 years, she had to pay to the respondent four months' rent in advance.

After using the house for a year the appellant wanted to terminate the lease and in consequence thereof she asked the respondent to take possession of the house. However, he refused, saying that the terms of the contract were not satisfied. So, she filed a suit to have him ordered to take possession of the house.

The respondent appeared in court and gave the same answer.
The Court decided in favour of the respondent on the ground that a contract cannot be terminated without satisfying its terms. Hence, this appeal.

The appellant had agreed in the contract that she would pay four months' rent in advance if she were to terminate the lease before the expiration of the agreed time.

On the basis of the contract, how can she then ask for the termination of the contract without paying the four months' rent in advance?

Therefore, by majority vote we have affirmed the decision of the Awradja Court. One of the judges disagreed with the majority opinion.

## Dissenting Opinion

I, the judge mentioned above, disagree with the majority opinion given. Basically, I would not say that it is proper for the Awradja Court to fail to grant the request s of the appellant by citing Article 1763 of the Civi Code. The reason is that the appellant in her petition to the Addis Ababa Awradja Court dated June 30, 1967 pointed out that the present respondent has leased his house to her for residence. Her husband is ill. The house is near a stream and as the air is not good for health and moreover as the house is two-story it was found to be unsuitable for nursing the patient. As a result she wanted the termination of the lease and asked the owner to take possession of the house. However, the owner instead of complying with her request kept her under surveillance. As is shown in the record she asked for a court order to terminate the lease for the reasons given above.

The respondent objected to this request. The Awradja Court decided that the appellant should pay the four months' rent to the respondent in advance; failing that she should not leave the house.

Before considering the issues in the case let us determine the meaning of the contract of lease made by the parties on May 10, 1966. It is true that the petitioner rented the house of the respondent located on Itegue Taitu Street for two years. Nevertheless, the contract shows that the right of termination of the same is given to the pettioner provided she pays four months' rent in advance. If this is so, and if the appellant wants to vacate the house after stating its unsuitableness, I think it is a miscarriage of justice for the owner to object or for the Awradja Court to cite Article 1763 which is irrelevant and thereby nullify the petition.

In the contract entered by the appellant and respondent, the former was bound to pay four months' rent. Hence, the contract gives the petitioners the right to vacate the house at any time by paying the four months' rent. If so, is Article 1763 violated by ordering the enforcement of the contract by asking the owner to take possession of this house and at the same time safeguarding his interest if he asks for payment? I think it is not. The power of the appellant to leave the house at any time, as stated in the contract is not contrary to law. This is because contracts which restrict the right of individuals to choose their residences are void.

Actually, the appellant is bound in the contract to pay four months' rent in advance at the time she asked the owner to take possession of the house. There is no reason why she should not vacate the house provided the above requirement is satisfied. What if the appellant does not pay the money to the respondent in advance? The answer is that as the petitioner did not pay the four months' rent and as this money would have benefitted the respondent, the former would be required to pay the said amount plus damages. This is the extent of her obligation. The right of termination of a lease, even if not stated, which in fact was done here, does not prevent anyone from terminating the contract by which he had taken possession of the immovable property by asking the lessor to take back possesion of the same. By so doing, however, it does not mean that he will lose the right to demand the return of interest or securities given or acts done for the performance of the contract or the right of asking for damages. For all these reasons, the decision of the Awradja Court that the petitioner should not vacate the house not only entails financial loss but also, infringes the individual's rights.

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## HIGH COURT

Addis Ababa, Div. No. 1
Judges:
Ato Bekele Habte Michael
Ato Fisehaye Gebre Awestatewos
Ato Teshome Tessema

# MINISTRY OF STATE DOMAIN v. MUNICIPALITY OF DEBRE ZEIT* 

Civil Appeal No. 825/60

Taxation - Municipal Taxation - Exemption of Government Property - State-owned Commercial Enterprises. Proclamation No. 74 of 1945, (Municipalities Proclamation of 1945), Section 4(2),(3).

Judgments - Stare Decisis - Effect of Precedent in Construing Questions of Tax Law.
An Appeal from an order of the District Court to compel payment, of assessed municipal tax and service fees by a State-owned commercial enterprise.

Held: Order affirmed.

1. A State-owned commercial enterprise cannot refuse to pay a municipal assessment of taxes on the ground of its government ownership.
2. The prior judgment of the High Court on exemption of similar State-owned commercial enterprises is distinguished.
3. Dicta: "The Awradja Court is not required by law to strictly follow prior decisions of higher courts."

## JUDGMENT

The appellant has introduced the record containing the decision of the Yerer and Keryu Awradja Court and the rest of the memorandum of appeal. The district court had passed judgment in favour of present respondents on March 22, 1968 in Civil Case No. 7/60.

The following facts were established in the lower court. The Debre Zeit Municipality required from the Debre Zeit Grand Hotel the payment of E\$1041 for the year 1966, and $E \$ 738$ for 1966-67 for reasons of revenue and repair and sanitary work provided to the Hotel by the Municipality.

The Ministry of State Domain refused to comply with the above request on the ground that the Hotel belonged to the State and was exempted from such taxation. The Ministry referred to a precedent where the High Court ruled in Civil Case No. $452 / 57$ that state properties should not pay revenue. On the basis of this

* The lower court opinion in this case appears on page 485.


## JOURNAL OF ETHIOPIAN LAW

decision, it was requested that the suit be dismissed. The Awradja Court, however, rejected this argument and ordered that the said sum be paid to the Municipality.

This Court after examining the case has not found any ground to reverse the Awradja Court decision.

The document introduced by appellant to defend its stand is a copy of the record which contained the litigation between the Addis Ababa Municipality and the Ministry of State Domain, wherein the former required payment of building tax by the latter. True, the High Court decided in favour of the Ministry. Nevertheless, one should note that there is a difference between the present case and the one decided earlier; one deals with hotel business and the other with ownership of buildings.

Moreover, the Awradja Court is not required by law to strictly follow prior decisions of higher courts:

The Hotel is required to pay an amount determined by the appropriate council of the town. The Hotel therefore cannot, under the cover of being state property, refuse to pay the tax while it is engaged in a commercial activity. We therefore affirm the judgment of the Awradja Court.

April 12, 1968

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# DISTRICT COURT 

Yerer and Keryeu Awradja
Judges:
Ato Woldetsadik Banti
Ato Yemane Hailegiorgis
Ato Tefera Lulu
MUNICIPALITY OF DEBRE ZEIT v. THE MINISTRY OF STATE DOMAIN AND BERHANE ALEMU, MANAGER OF THE DEBRE ZEIT GRAND HOTEL

Civil Case No. 7/60
Taxation-Municipal taxation-Exemption of Government Property-State owned commercial enterprises. Proclamation No. 74 of 1945, (Municipalities Proclamation of 1945), Section 4(2),(3). Judgments-Stare decisis-Effect of precedent in construing questions of tax law.

Original action to compel payment of municipal revenue tax and charges for municipal services, assessed against a government-owned enterprise.

Held: Payment of assessed amount ordered.

1. Municipalities have the right to collect revenues from commercial enterprises located within their boundaries.
2. There is no statutory authority for exempting government-owned commercial enterprises like the subject hotel from municipal taxation.
3. The fact that a judgment for exemption was granted to the subject Ministry in a similar previous case is irfelevant.

## JUDGMENT

In its statement of claim dated September 12, 1967, the plaintiff stated that the defendant failed to pay a sum of E $\$ 1,779$ assessed by the Municipality council by way of revenue, and money charged for repair work and the maintenance of cleanliness. Despite a letter numbered 5177-59, July 17, 1967, asking for the payment of the above stated sum, the defendants failed to comply with the request. Therefore, the Municipality requests this court to compel the defendant to pay the money in question. It cited Proclamation 74 of 1945, Neg. Gazeta Year 4, No. 5 in support of its request.

The defendant's contention was that he should not have been sued because the hotel is government property. It took the Court some time to study the case and the issues that are raised therein. On December 29, 1967, the defendant came up with written evidence which convinced the Court that he is not the right person to be sued. He argued that the representantive of the state should argue the case. The Court therefore instructed the defendant to bring the state representative and warned him that he would carry the whole responsibility if he failed to do so. The said representative appeared in court on January 8, 1968. He argued that although the

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hotel engages in commercial activities, it is government property and therefore should not be required to pay revenue. He also referred to a previous judgment where the Addis Ababa Municipality had sued the same authorities.

We have carefully stuđied the statement of claim, the defence and a copy of the assessment made by the Debre Zeit Municipality. The latter makes it cleat that the Municipal Council assessed E $\$ 1041$ for the year 1965-66 and E $\$ 738$ for 1966-67 against the defendant. On the other hand, the defendant has not denied that the hotel engages in a commercial activity. Nor has he mentioned any law which exempts a hotel that belongs to the Government from paying revenue.

It is evident that the Municipality carries out its function with the money that it obtains in the form of revenue from, among others, business organizations like the hotel in question. The Ministry of State Domain, while it can, in the manner provided by law, collect its share of taxes, cannot possibly refuse to pay revenue to the Municipality after engaging in a commercial activity.

The court attaches no importance to the argument that the defendant got a judgment in its favour in a previous case against the Addis Ababa Municipality.

We, therefore, hold that the defendant should pay the sum of $\mathbf{E} \$ 1779$ plus E $\$ 50$ costs and court fees to the extent shown in the receipt.

## ORDER

We order that a copy of this judgment be sent to the Woreda Court of the area. The above judgment should be enforced by requiring the defendant to pay the court fees to the treasury and the rest to the plaintiff. If the government agency in- question does not comply in paying the sum, the manager of the Hotel shall be forced to do so.

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## ARTICLES

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

by
H. E. Ato Aberra Jembere, B.A., LL.B.**
"The Emperor determines the organization, powers and duties of all ministries, executive departments and the administrations of the Government..."

Article 27 of the Revised Constitution.

## Introduction

The term "administrative agencies" is used in this article to denote those governmental or public authorities created either by an order, ${ }^{1}$ general notice, ${ }^{2}$ or legal notice ${ }^{3}$ as autonomous bodies, distinct from a ministry, a department ${ }^{i}$ or a branch thereof, or a court, or a legislative body. Administrative agencies are called in Ethiopia either a board, ${ }^{4}$ authority, ${ }^{5}$ office, ${ }^{6}$ commission, ${ }^{7}$ municipality, ${ }^{8}$ administration, ${ }^{9}$ corporation, ${ }^{10}$ committee, ${ }^{11}$ institute, ${ }^{12}$ organization, ${ }^{13}$ or agency..$^{14}$

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

[^11]** Secretary - General to the Council of Ministers with the Rank of Vice-Minister.

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

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

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

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

The thesis the writer of this article attempts to advance may be summarized:
a) Matters dealing with the organization and determination of duties and powers which do not involve regulatory power, police power, or powers regulating matters of public finance may be dealt with in the form of an order under Article 27.
b) Effective delegation to administrative agencies of regulatory powers, police powers, and powers regulating matters of public finance, requires an enabling proclamation, under Articles 34 and 88, or a decree, under Article 92 of the Revised Constitution in cases of emergency that arise when the Chambers are not sitting, and subject to the approval of the Parliament at its subsequent session.
c) Where an order under Article 27 has apparently delegated regulatory, police or financial powers to an agency, appropriate enabling legislation is necessary before the delegation can become effective.
Having thus formulated a basis on which to predict whether a particular delegation of power to an administrative agency granted by an order under Article 27 would be legally effective in the absence of enabling legislation enacted in the form of a proclamation or decree, a special study of the powers granted to the Awash Valley Authority (AVA) is made. The purpose of this study is to give a concrete example of the general analysis presented. It is found that some provisions of the Awash Valley Authority Charter are immediately effective, whereas others require further legislative action to become effective, if the thesis of this article is accepted.

## PART 1: GENERAL CONSIDERATIONS

## I. The Prerogative of the Emperor

## A. Historical perspective - separation of powers

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

## PREROGATIVE TO DETERMINE AGENCIES' POWERS

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

## 1. Prior to $\mathbf{1 9 3 1}$ Constitution

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

## 2. Post-1931 Constitution

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

This provision only concerns the power of the Emperor to determine the organization and internal rules of administrative departments, which of course include administrative agencies. Under Article 34 of the 1931 Constitution, the power to enact a substantive law, which affects the rights of individuals, was shared by the Emperor and the Parliament. Such "laws," corresponding to present proclamations, were to be enacted only after having been discussed by the two chambers of Parliament and having obtained the confirmation of the Emperor. ${ }^{16}$ Article 11 read in conjunction with Article 34 gives a basis for concluding that the Emperor by His own free will limited His prerogatives. He retained sole power to create administrative agencies, determine their organization, and lay down the regulations which governed them. But He reserved the power to enact a substantive law affecting the rights of individuals, such as a grant of regulatory powers to an administrative agency, to Himself acting together with Parliament. By virtue of Article 11 of 1931 Constitution, the Emperor could act alone to determine the internal rules - "regulations" - under which the administrative agencies had to operate. But "laws," rules directly affecting the rights of citizens, had to be enacted by Parliament and the Emperor jointly. That a grant of regulatory powers to an administrative agency should be made by a "law" is shown by the proclamations
16. Art. 34 of the 1931 Constitution provides: "No law may be put into force without having been discussed by the Chambers and having obtained the confirmation of the Emperor."
promulgated for the establishment of the Imperial Board of Telecommunications of Ethiopia ${ }^{17}$ and the Charter of the Scrap Iron Board. ${ }^{18}$

## 3. Post-Revised Constitution of 1955

The doctrine of separation of powers and the principle of checks and balances between the three branches of the government are spelled out in greater detail in the Constitution of 1955 than in the first Constitution of Ethiopia. Nevertheless, the scope of Article 27 of the Revised Constitution, at least in its English version, appears to be wider than its counterpart, Article 11 of the 1931 Constitution. In the language of Article 27 of the Revised Constitution it is within the prerogative of the Emperor to determine the "organization, powers and duties" of administrative agencies: under Article 11 of the 1931 Constitution He determined only the regulations of the administrative agencies. The language of Article 27 in the English version thus suggests that the Emperor may delegate to administrative agencies powers which may extend to the people outside the organization; whereas under Article 1 I of the 1931 and the Ambaric version of Article 27 of the Revised Constitution, it seems that He is able to delegate to administrative agencies only the right to adopt regulations limited to the internal administration of the agencies. When we later consider the nature of powers to be granted to administrative agencies under Article 27 of the Revised Constitution of 1955, we will ask whether the historical progression does not suggest a narrower reading for the article than its language alone might suggest.

## B. Discretionary powers of the Emperor provided in the Constitution

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

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

1. According to Article 36 he may take measures consistent with other constitutional provisions that may be necessary to ensure, inter alia the safety and welfare of the inhabitants of the Empire. That Article may be the general authority under which some semi-public organs have been organized, as appears to be the case with the granting of the Charter of the Haile Sellassie I University. ${ }^{19}$ The basis for the
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issuance of the Charter of the Haile Sellassie I Foundation ${ }^{20}$ could also possibly be attributed to the source of power provided in Article 36.
2. By virtue of the residual power of the Ethiopian monarch to review cases in Chilot; and due to the prerogative of residuum of justice, ${ }^{21} \mathrm{He}$ maintains justice as provided in Article 35. It should be noted, however, that the possibility of Article 35 being used to create agencies for the administration of justice is severely restricted by Articles 108 and 109 of the Revised Constitution. ${ }^{22}$
3. He delegates legislative, adjudicative or regulative power to administrative agencies with prior approval (Article 88), or later approval (Article 92) of both chambers of Parliament. The Post Office ${ }^{23}$ is an example of an administrative agency created with powers given to it by enabling legislation enacted with prior approval of Pariament. The Civil Aviation Administration is an example of an administrative agency to which powers were given by enabling legislation approved later by the Parliament. ${ }^{24}$
4. He promulgates the decrees, edicts and public regulations of the Ethiopian Orthodox Church, (which is given the status of an administrative body by Articles 398 and 399 of the Civil Code of 1960) by virtue of Article 127. The issuance of the Menelik II Memorial fund and the Trinity Monastery Charter ${ }^{25}$ or the Church Administration Order ${ }^{26}$ are examples of the exercise of this prerogative.
5. He organizes armed forces and decides what armed forces shall be maintained, both in time of peace and in time of war under Article 29. "The creation of the Imperial Territorial Army is an example of this authority. ${ }^{27}$
6. Finally, He determines the organization, powers and duties of all ministries, executive departments and the administrations of the government, under Article 27.

## II. Constitutional Limitations to the Emperor's Prerogatives

## A. Limiting provisions of the Constitution

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

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

Thus, the powers to be granted to an administrative agency by an order ${ }^{29}$ issued under Article 27 are limited to a certain extent by the other provisions of the Revised Constitution, notably, Articles 88, 92, 115-119 and 122.

## B. Article 4 vs. other provisions of the Constitution

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

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

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

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

The prerogatives of the Emperor referred to earlier and provided in the different provisions of the Revised Constituiton apply to different cases. For the purpose of this study, the most relevant constitutional provision is Article 27. Analysis of these can be a model for the analysis of other cases.
17. Analysis of Article 27
A. Discrepancy between the Amharic and English versions and its reconciliation

The English version of Article 27 of the Revised Constitution reads:
"The Emperor determines the organization, powers and duties of all ministries, executive departments and the administrations of the Government and appoints, promotes, transfers, suspends and dismisses the officials of the same."

It should be noted that the Amaharic version of the same Article differs from the English version. The literal translation of the Amharic version is:
"The Emperor determines the working conditions, establishes the departments which carry government functions, and all ministries. ${ }^{30}$ He appoints, promotes, transfers, suspends and dismisses the officials of the departments.'

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

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

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

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

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

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

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

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

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

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

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

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2. The Ambaric version should be read to mean what the English version provides, because a prerogative to determine the organization and duties of all ministries, executive departments and the administrations of the government should at least be able to grant some sort of powers, for, according to the Amharic version, no immediately effective power may be granted under Article 27.
The question is then what kind of power may effectively be granted to administrative agencies by executive law under the Constitution? According to the author's interpretation of the language of Article 27, the nature of powers to be granted to administrative agencies shall not involve: (1) regulatory powers, for instance, grant of jurisdiction over third parties, i.e., ordinary citizens, as opposed to powers to regulate the internal working of the administrative agencies; (2) police powers, for instance, the power to establish new offences or new punishments for old dnes, or the power to secure the judicial enforcement of regulations; and (3) powers regulating matters of public finance, which are explicitly or implicitly reserved for parliamentary approval.

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

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

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

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## IV. Findings as to the Prerogrative of Determining Powers of Administrative Agencies

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

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

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

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

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

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

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

## PART II:

A CASE STUDY-POWERS GRANTED UNDER THE CHARTER OF AVA

## VI. Definition and Usage of the Term Charter

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

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

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

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

## VII. The Form and the Source of the Legislation

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

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

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

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

## VIII. Legal Analysis of the Provisions of the Charter

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

The general purpose of the AVA is laid down in the first clause of Article 4 in the following words:
"The purpose of the AVA is to administer and develop the natural resources of the Awash Valley...

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

## B. Specific duties

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

Two specific provisions, however do require special consideration.

1. Control and distribution of water
a) Sub-section (f) of Article 4 gives to the AVA special power to assign waters of the Awash River for irrigation and other purposes. This provision implies that the waters in the Awash Valley are part of the state domain. According to Article 130 of the Revised Constitution, the natural resources of the Empire, including waters, lakes and rivers, are made state domain; Articles 1228 and 1447 of the Civil Code of Ethiopia of 1960 also stipulate that the ownership of all running and still water vests in the State, and the community has only the right to the use of the water. As provided in Article 1229 of the Civil Code, water becomes private property where it is collected in a man-made reservoir, basin or cistern from which it does not flow naturally. Article 1228 (2) stipulates also that all running
2. James C.N. Paul, "Cases and Materials on Public Law I (1966-1967)" unpublished, Library, Faculty of Law, Haile Sellassie I University, Chapter XIII, p. 23.

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

Therefore, the function of assigning water of the Awash River for irrigation and other purposes by the AVA to those who meet its requirements is immediately effective, provided it is made without any discrimination.
b) Article 9 of the Charter safeguards the existing water rights in the Awash Valley which are embodied in agreements existing between the users of said water and any agent of the government. This is a provision deliberately inserted to recognize the water rights acquired by H.V.A. Eihiopia Share Company (Wonji) under an agreement. The purpose of this Article is to reaffirm the rights acquired under an agreement and not to make any discrimination between users of the said waters. As an agent of the government, the AVA has the power to regulate the uses of the water in its jurisdiction, without affecting existing water-rights in the Awash Valley which are embodied in an agreement.

## 2. Taking any action to assure the best use

Article $4(\mathrm{~h})$ assigns to AVA a general responsibility, to do all such things ás may be necessary to assure the best use and development of the resources of the Awash Valley.

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

## C. Ordinary powers

The powers granted under Article 5 of the Charter are powers a juridical person (corporate body) may normally have. Those powers include the power to contract, to sue and be sued ${ }^{36}$ in its own name, and to acquire, own, possess and dispose of property.

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

[^18]of the Charter is meant to give separate juridical personality to AVA but only in public law and that the AVA exercises rights in civil law on behalf of the ministries or on behalf of other public authorities, rather than on its own legal virtues, i.e. not because it is a public corporation having separate entity from the Government.

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

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

## D. Extra-ordinary powers

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

## 1. Regulatory powers

The point at issue in this section is:

- whether the Charter simply distributes powers within the government by saying that the AVA is the appropriate agency to exercise such powers, or
- whether the Charter grants the AVA powers over third parties which the government did not previously possess.
With this in mind, the writer examines the following specific provisions of the Charter under which regulatory powers are granted to the AVA. By "regulatory power" we mean the grant of jurisdiction over third parties, i.e ordinary citizens, as opposed to powers to regulate the internal working of the government and the AVA.


## a) Expropriation

Article 6 (a) empowers the AVA to acquire real and other property by expropriation in accordance with the law.
38. According to later explanation by the principal draftsman of the Charter, Art. 6(f) was merely intended to permit the AVA to administer, but not itself to become hable for the credits. The credits would actually be concluded by other government departments.

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

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

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

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

## b) Regulating the use of water and facilities

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

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

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

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

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

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

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

## c) Granting concessions

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

## 2. Fiscal powers

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

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## PREROGATIVE TO DETERMINE AGENCIES' POWERS

## a) Fixing fees and charges

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

The Livestock and Meat Board Proclamation of 1964 defines "fee" as a charge fixed in accordance with the provision of the cited Proclamation. ${ }^{40}$ The Ethiopian ${ }^{3}$ Antiquities Administration Order also refers to fees for admission. ${ }^{41}$ One may logically infer from all this that "fees" means charges for services rendered or facilities provided by administrative agencies or government departments.

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

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

Alternatively, the writer submits that safeguards similar to those set up in the Livestock and Meat Board Proclamation be adopted as a standard for fixing fees and charges by administrative agencies. The relevant Article of that Proclamation reads in part:
"to fix, impose and collect fees on all ... using facilities of any sort provided
by the Board,... provided, however, that such fees shall be fixed upon a uniform basis and shall reflect, as nearly as possible, the cost and value of the services and the facilities being provided to the users thereof, having due regard to the need to expand and finance the expansion, maintenance and improvement of such services and facilities." ${ }^{43}$

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

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

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

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

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

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

## c) Borrowing money

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

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

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

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

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

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

## d) Investing in public companies

Article $6(\mathrm{~h})$ empowers the AVA to invest its funds-presumably its revenues collected $f$ as fees and charges-in public companies.

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

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

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

## e) Approving the budget

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

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

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

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

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

## E. Internal organization

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

On the other hand, Article 19(e) gives to the General Manager a full power to act and give decisions on behalf of the Board, in case of emergency. The test for existence of such emergency as laid down in the Article just cited are:
-delay in taking action on any matter or in giving a decision which in the
opinion of the General Manager would adversely affect the operation of the AVA, and
-it is impossible to convene the Board in time to present such matter to it.
Since the test is by the personal judgment of the General Manager, its limitation in effect is not as narrow as it seems. With the pretext of emergency the General Manager might commit the Authority by acting over and above his normal powers.

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

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

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

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

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

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

## Conclusion

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

## A. Findings

## 1. The Charter of the AVA

## a) Form of the legislation

1. The Charter combines matters that should be enacted under Article 27, in an executive law-order-and those that should be promulgated in accordance with Articles $88-90$ by a proclamation, or under Article 92 of the Revised Constitution by a decree if the enactment meets the requirements provided therein.
2. An order rather than a general notice would be the appropriate form of legislation to create an autonomous public authority like the Awash Valley Authority.
3. The non-citation of the constitutional authority for granting the Charter leads to speculation of the sources of authority, as a result of which courts would face difficulty in reaching consistent decisions if ever the authority for legislation is challenged in the courts of law by an interested party.

As pointed out earlier, despite the form, i.e. general notice instead of order, and the absence of citation to Article 27, the source of authority for the enactment
of the Charter of the Awash Valley Authority seems to be Article 27 of the Revised Constitution. The form does not make the legislation unconstitutional.

## b) Content of the Iegislation

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

Mr . Berman ${ }^{46}$ suggested that Articles 3, 6(c), 6(e) and 7 of the Charter should also be confirmed and approved by Parliament. The writer, however, does not subscribe to this finding for the following reasons:
(a) Article 3, even though it uses the term "exclusive jurisdiction" and "all artificial means of controlling and diverting the flow of water" is not an article giving specific power to the Authority, but an article defining the area over which the Authority may exercise the powers granted to it by the other provisions of the Charter.
(b) Article 6(c) as pointed out earlier, gives the power to borrow as a separate juridical personality (corporate body) within the limits of "law" so special parliamentary approval is required for every AVA loan, and does not give independent borrowing power to the AVA, Since the Charter itself states the requirement of law, getting the approval of Parliament for the same provisions serves no purpose.
(c) Article $6(e)$ does not give extra powers to the AVA, but just affirms that the AVA, as an agent of the government exercises the powers legally vested on the executive branch of the government, in co-operation with appropriate government ministries and public authorities. The power of granting concessions lies within the domain of the executive branch of the Government by its nature, and granting such power to the AVA does not need parliameatary approval.
(d) Finally, Article 7 of the Charter just delegates to the AVA the powers assigned to ministries and other public authorities by administrative law Again, assignment of power to ascertain land ownership ${ }^{47}$ and to administer all state-owned land ${ }^{48}$ in a given area is an act within the domain of the executive branch of

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## PREROGATIVE TO DETERMINE AGENCIES' POWERS

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

Therefore, the writer of this article does not see the legal basis for suggesting that these particular powers granted to the AVA should be confirmed and approved by Parliament.
2. The exceptional power granted to the General Manager of the Awash Valley Authority under Article 19(e) of the Charter overlaps with the powers, responsibilities and functions vested in the Board of Commissioners of the AVA under Article 13 of the Charter, unless qualified. That is to say, the Board by prior resolution should delegate its powers to the General Manager to act and give decisions on behalf of the Board in emergency situations envisaged in Article 19(e) of the Charter.
-2. The legal deficiencies pointed out in the first paragraph above may be rectified by re-enacting the same delegation of powers in the form of a proclamation with the approval of Parliament and the assent of the Emperor, as they are matters to be enacted in a basic law rather than in an executive law. The deficiency in the internal organization in the second paragraph, i.e. the inconsistency of the powers granted to the Board and the General Manager of the Awash Valley Authority, under Articles 13 and 19(e) respectively, may be remedied by making the language of Article 19(e) clearer, and by requiring prior authorization or later approval by the Board of the acts or decisions of the General Manager.

## 2. Constitutional authority

a) Article 27 of the Constitution

1. There is a basic discrepancy between the Amharic and English versions of the Article as demonstrated earlier.
2. The discrepancy is a result of bad translation rather than of legislative intent. Thus, the Amharic version should be complemented by the English version.
3. The nature of powers to be granted to administrative agencies by an order under Article 27 should deal only with the internal organization and the determination of duties and powers, which does not involve: (1) regulatory powers, (2) police powers, and (3) powers regulating matters of public finance which are explicitly or implicitly reserved for parliamentary approval.

## b) Other provisions

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

## B. Recommendations

1. As a rule, administrative agencies should be created by order - the principal legislation within the executive power - under Article 27 of the Revised Constitution.
[^24]The scope of such orders should be limited to internal organization of the administrative agencies to be created and to the ordinary powers and duties of such agencies, while the basic law, such as regulatory powers, police powers and powers regulating matters of public finance be enacted in the form of a proclamation or decree.
2. Whenever an order or a general notice is enacted, the constitutional authority should be cited so that courts can know under which article the order or the general notice is issued.
3. By requiring administrative agencies to submit before enactment their proposal of fees and charges to the Council of Ministers for approval, the executive branch of the government should fix at least the upper limit or the ceiling of the fees to be charged by administrative agencies from time to time or adopt the standard laid down in Article 3(10) of the Livestock and Meat Board Proclamation of 1964.
4. Even though Article 113 of the Revised Constitution does not require fees and charges to be fixed pursuant to legislation approved by Parliament, if the delegation of power to fix fees and charges be given initially in the basic law rather than in the executive law, public criticism would be stiffed in advance, and the rights of individuals would be safeguarded adequately.
5. The powers granted to the AVA under Articles $4(\mathrm{~h}), 6(\mathrm{~b}), 6(\mathrm{~d}), 6(\mathrm{~h}),{ }^{i} 10$, and 20 , should be re-enacted in the form of a proclamation pursuant to Articles 88-90 of the Revised Constitution, while the rest of the provisions of the Charter of the AVA may be re-enacted in the form of an order, with some clarification of the language.

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# LANGUAGE AND LAW IN ETHIOPIA 

By Fassil Abebe* and Stanley Z. Fisher**

The purpose of this article is twofold: first, to introduce our readers to the problems of legal terminology in Ethiopia's codes and to explain what the Faculty of Law has been attempting to achieve in this area; second, to give some specific examples, drawn from the procedural codes, of these language problems:

## I. The Language Problem: Background

From 1955 to 1965 Ethiopia enacted a series of modern legal codes predominantly based upon Western models. Some of the codes ${ }^{1}$ were drafted in English, translated into Amharic, enacted in Amharic by the Parliament, and then officially published in both language versions. Most, ${ }^{2}$ however, were drafted in French, then translated into Amharic and English (usually, it seems, by different translators), enacted in Amharic and published officially in Amharic, and English. In the bilingual situations, the Amharic versions are the authoritative ones, but the English versions presumably have some official status as well by virtue of their publication in the official government gazette. The tri-lingual situations are more complex, in that the (original) French versions have no official status, the Amharic versions are authoritative and the English versions, although not passed by the Parliament, are by virtue of official publication more authoritative than the original French versions.

In these circumstances it is not surprising that many special difficulties in interpretation of the codes should arise. Often the two (or three) language versions conflict with each other. ${ }^{3}$ We encounter three types of translation problems in the codes and other legal materials:

1. A single foreign legal term may be translated differently in various parts of the codes, etc. so that discrepant Amharic (or, where relevant, English) equivalents exist for terms in the "original" version. These we might call "equivalency discrepancies."
2. "Discrepancies" exist in the sense that legal or non-legal terms have been mis-translated or not translated at all-e.g. the original version is in the affirmative and the translation is in the negative. The Amharic version*of
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the Civil Code says a lease of an imovable may not be made for more than 50 years and the English says 60 years. These we might call "true discrepancies."
3. Legal terms in the original are mis-translated or translated literally in such a way that the Amharic version may fail to import the technical, intended meaning of the term in the original, e.g., "due process of law" is translated as "in accordance with law." These we might call "definitional discrepancies".

Where discrepancies exist it is problematic to decide whether the original but unofficial version should prevail over the frequently mistranslated but official version. These problems are magnified greatly by the fact that the authoritative, Amharic version, standing alone, often makes no sense to the reader. That is because the Amharic language was and is not adequate to express many of the foreign legal concepts which pervade the new codes. It was at one time suggested ${ }^{4}$ that before new codes were adopted a "Language Academy" be established to decide upon the Amharic terminology to be used, but this was never done. Therefore, the code translators were forced, when translating foreign legal concepts, to create new Amharic terminology - often inconsistently within particular codes or as between the various codes - or else to try and express sophisticated technical concepts with existing Amharic terms which could only approximately and/or with great awkwardness convey the intended meaning. These practices have led, many feel, to an alarming degree of chaos in the law. ${ }^{5}$

Such a serious problem cannot but affect the Empire's entire legal system adversely. It must introduce uncertainty into the law, and hinder the government's attempt to further modernise the legal structure. The codes are now still so "new" that, in fact, they are not yet in use in many courts of the country. For the fleeting present, some of those judges and advocates who use the codes can and do rely upon the English or French language versions. But probably $90 \%$ of Ethiopia's judges and advocates are not sufficiently fluent in either foreign language to get by in this way; as the new codes come gradually into extensive use, the Amharic versions will assume overwhelming importance. It is a matter of extreme urgency, therefore, to assure the existence of adequate Amharic legal terminology for use by the legal community in the very near future. Francophonic African countries can run their legal affairs in French; the former commonwealth countries in Africa can operate well in English. But Ethiopia, whose advocates, judges and litigants will continue to use Amharic rather than any foreign tongue, cannot simply "absorb" atien legal terms into Amharic; the language must be developed to express the foreign legal concepts of the codes without unnecessarily inconsistent and ambiguous usage.

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## LANGUAGE AND LAW IN ETHIOPIA

## II. The Lexicon Project: Aims and Progress to Date

In 1964 the Research and Publications Committee of the Faculty of Law, Haile Sellassie I University, decided that a high priority need of the Ethiopian legal community was for a lexicon of Amharic legal terms. Although ultimately a true dictionary of Amharic terms with legal definitions would be desirable, that goal has put aside for the immediate future in favour of the preliminary goal of a register of approved Amharic equivalents for the foreign (French and English) legal terms introduced by the codes. This task was therefore divided into two stages, each of independent value:

1. Compiling a register of existing Ambaric legal terminology as found in the laws of the Empire. This record of how foreign legal terms have so far been translated into Amharic is to be compiled by studying all of the new codes' provisions (there are approximately 7,000 ). The lexicon will be ultimately published in tri-lingual form for use by legislators, translators and the legal community in general. It will not only show the code equivalencies of all Amharic legal terms, with precise references to all the code articles in which each Amharic usage appears, but it will also provide the basis for an informed assessment of the "language crisis areas." These crisis areas exist mainly in the realm of "equivalency discrepancies," where a single foreign legal term has been translated into two or more different Amharic terms - resulting in an unnecessary and confusing multiplicity of Amharic equivalents, and also where a single Amharic term has been used to translate two or more distinct foreign legal terms. ${ }^{6}$ In the latter case the poverty of the Ambaric equivalents results in unnecessary and confusing ambiguity. Aware of these difficulties, the lexicon user will be in a position to choose the best existing Amharic equivalent, or, where appropriate, create needed new equivalents. Without any lexicon to refer to, he would at least have to make these choices in the dark, and risk unnecessarily proliferating Amharic terms because of his ignorance of the existing choices. The project has so far been concentrating its efforts upon the enormous task of compiling the lexicon of existing terminology described above.
2. Once the above task is completed, we foresee the possibility of a second stage, in which we would convene a Linguistic Commission, composed of Ge'ez and Amharic linguists, and government and academic lawyers and jurists, to review the existing Amharic terminology. Where terms had been unnecessarily proliferated in the codes, the Commission would choose the best Amharic equivalent for the foreign concept concerned. Where new Amharic terms were needed to translate foreign concepts because the existing terms were inadequate, the Commission would coin new equivalents. Where existing terms were found to be adequate and consistently employed, it would approve them. The Commission's work would culminate in an "approved" lexicon of Amharic legal terminology, which hopefully would not only guide usage in all future legislation and other Amharic legal activity, but would also encourage and assist in revision of the many linguistic discrepancies in the existing law.
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The work of such a commission has precedent in Tanzania, where a wellqualified group of volunteers sat for some years to produce approved Swahili legal terms. ${ }^{7}$ Since it is necessary to complete the first, recording stage of the Lexicon Project in Ethiopia before a commission's work can begin, it is premature at this time to solicit the government cooperation and sponsorship which a commission sitting later should have.

The Lexicon Project (stage I) began operation in 1965, financed by a nowexhausted Ford Foundation grant to the Faculty of Law, Haile Sellassie I University, for research and publication in general. Using student labour under close faculty supervision, the Project has already processed over 5,000 legal terms. ${ }^{8}$ These terms, recorded in triplicate, tri-lingual card drawers in the Law Faculty's library where the public may use them, have already proved valuable to stadent translators for the Journal of Ethiopian Law and other researchers into Ethiopian law. But, of course, the great bulk of the job remains to be done. Only 1,000 of the 7,000 provisions in the Ethiopian codes have been processed. ${ }^{9}$ Because of the difficulty and expense in finding workers who possess the necessary requirement legal training, and fluency in French as well as Amharic and English - we have been forced to neglect the major work in the trilingual codes, while we have almost completed the bi-lingual (English-Amharic) codes. Unfortunately the Faculty of Law was recently led by financial considerations to suspend work on the Project altogether, until sufficient funds to carry it forward can be found.

## III. Some Linguistic Problems in the Adjective Law Areas

By way of illustration, we would like to point out a few language problems arising mainly in the adjective law areas: criminal and civil procedure. Of course, since these are bi-lingual areas, having no French versions, ${ }^{10}$ the linguistic situation in these areas is bound to be much less complex than in the tri-lingual substantive
7. See A.B. Weston, "Law in Swahili - Problems in Developing the National Language," East Afr. L.J., vol. 1, no. 1 (March, 1966), p. 60; L. Harries, "Language and Law in Tanzania," J. Afr. L., vol. 10, no. 3 (Autumn, 1966), p. 164; A.B. Weston, "Language and Law in Tanzania," J. Afr. L., vol. 11, no. 1 (Spring. 1967), p. 63.
Prior to national independence all laws in Tanzania were enacted only in English. Therefore, unlike the case of Ethiopia, the Tanzania language commission started with a more or less "clean slate" to create Swahili legal terminology for future use. This would have been Ethiopia's position had linguistic work preceded codification in Amharic, but at this point Ethiopia must obviously begin with the job of descriptive recording before it can aspire to such normative work as was done in Tanzania.
For some comments on the complicated legal language problems in one of Ethiopia's neighbors, see P. Contini, "Integration of Legal Systems in the Somali Republic," Int'l Comparative L.J., vol. 16 (1967), pp. 1090-91.
8. The method employed by the Lexicon Project is tedious but not complex. The worker takes a code and goes through the original version systematically starting with the first page and proceeding to the last. Every legal term is selected, its equivalents are located in the translated versions, and the set of equivalents is registered on $5 "$ by 7 " index cards. Depending on whether the original term is English or French, duplicate or triplicate cards are prepared. There will ultimately be a triplicate card index of all legal terminology used in the Ethiopian codes.
9. So far the following have been completed: Criminal Procedure Code, all; Civil Procedure Code, Arts. 1-57; Civil Code, Arts. 1126-75 and Arts. 1675-1717; Revised Constitution, all.
10. Actually the Criminal Procedure Code was initially drafted in French by the Penal Code's drafter, Prof. Jean Graven, but that draft was largely supplanted by later, English-language drafts by Sir Charles Mathew, an English jurist.

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law codes. "Nevertheless, as we shall show, there are serious problems just in the English-Amharic translations.

We have already noted that one type of translation problem is the sort where a single foreign legal term is translated by different Ambaric terms in different code articles. Sometimes, however, the variation is attributable to the very nature of the Ambaric equivalent. Because Amharic legal concepts are quite loose in meaning, the translator has often resorted to a logical development of a verb to fit the definitional limits of the foreign term, or has combined several Ambaric words to describe in a phrase a concept which is expressed by a single foreign word. Inevitably the developed verb or the combination of words cannot be used uniformly in different code articles because a shade of difference denoted by the English word used in a different context cannot be achieved in the Amharic without changing the structure of the developed verb or the combination of words to fit the new meaning. Sometimes mere grammatical expediency militates for a change in the combination of words. One should not be disturbed by such discrepancies, because they are not confusing-the Amharic reader will see immediately the essentially similar meaning of seemingly discrepant Amharic equivalents. See, for example, the diverse Amharic combination of words used to translate the word "evidence" in Articles 258, 261, 265 and 129, Civil Procedure Code, and Articles 97, 147, and 204 Criminal Procedure Code. ${ }^{12}$

In other cases where a single foreign term having a single and definite méaning is translated by various Amharic terms, the difficulty in finding one Amharic term that can be used consistently to denote the foreign concept arises from the fact that the concept in question has been unknown to Ethiopian experience. Therefore, although the translator may have created an Amharic term in one area of the code with some satisfaction as regards its foreign conceptual boundaries, he finds that the Ambaric creation is not as versatile as its English equivalent and is rendered meaningless by a new context. See for example the diverse Amharic words used to translate the word "jurisdiction" in Articles 4, 44, 45, and 223, Criminal Procedure Code. ${ }^{13}$

Another prevalent problem concerns the cases where several foreign legal words are translated by a single Amharic term. This may not always be a serious problem, because for purposes of clarity in the law the subtle distinctions drawn by the foreign terms may not be useful and a single Amharic term may suffice to describe slightly different situations. This is the case with the English "release on bail" and "release on bond" which have been translated by an identical phrase:

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 other hand，there are cases where a single Amharic word or similar Amharic words are used to translate clearly distinct foreign legal terms．In such cases a distinction ought to be made in the Amharic since，as we shall see，the consequences of not doing so may prejudice a party to a proceeding，or may make the law unclear and difficult to apply．For example，there have been several cases in which the z courts＇decisions were not comprehensible because of the ambiguous character of the Amharic term used to announce the accused＇s dispostion．These cases have involved the use of imprecise Amharic terms for two distinct English terms：＂acquit＂and ＂discharge．＂＂Acquittal＂refers to a decision of court that the accused is not guilty as charged；it has the effect of preventing the institution of proceedings ，against him on the same charge in the future．Acquittal concludes the case except for appellate remedies．${ }^{15}$ When，on the other hand，a court＇discharges＂an accused，it has not decided his guilt or innocence of the crime charged，and the public prose－ cutor may later prosecute the accused on the same charge．${ }^{16}$ The Amharic version of the Criminal Procedure Code generally uses the verb＂amA中中 ：＂（melkek），literally， ＂to release＂or＂to let go＂for both English terms，although it often qualifies the verb with the adjective＂nz， $\mathbf{H o}$ ．＂（begizew），meaning＂temporarily，＂or＂0\％z：＂ （benetsa），meaning＂free，＂to indicate discharge and acquittal respectively．${ }^{17}$ But，at times＂onへ中就：＂（melkek）alone is used to translate＂discharge＂．${ }^{18}$ Since the termi－ nology is neither sufficiently precise nor consistently employed，many courts＇seem not to appreciate the distinction between the two concepts，which was probably not known to the traditional legal system．Thus in the case of Public Prosecutor v．Jada Elalo ${ }^{19}$ the trial court ruled that continuing to hold the accused for trial was unwarranted；as for disposition，the court said of the accused，＂n\＆＞PA：＂ （lekenewal），literally，＂we release him，＂without any indication as to whether this constituted an acquittal or a discharge．Obviously such ambiguity could have the unfortunate effect of leaving the accused and the prosecutor uncertain as to the status of the case．In another case，Public Prosecutor v．Berhane Gebresellassie，${ }^{20}$ the trial court closed the case and ordered the accused released from prison custody because of the prosecution＇s failure to present its witnesses；the disposition was
 azenal），literally，＂the accused should be released immediately．＂

Similar difficulty is encountered with the Amharic word＂hn：＂（kis），literally， ＂accusation，＂which is used to translate four English terms although in each case

14．Art．28（1），63（1），Crim．Pro．C．
15．See Art．130（2）（b），Crim．Pro．C．
16．See，for example，Art．122（3），（5），Crim．Pro．C．

 （kekitat netsa mewtat）literally，＂to be free from punishment．＂＂Discharge＂is translated as
 184，185（2）（a），Crim．Pro．C．
18．Arts．122，158，Crim．Pro．C．In Pen．C．Art．16（2）＂discharge＂is rendered as＂thht a 0 ong＝ anv＂＇：＂（kekis witch mehon），literally，＂being outside accusation．＂
19．（High C．，Addis Ababa，1965），Crim．Case No．257－54，unpublished，Library，Faculty of Law，H．S．I．U．
20．（High C．，Addis Ababa，1966），Crim．Case No．104－59，unpublished，Library，Faculty of Law，HSIU．

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there is sometimes an addition to the word. The four words are "prosecution", "charge" "complaint" and "accusation." 21 "Complaint" is at times translated by
 literally, "a notice of accusation" and elsewhere simply by "hin :" (kis). "Accusa-
 itterally, "an accusation of crime." "Charge" and "prosecution" are both translated, simply by "fnin :" (kis). ${ }^{27}$ One can readily imagine the ambiguity which can arise from the use of "hn $:$ " (kis) by a court, or in a pleading, especially in trying to distinguish complaint from accusation, and either of those from the charge. It is also sometimes difficult to tell, from reading a case report, whether the injured party appeared as complainant or private prosecutor.

## Conclusion

Other linguistic problems in the adjective law codes could easily be cited, ${ }^{28}$ but our intention has been only to give a few illustrations of the "equivalency discrepancies" which the Lexicon Project files reveal. As pointed out above, the major part of the task - to create an adequate, clear and uniform Ambaric legal terminology - is still before us. Hopefully, this article will help stimulate our brethren of the Ethiopian legal profession to support an early resumption of the work which has been started.

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# PUBLIC SERVANTS' RIGHT TO ORGANIZE 

William H. Ewing*

Introduction
Article 47 of the Revised Constitution of 1955 provides, "Every Ethiopian subject, in accordance with the law, may live engaging in any occupation; he has the right to form any sort of occupational association and to be a methber of any association." ${ }^{1}$ The question of the extent to which the law restricts goverument employees' right to form or join labour-union-like associations has been in the news recently.

The Central Personnel Agency and Public Service Order of 1961, as amended, and the Legal Notice issued thereunder, ${ }^{2}$ provide that all persons employed by the government or by independent public authorities are "public servants" ${ }^{3}$ except that the Public Service Commissioners, with the approval of the Council of Ministers, are empowered to exclude certain employees from the coverage of this term. ${ }^{4}$ However, for discussion of the above issue, it is useful to consider separately the two categories into which the Civil Code and the Labour Relations Proclamation divide government employees. These categories are: (1) those government employees who are employed in the ordinary administration of the government, and (2) those who are employed by an "industrial, commercial or other profit-making enterprise administered by the Government or its administrative or technical departments." ${ }^{5}$

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## Employees of Government-Run, Profit-Making Enterprises

The Labour Relations Proclamation explicitly grants non-managerial employees in the latter category the right to form labour unions which have the right to engage in collective bargaining. ${ }^{6}$ It has been argued, however, that the scope of these provisions should be restricted to employees of enterprises explicitly excluded from the coverage of the Order and Legal Notice by the Public Service Commis- ${ }^{-1}$ : sioners. ${ }^{7}$ Two reasons have been or may be advanced for this position. First, it may be suggested that the drafters of the Proclamation intended the definition of "employees" covered by the Proclamation to have only this narrow scope, or that it should be so construed in order to avoid an overlapping of jurisdiction between the Central Personnel Agency and the Ministry of National Community Development and Social Affairs. The problem with this argument is that the language used contains no hint of such a restriction. The resemblance between the language of the Proclamation and that of the Civil Code, which was drafted independently and before the Central Personnel Agency came into existence, suggests that the drafters of the Proclamation were thinking of the Civil Code rather than of the Central Personnel Agency and Public Service Order. There is no suggestion in either the Proclamation or the Order that the Public Service Commissioners should have the power to determine which employees are entitled to the rights granted by the Proclamation. On the contrary, the Commissioners' jurisdiction is to decide which employees of the government come within the coverage of the Order and Legal Notice. If overlapping jurisdiction is a problem, the Commissioners can solve it simply by excluding all non-managerial employees of government-run, profit-making enterprises from the coverage of the Order and Legal Notice.

A second argument is that the Order and Legal Notice issued under it must prevail over any conflicting provisions of the Proclamation because the Order derives its authority from Article 27 of the Revised Constitution (often called the Order Power Article), which provides:

The Emperor determines the organisation, powers and duties of all Ministries, executive departments and the administrations of the Government and appoints, promotes, transfers, suspends and dismisses the officials of the same.
Persons who deny the applicability of the Proclamation to public servants of any sort argue that this Article entrusts regulation of public servants and their employ-ment-related activities solely to the Emperor, thus removing them from the possibility of regulation by proclamation. ${ }^{8}$
6. Cited above at note 5, Arts. 2 (f), 20 (a), 23.
7. See Yilma Hailu, Employees Protected by and Subject to the Labour Relations Proclamation of 1963 (1968, unpublished, Archives, Faculty of Law, Haile Sellassie I University), pp. 23-26.
8. The Preamble to the Order also cites Article 66 of the Revised Constitution, which provides: "The appointment, promotion, transfer, suspension, retirement, dismissal and discipline of all other [except for Ministers and Vice Ministers] Government officials and employees shall be governed by regulations made by the Council of Ministers and approved and proclaimed by the Emperor."
Although this Article might also seem to be relevant, especially because it is cited in the Preamble, the Order itself, unlike many other Orders, does not state that the Council of Ministers had any part in its preparation. While Article 1 of the Legal Notice states that it was promulgated with the approval of the Council of Ministers, the Legal Notice does

The application of this argument to the present problem is fallacious. The Emperor and the Council of Ministers participate in the process of enacting proclamations. No Proclamation can become law unless and until it is approved by the Emperor. The Labour Relations Proclamation was first promulgated as a decree by the Emperor himself ${ }^{9}$ and later, after minor Parliamentary amendments, again approved by the Emperor and promulgated as a proclamation. The provisions speci-* fically allowing employees of government-run, profit-making enterprises to form labour unions appear in both the Decree and the Proclamation. Thus, the Emperor twice approved these provisions. Because he promulgated the Labour Relations Proclamation more recently than he promulgated the Order and the Public Service Commissioners promulgated the Legal Notice, ${ }^{10}$ he must bave decided that the provisions of the Proclamation should apply to certain public servants and prevail over any conflicting provisions of the Order and Legal Notice issued thereunder. Even if the Emperor has exclusive power to regulate public servants' right of association, the more-recently-enacted evidence of his intent (i.e., the Proclamation) should prevail over earlier legislation. ${ }^{11}$

Even if one were to reach the unlikely conclusion that the Order and Legal Notice should prevail over the Proclamation in the event of conflict, he would not find any conflict on the present issue. As is demonstrated below, neither the
not appear to have been approved and was not proclaimed by the Emperor. A somewhat strained argument may be made that the citation of Article 66 in the Preamble to the Orders shows that the Council "made" the provisions of the Order or that the participation of the Emperor and the Council of Ministers in the combined legislation of Order and Legal Notice is sufficient to satisfy Article 66. Even if one of these arguments is successful, the reasons adduced in the text for rejecting the relevance of Article 27 to the present problem apply equally to Article 66.
9. Decree No. 49,1962 , Neg. Gaz., year 21, no. 18.
10. . The chronological order of promulgation was: Order, Decree, amending Order, Legal Notice, Proclamation. See dates and issues of Negarit Gazeta cited in notes 2, 5 and 9 above.
11. This conclusion follows from the universal rule of statutory construction leges posteriores priores contrarias abrogant, which prescribes that, where two provisions of law conflict, the later one prevails over the former. See H. Bekaert, Introduction à l'étude du droit (1964) pp. 246-247; S. Edgar, Craies on Statute Law (6th ed. 1963) pp. 363-381; Halsbury's Laws of England (3rd ed. 1958), vol. 36, Statutes, secs. 709-713; M. Planiol and G. Ripert, Treatise on the Civil Law (12th ed., 1939) (translation, Louisiana State L. Inst., 1959), vol. 1, pt. 1, nos. 223, 228; Krzeczunowicz, "Statutory Interpretation in Ethiopia", J. Eth. L., vol. 1 (1964), pp. 321-323; Alemante Gebre Sellassie The Effect of the Penal Code on the Prisons Proclamation of 1944 and the Resulting State of the Law (1968, unpublished, Archives, Faculty of Law, Haile Sellassie I University), pp. 10-18. Another rule of statutory construction supports the above conclusion in the present circumstances. This rule, generalia specialibus non derogant, says that, if two statutory provisions conflict, the more specific prevails over the more general. See Edgar, Halsbury, Planiol and Krzeczunowicz, cited above. Because the provision of the Proclamation deal specifically with certain types of public servants and their right to form and join labour unions, whereas the provisions of the Order and Legal Notice deal with public servants generally and do not refer specifically to labour unions, the provisions of the Proclamation prevail over those of the Order and Legal Notice. A final argument to support this conclusion is that Article 27 of the Revised Constitution deals only with the internal organization of the government, and the relation of the various parts of the government to one another. See Aberra Jembere, The Prerogative of the Emperor to Determine Powers of Administrative Agencies (appearing in this issue of the Journal of Ethiopian Law, at page 521), pp. 527-528. It is doubtful that this Article gives the Emperor, acting alone, the power to regulate the exercise of constitutionally guaranteed civil rights (such as the right of association), even by public servants. The present comment does not deal with the knotty question of the extent to which the Emperor or even Parliament may constitutionally restrict the right of association granted by Article 47.

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Order nor the Legal Notice prohibits in any way the formation of labour unions by public servants.

Thus, the laws of Ethiopia, in particular the Labour Relations Proclamation, clearly provide for the formation of labour unions by the non-managerial employees of government-run, profit-making enterprises. No law provides otherwise; even is, the Central Personnel Agency and Public Service Order and the Legal Notice issued thereunder did so provide, they would be deemed to be superseded by the Proclamation, which was approved and promulgated more recently by the Emperor.

## Public Servants Generally

Other government employees are not covered by the provisions of the Jabour Relations Proclamation. As R.C. Means has pointed out in an earlier issiue of this Journal, the effect of this exclusion is that they cannot form a "union" as that term is defined in the Labour Relations Proclamation, ${ }^{12}$ "their employer, the government, is under no legal duty to bargain with them, and the Labour Relations Board bas no jurisdiction over their disputes with the government." ${ }^{13}$

The exclusion of most public servants from the coverage of the Labour Relations Proclamation does not, however, by itself prohibit them from forming unionlike associations. There is no indication that the Proclamation was intended to be the only law regulating all types of associations for furthering the interests of workers. Rather, the Proclamation deals with those associations, called "unions", which have the legal rights to strike and to require employers to bargain collectively with, them. Because, as shown above, most associations of public servants do not have these rights, it would have been awkward to include them within the coverage of the Proclamation. Thus, the drafters of the Proclamation may well have concluded that associations of ordinary public servants should be covered by other legislation, and interested persons must search other laws to find the implementation and regulation of ordinary public servants' right of association.

The following survey of the relevant legislation shows that no law clearly prohibits the formation of union-like associations by public servants. Although some provisions of the previously mentioned Legal Notice might at first glance be understood to allow public servants' superiors to deny them the right to participate in such an organization, a closer analysis of those provisions indicates the contrary to be the intent of the legislator.

As will be shown, this interpretation of the Legal Notice is bolstered not only by consideration of the special protection given to occupational associations by Revised Constitution Article 47 but also by another element described in Article 122 of the Constitution as "supreme law of the Empire," an International Labour Organization Convention which Ethiopia subsequently ratified.

Aside from the Constitution, the only provisions of Ethiopia's domestic laws directly relevant to this question are found in the Legal Notice issued under the Central Personnel Agency and Public Service Order; in Title III, Chapter 2 of the

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## PUBLIC SERVANTS' RIGHT TO ORGANIZE

Civil Code; and in the Associations Registration Regulations issued in 1966 under the Code. ${ }^{14}$ Article 81 of the Legal Notice provides, in relevant part, as follows:
(2) No Public Servant shall undertake any outside activity which would in any way tend to impair his usefulness as representative of the Public Service or which might, in any way, conflict with his duties or be inconsis ${ }_{5}$, tent with the position as a Public Servant.
(3) No Public Servant shall take up or accept part in professional activities of any kind with or without remuneration besides the performance of his official duties without prior written permission of the Head of the Ministry, Chartered Government Agency or other Public Authority. Nothing shall prevent a Public Servant from being a member of professional associations.
The Civil Code and regulations issued thereunder provide for the formation of associations, including "trade unions" not covered by special laws, by registration with the Office of Associations in the Ministry of Interior. ${ }^{15}$ Such associations are entitled to be registered unless contrary to law or morality. ${ }^{16}$ It is inconceivable that an association could be immoral without tending to impair a public servant's usefulness or conflicting with his duties or being inconsistent with his position as a public servant. Therefore, the question may be solved in terms of Article 81 (2) and (3) of the Order, the only provisions of law which such an association might be argued to violate.

Any analysis of these provisions must take into account their two aspects: on the one hand, they prohibit certain activities; on the other hand, Subarticle (3) emphatically guarantees that "nothing shall prevent a Public Servant from being a member of professional associations." (Emphasis added.) For clarity of analysis, it is best to start with the second aspect.

Two initial questions arise with respect to the last sentence of Subarticle (3). First, does it mean only that public servants can be ordinary members of professional associations, but that their superiors may deny them permisison to play a more active role, for instance as officers of associations? Second, what are "professional associations"? In answering these questions, it is important to keep in mind
14. Leg. Not. No. 321, Neg. Gaz., year 26 , no. 1.
15. Civ. C., Arts. 406, 409, 413, 468, 469; Associations Registration Regulations, 1966, cited above at note 14, Arts. 4-9.
16. The Code itself says nothing about the possibility of denying registration, so long as all the formalities are complied with. It does, however, provide that an association may be dissolved by the Office of Associations in the Ministry of Interior if its object or activities are contrary to law or morality. Civ. C. Art. 462. As the drafters of the regulations wisely concluded, this provision must allow the Office to refuse registration to an association with such prohibited purposes. It would be fruitless to require the Office to register an association and then to dissolve it immediately. Therefore, the regulations provide that an association will not be registered if its objectives are contrary to law or morality. Associations Registration Regulations, 1966, cited above at note 14, Art. 8 (1) (b). These regulations also allow the Office of Associations to deny registration on the ground that "the purposes of the intended association, are against national unity or interest." Id., Art. 9 (1) (c). If this vague provision adds anything to Article 8 (1) (b), it goes beyond the provisions of the Civil Code and is ultra vires the regulatory power granted to the Minister of Interior by Article 479 of the Code. See Essayas Haile Mariam, Legality of Laws Dealing with Associations in Ethiopia (1968, unpublished, Archives, Faculty of Law, Haile Sellassie I University), pp. 81-83.

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the breadth of the guarantee contained in Article 47 of the Revised Constitution, assuring to "every. Ethiopian subject" the right "to form any sort of occupational association and to be a member of any association." (Emphasis added.) It seems likely that the emphatic last sentence of Subarticle (3) was inserted to make clear that public servants' rights under Article 47 were not to be abrogated. Even if this was not in the mind of the legislator, his regulation should not be interpreted to restrict or deny such a clearly stated constitutional guarantee, unless such an interpretation is inevitable and clearly intended. Since the regulation can reasonably be interpreted consistently with Article 47, as is shown below, it is unnecessary here to consider the further question whether or not such a restriction or denial. by a legal notice promulgated under an Article 27 order would violate the Constitution.

The first question above should not be answered by requiring public servants to subordinate their desire to be founders or officers of associations to the discretion of their superiors. Not only does Article 47 explicitly guarantee the right to "form". associations, but also, because of the present state of development of the Empire and the predominant role of the government, there are a number of professions, for instance journalism, almost all of whose members are public servants. To place officership of associations of such employees at the whim of certain goverment officials by requiring their permission before a public servant could become an officer would effectively frustrate the formation of such associations, or at least would greatly limit them. Furthermore, membership without eligibility to become an officer is not full membership. Thus, the narrow interpretation would frustrate the purpose of the last sentence of Subarticle (3) by effectively preventing public servants from becoming full members of those associations. Such an interpretation would be unreasonable. Therefore, the last sentence of Subarticle (3) must authorize public servants to be officers as well as ordinary members of "professional associations." ${ }^{17}$

The question of the meaning of "professional associations" can be further broken down into two parts. First, does it mean only associations of persons generally regarded as belonging to one of the "learned professions"? Second, what kinds of activities can such "associations" undertake? In particular, can they undertake activities for the purpose of gaining higher wages and better working conditions for their members? The answer to the first question must be negative: "professional associations" must be taken to include occupational associations of persons other than those who are members of "learned professions." From the time of Emperor Menelik's Proclamation of 17 th Ter $1900,{ }^{18}$ adjuring the people not to insult these who engage in manual labour and providing punishment for such insults, the Ethiopian government has been dedicated to the proposition that no occupation is superior to another. This principle is ensbrined in Article 38 of the Revised Constitution of 1955: "There shall be no discrimination amongst Ethiopian
17. The first sentence of Subarticle (3) may be taken to require written permission of the designated superiors of the public servant even for activities which are guaranteed by the second sentence. Because such a requirement would necessitate useless paperwork and incursion on the time of the busy men designated, however, the first sentence should be interpreted to require written permission only for activities which do not fall within the guarantee of the second sentence.
18. J. Paul \& C. Clapham, Ethiopian Constitutional Development: A Sourcebook, Vol. I (1967), p. 309.

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subjects with respect to the enjoyment of all civil rights." Article 47 makes the right of association in connection with employment a civil right. To allow lawyers or journalists to form associations and to deny this right to electricians or messengers would contravene Article 38 as well as the term "every Ethiopian subject" which introduces Article 47. Therefore, the word "professional" in Article 81(3) of the Legal Notice must not be interpreted to limit the associations authorized ${ }^{n}$, thereby to associations of members of any particular occupations.

What, then, are the types of associations which that sentence contemplates? They must be associations of people with common interests related to thei employment. ${ }^{19}$ The purpose of such associations the world over are to discuss matters of mutual interest, to promote higher standards in their fields, and to advance the interests of their members in relation to their employment. Such associations in all countries commonly engage in seeking by legal means to improve the labour conditions of their members. Considering this fact as well as the breadth of the constitutional protection of "any sort of occupational association,"" it would be extraordinary if the term "professional associations" was used in this Legal Notice to mean some more limited form of association. The more limited interpretation could be justified only if other provisions of law required it. As has been pointed out, the only relevant provisions of domestic law are Subarticles (2) and (3) of Article 81, which are quoted above. Since any employee has an interest in improving his own labour conditions, his membership or even officership in an organization dedicated to that end would create no conflict other than whatever conflict is already implicit in the employer-employee relationship. So long as he did not engage in association activities, as opposed to official duties, during his regular working hours, he would not violate Article 81 or any other article of the Legal Notice. The only activities of such an association which might cause a violation of other provisions of the Legal Notice are strikes and other concerted refusals to work. Such activities are separately and explicitly prohibited by Article 83. ${ }^{20}$ So long as the association was willing to recognize the limitation on its activities contained in Article 83, there is no reason under the law why public servants should not be allowed to form and join an association which would have, among its other purposes, the goal of attempting to improve the labour conditions of its members.

It may be objected that this interpretation renders useless the first sentence of Article 81 (3), which prohibits public servants from engaging in "professional activities" without permission of the head of their ministry or agency. This objection would not be valid, for the interpretation advanced merely excludes activities connected with professional associations from the general term 'professional activities" in the first sentence on the ground that the second sentence shows that the first sentence was not intended to apply to association-related activity. The first sentence still prohibits public servants from engaging in other professional activities-for instance, it prohibits lawyer public servants from taking cases for private clientswithout permission of their superiors.
19. The restriction to associations of people with common interests related to their employment would seem to be required by the Legal Notice's term "professional association," as interpreted above at note 19 , and by the Constitution's term "occupational association."
20. See generally Means, cited above at note 12. As Means points out, even this provision was probably repealed by the Proclamation insofar as it purports to apply to employees of govern-ment-run, profit-making enterprises. $I d$., p. 169. A public servant who strikes "in breach of his professional or statutory obligations" may also be penally liable. Pen. C., Art. 413.

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Another objection which may be posed is the argument that a union-like association without the right to strike is useless, and therefore the Order and Legal Notice should not be construed to authorize such associations. However, such an association could perform a number of useful functions for its members and for the government. For instance, by uniting a significant number of persons for the the purpose of presenting a petition to the Emperor under Article 63 of the Revised Constitution, it could render such a petition more persuasive. Moreover, by furnishing a vehicle for the pooling of information held by a number of public servants, it could discover inequities in the working conditions of its various members and concentrate attention on specific instances of unsatisfactory working conditions. By bringing this information to the attention of supervisors and the Central Personnel Agency, the association could contribute to the efficiency of the public service.

This interpretation of the law today is supported-indeed required-by the International Labour Organization Convention No. 87, the Convention Concerning Freedom of Association and Protection of the Right to Organize. ${ }^{21}$ Ethiopia's ratification of this Convention was registered with the ILO on June 4, 1963.22 Thus, Ethiopia is a party to the Convention, and, pursuant to Article 122 of the Revised Constitution of Ethiopia, the Convention is part of the "supreme law of the Empire." Any legislation inconsistent with it is "rull and void." Even if the Legal Notice or other laws could previously have been interpreted to have prohibited public servants from forming or being members of labour-union-like organizations, those laws would necessarily be modified by the subsequent adoption of new provisions of supreme law. This conclusion follows a fortiori from the discussion of the Labour Relations Proclamation, above. Thus, if Convention No. 87 requires that public servants be allowed to form and join union-like associations, then other laws should not be interpreted to prohibit such organizations. If they previously had that meaning, they would be impliedly amended by the subsequent ratification of the Convention; otherwise they would be null and void.

The Convention provides that "workers ..., without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing without previous authorization." ${ }^{23}$ The term "organization" is defined to include "any, organization of workers ... for furthering and defending their interests ..... ${ }^{24}$ Further, the Convention provides that such organizations shall have the right to formulate their own programmes without interference from public authorities. ${ }^{25}$ Article 8 of the Convention says, "In exercising the rights provided for in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land," but it further provides, "The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention."

There is no doubt that the term "workers" includes those whose work is public service as government employees. In fact, the explanatory report which was pre-

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## PUBLIC SERVANTS' RIGHT TO ORGANIZE

pared by the competent committee of the International Labour Conference and which accompanied the Convention when it was submitted for adoption by the Conference explicitly stresses the fact that the Convention guarantees freedom of association to public servants equally with other workers. ${ }^{26}$

Thus, Convention No. 87 of the International Labour Organization, 35 part of the "supreme law" of Ethiopia, guarantees to Ethiopian public servants \}except for members of the police and armed forces, who are excepted from the Convention's guarantees by Article 9 thereof) as well as to other Ethiopian workers, full rights to form organizations "for furthering and defending their interests" by legal means. Persons to whom this right is denied have the right not only to petition the Emperor under Article 63 of the Revised Constitution or to bring suit in court under Articles 62 and 110, but also to complain to the $\mathbf{X L O}^{27}$ through a workers' association. If it determines that a member state is failing to observe a Convention which the state has ratified, the ILO has the power to attempt to secure compliance. ${ }^{28}$

## Conclusion

A study of the ordinary laws of Ethiopia, both independently and in the light of the provisions of "supreme law" contained in the Revised Consiitution and ILO Convention No. 87, reveals that public servants have the right to form i union-type associations. For public servants employed by government-run, profit-making enterprises, this right and the means for its fulfilment are clearly given by the Labour Relations Proclamation. Such employees have the right to have the Minister of National Community Development and Social Affairs register any unions they may form in compliance with the provisions of the Proclamation. Other public servants are not prohibited from forming union-type associations. In fact, ILO Convention No. 87 gives all workers except members of the police and armed forces the right to form such organizations. These workers may take advantage of that right by registration of their associations with the Ministry of Interior in accordance with the provisions of the Civil Code. However, unlike the employees of profitmaking enterprises, the ordinary public servants have no legal right to compel their employer (the government) to bargain collectively with their organization. They must rely on the goodwill of responsible members of the government or on the power of enlightened public opinion to bring about serious consideration of the positions taken by their organizations.

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## Corrigenda

5. Footnote 43 on page 537 actually refers to note 40 .
6. Footnote 46 on page 542 actually refers to note 39 .

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[^11]:    * This study was originally submitted as a research paper in a senior seminar of the Facuity of Law Hailes Sellassie I University. It has been re-arranged for publication in the Journal of Ethiopian Law.

[^12]:    17. The Imperial Board of Telecommunications of Ethiopia Proclamation, 1952, Proclamation No. 131, Neg. Gaz-, year 12, no. 5.
    18. Scrap Iron Board Charter (as amended by General Notice No. 268 of 1960) 1953, General Notice No. 168, Neg. Gaz., year 13, no. 4.
    19. Charter of the Haile Sellassie I University, 1961, General Notice No. 284, Neg. Gaz., year 20, no. 8.
[^13]:    20. Charter of the Haile Sellassie I Foundation, 1959, General Notice No. 253 (as amended by General Notice No. 261 of 1960) Neg. Gaz., year 18, no. 11.
    21. R.A. Sedler, "The Chilot Jurisdiction of the Emperor of Ethiopia: A Legal Analysis in Historical and Comparative Perspective," Journal of African Law, vol. 8, no. 2 (1964), p. 756.
    22. The Administrative Court in the Central Personnel Agency was established under Art. 27 of the Revised Constitution, rather than Art. 109 of the Revised Constitution.
    23. Post Office Proclamation, 1966, Proclamation No. 240, Neg. Gaz., year 25, no. 22.
    24. Civil Aviation Decree, 1962, Decree No. 48, Neg. Gaz., year 21, no. 17, later approved by Notice of Approval No. 8, Neg. Gaz., year 22, no. 9.
    25. Creation of the Trustees of the Menelik II Memorial Building Fund and Trinity Monastery Charter, 1957, General Notice No. 229 (as amended by Gen. No. 263 of 1960) Neg. Gaz.. year 17, no. 5.
    26. Church Administration Order, 1967, Order No. 48, Neg. Gaz., year 26, no. 9.
    27. The Imperial Territorial Army Order, 1958, Order No. 21, Neg. Gaz., year 18, no. 2.
[^14]:    28. Kenneth Redden, The Law Making Process in Ethiopia, 1966, Addis Ababa, pp. 6-7.
    29. An order, even though it is a primary law on its own merit, i.e. as the principal form of executive law, is subordinate to a proclamation promulgated pursuant to the provisions of Articles 88,89 or 90 , or to a decree enacted under Art. 92 of the Revised Constitution. Incidentally, no reference is made in the Amharic version of the supremacy clause of the Revised Constitution, Art. 122, (again due to bad translation) to the form of law known as "order," even though it is enumerated in Art. 88 as among the laws required to be published in the Negarit Gazeta.
[^15]:    30. In fact the word "ministers" is used. It seems that this is a misprint.
[^16]:    31. E.S. Corwin, The President (Office and Powers, 1787-1957) (4th ed. 1957) New York University Press, New York, p. 393.
[^17]:    32. Establishment of Negarit Gazeta Proclamation, 1942, Art. 2(a) Proclamation No. 1, Neg. Gaz., year 1, no. 1.
    33. The Civil Code gives status of corporate body to private associations formed and registered in accordance with Articles $404-482$ inclusive.
    34. There is evidence that at the time that the Charter was in preparation the principal draftsman pointed out that certain of the enumerated powers of the AVA could only be granted by Proclamation.
[^18]:    36. The words "use" and "used" are employed in Art. 5(b) of the Chapter instead of "sue" and "sued". This is certainly a misprint.
    37. R.J.H. Pogucki, Preliminary Analysis of the Charter of the AVA, 1967 (unpublished) p.4.
[^19]:    39. The distinction between the public and private domain of the State is pointed out by Russell S. Berman in "National Resources: State Ownership and Control Based on Article 130 of the Revised Constitution," J. Eth. L., vol. III, no. 2 (1966) p. 553.
[^20]:    40. Livestock and Meat Board Proclamation, 1964, Art. 2 (3), Proclamation No. 212, Neg. Gaz., year 23, no. 13.
    41. Ethiopian Antiquities Administration Order, 1966, Art. 4 (6), Order 45, Neg. Gaz. year 25 no. 17.
    42. Paul and Clapham, Ethiopian Constitutional Development Vol. II 1969, Addis Ababa, p. 453.
    43. Livestock and Meat Board Proclamation, cited above at note 39, Art. 3 (10).
[^21]:    44. It seems that the drafter used the term "Board of Directors" in this Article by oversight, as he repeatedly used the term "Board of Commissioners" in Articles 10,13 and 16.
[^22]:    45. Budget Proclamation, 1959 (E.C.), 1966, Capital Expenditure Head 4 (5), Proclamation No. 239, Neg. Gaz., year 25, no. 19.
[^23]:    46. Berman, work cited above at note 38.
    47. Even though the rules relating to property and mortgage provided in Articles 1553-1646 of the Civil Code are provisionally suspended by Art. 3363 of the Civil Code, the duty to ascertain Land ownership and register the same is assigned to the Ministry of Agriculture by Art. 1554 of the Civil Code. The purpose of Art. 7 of the Charter seems to indicate that the AVA is the keeper of registers of immovable property within its jurisdiction as provided in Art. 1553 of the Civil Code, when Title X of the same becomes applicable; and until then to carry out as stipulated in Art. 3364 of the Civil Code the customary rules relating to the formalities to be complied as to the transfer or extinction of the ownership of immovable property as zan agent for other government ministries and public authorities.
    48. The Ministry of Land Reform and Administration is given power to administer all government lands, except insofar as specific power theerfore has been legally delegated to another ministry or public authority, similarly by an order. See Ministers (Definition of Powers) (Amendment No. 2) Order, 1966, Art. 18 (c), Order No. 46, Neg. Gaz., year 25, no. 23.
[^24]:    49. Ibid., Art. 18 ( c - (h) of the Order assigns to the Ministry of Land Reform and Adm nistration the duties to administer, dispose of and distribute government lands; to ensure the establishment and maintenance of registers of land; and to take measures to expedite the settlement of all claims relating to ownership of land.
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[^29]:    * Fourth year student, Law Faculty, Haile Sellassie I University.
    ** Associate Professor of Law, Boston University, Boston, Mass.; Assistant Professor of Law, Haile Sellassie I University, 1966-68.

    1. i.e., The Criminal Procedure and Civil Procedure Codes. The Revised Constitution was also originally drafted in English, and the draft evidence code now under consideration is reportedly also in English. It is noteworthy that these constitutional and adjectival areas of the law, drafted in English, are predominantly common law influenced, whereas the substantive codes, drafted originally in French, are predominantly civil law influenced.
    2. They are the Commercial, Civil, Penal, and Maritime Codes.
    3. See G. Krzeczunowicz, "Ethiopian Legal Education," J. Eth. Studies, vol. 1, no. 1 (Jan., 1963), pp. 69-70. His examination of the Civil Code's French-English mistranslations prompted Professor Krzeczunowicz to remark, "The legal translators involved should drop the law and try fiction." Id., at n. 12.
[^30]:    4. By Like-Maquas Tadesse Negash, former Vice-Minister of Justice. His unpublished memorandum, A Project for the Improvement of the Judiciary, dated July 12, 1957 in Archives, Faculty of Law, H.S.I.U., stated p. 30 :
    "Making of Codes ... is a long term object and should be pursued vigorously, but alongside it an Academy of Language must be established to ascertain and decide upon all legal terminology to be used in such codes."
    5. See Krzeczunowicz, cited above at note 3, passim.
[^31]:    6. The two other types of translation problems we have described - "true discrepancies" and "definitional discrepancies" are not direct concerns of the Project. However, the project director has attempted to collect and record such information about these discrepancies as colleagues have been willing to pass on, in the hope that some day such information may be put to use by academics, parliamentarians, etc.
[^32]:    11. For an example of some French-English-Amharic translation difficulties, see w.L. Church, "A Commentary on the Law of Agency-Representation in Ethiopia," J. Eth. L., vol. 3(1966), p. 314 (Appendix).
     Arts. 42, 98, Civ. Pro. C. use "ap $\angle \bar{s} \mathrm{~s}$ " (mereja), literally, "information"; Art. 305, Civ.
    
     "being a witness".
     yalew fird bet), literally, "the court with the right to decide the case;" Art. 4, Crim. Pro. C. uses
     uses " $\boldsymbol{\Lambda} A \boldsymbol{T}\rangle$ " " (siltan), literally, "power".
[^33]:    21. For the distinction between "complaint" and "accusation", see P. Graven, "Prosecuting Criminal Offences Punishable Only Upon Private Complaint," J. Eth. L., vol. 2(1965), p. 121, at n . 1.
    22. Arts. 28(1), 32(2) (b), 98(1) (a), 176(3), 150, 151 Crim. Pro. C.; Arts. 216-17 Pen. C.
    23. Arts. 13, 14(1), 15, 16, 23, 27(1), 44(1), (2), 151, Crim. Pro. C.; Arts. 8, 14(2), 19(1) (a), 218, 219, Pen. C.
    24. Art. 13, Crim. Pro. C., Arts. 216, 220-22, Pen. C. In Pen. C., Art. 8, it is also translated
    
    25. Art. 217, Pen. C.
    26. Art. 14, Crim. Pro. C.
    27. Arts. $42(1)$ (c), 108, Crim. Pro. C.; Art. 721, Pen. C.
    28. For example, the use o the Amharic term "Phgosif: In :" (yemnet kal), literally, "word of belief," to signify both "confession" and "plea of guilty," two quite distinct concepts in the Criminal Procedure Code.
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[^43]:    * Lecturer, Faculty of Law, Haile Sellassie I University. I am indebted to Dr. Syoum Gebregziabher, Head of the Department of Public Administration, Haile Sellassie I University and to Ato Emmanuel Negassa, student in the Faculty of Law, for a number of fruitful observations on a draft of this comment.

    1. The version of Article 47 given in text is a new translation of the Amharic version. The English version says, "Every Ethiopian subject has the right to engage in any occupation and, to that end, to form or join associations, in accordance with the law." The more accurate version of the Amharic is used in the text, because Article 125 of the Revised Constitution says, "The official language of the Empire is Amharic." Gratitude is due to Ato Fasil Nahum, Assistant Lecturer in the Faculty of Law, for pointing out this disparity and providing the new translation.
    2. Order No. 23, Neg. Gaz., year 21, no. 3, as amended by the Central Personnel Agency and Public Service (Amendment) Order, 1962, Order No. 28, Neg. Gaz., year 22, no. 6 (Order No. 23 as amended by Order No. 28 hereinafter cited as "Order"), and Public Service Regulations No. 1, 1962, Leg. Not. No. 269, Neg. Gaz., year 22, no. 6 (hereinafter cited as "Legal Notice").
    3. Although they are defined as public servants, uniformed members of the armed services, police and judges are excluded from the coverage of the Order and Legal Notice. Order, cited above at note 2, Art. 3; Legal Notice, cited above at note 2, Art. 3.
    4. Ibid.
    5. Labour Relations Proclamation, 1963, Art. 2(f) (iv), Proc. No. 210, Neg. Gaz., year 23, no. 3 (hereinafter cited as "Proclamation"). The language of the Civil Code differs slightly. It provides that "unless otherwise provided in special laws," the code shall apply to "contracts of employment concluded by industrial or commercial undertakings administered by the State or its administrative or technical departments". Art. 2513(2). The present comment does not deal with the interesting question of whether the slight variation in language between Code and Proclamation makes a difference in substance, nor with the precise meaning of either phrase
[^44]:    12. "Employces Who May Not Strike," J. Eth. L., vol. 4 (1967), p. 168. As Means says, his conclusion follows from the fact that ordinary public servants are not "employees" within the definition given in the Proclamation.
    13. Id., p. 174 (footnotes omitted).
[^45]:    21. International Labour Organization, Conventions and Recommendations (1966), pp. 663-667.
    22. International Labour Office, Official Bulletin, vol. 46 (1963), pp. 481, 487. See generally Emmanuel Negassa, The Impact of International Labour Standards on Ethiopian Labour Legislation (1969, unpublished, Archives, Faculty of Law, Haile Sellassie I University).
    23. Art. 2.
    24. Art. 10.
    25. Art. 3.
[^46]:    26. International Labour Office, The International Labour Code (1951), vol. 1, p. 681 note 3. The subsequent Right to Organize and Collective Bargaining Convention, 1949, Convention No. 98, explicitly excepts public servants from its guarantees, which include the right of collective bargaining Art. 6, id., p. 697.
    Nevertheless, the explanatory report of the competent committee which considered Convention No. 98 makes clear that the members of the committee, as well as the Legal Adviser of the International Labour Office, considered Convention No. 87 as applying to public servants. Id., pp. 697-701 note 23. Sce also Syoum Gebregziabher, The Development of Some Institutions Concerned with Labour Relations in Ethiopia (1969, mimeographed, Department of Public Administration, Haile Sellassie I University), pp. 102-103 (quoting speech of Ato Fisseha Tsion Tekie, secrefary general of the Confederation of Ethiopian Labour Unions, at the Tripartite National Industrial Relations Conference held at Africa Hall, August 23-27, 1966).
    27. International Labour Organization, Constitution (1955 ed.). Art. 24. Ethiopia joined the ILO. thus becoming party to iis Constitution, in 1923, when she joined the League of Nations, Emmanuel Negassa, cited above at note 22, pp. 8-10.
    28. ILO Constitution, Arts. 25-34.
