

## LANGUAGE AND LAW IN ETHIOPIA

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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<sup>1</sup> were drafted in English, translated into Amharic, enacted in Amharic by the Parliament, and then officially published in both language versions. Most,<sup>2</sup> 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.<sup>3</sup> 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<sup>4</sup> of

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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.

the Civil Code says a lease of an immovable 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<sup>4</sup> 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.<sup>5</sup>

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" alien legal terms into Amharic; the language must be developed to express the foreign legal concepts of the codes without unnecessarily inconsistent and ambiguous usage.

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*.

## 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 was 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* Amharic 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.<sup>6</sup> In the latter case the poverty of the Amharic 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.

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.

The work of such a commission has precedent in Tanzania, where a well-qualified group of volunteers sat for some years to produce approved Swahili legal terms.<sup>7</sup> 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 now-exhausted 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.<sup>8</sup> 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 student 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.<sup>9</sup> Because of the difficulty and expense in finding workers who possess the necessary requirements — 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,<sup>10</sup> 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.<sup>11</sup> 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 Amharic terms in different code articles. Sometimes, however, the variation is attributable to the very nature of the Amharic 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 Amharic 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.<sup>12</sup>

In other cases where a single foreign term having a single and definite meaning 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 Amharic 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.<sup>13</sup>

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:

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).

12. Art. 129, Civ. Pro. C. uses “የስልጣን ማሰሪያ” (*yeseltan mesreja*), literally “evidence of authority”; Arts. 42, 98, Civ. Pro. C. use “መረጃ” (*mereja*), literally, “information”; Art. 305, Civ. Pro. C. uses “የሚያረጋግጥ ደብዳቤ” (*yemiyeregagit tsehuf*), literally, “a written document capable of proving,” Arts. 147, 97, 204, Crim. Pro. C. use “ምስክርነት” (*misikerent*), literally, “being a witness”.

13. Arts. 44 and 45, Crim. Pro. C. use “ክስ ለማየት መብት ያለው ፍርድ ቤት” (*kis lemayet mebit yalew fird bet*), literally, “the court with the right to decide the case;” Art. 4, Crim. Pro. C. uses “የፍርድ ቤት ስልጣን” (*yefird bet siltan*), literally, “the power of a court”; Art. 223, Crim. Pro. C. uses “ስልጣን” (*siltan*), literally, “power”.

“የዋስትና፣ ወረቀት፣ አስፈርጭ፣ ስለመልቀቅ፣” (*yewastna wereket asfermo silemelkek*).<sup>14</sup> On the 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 courts' decisions were not comprehensible because of the ambiguous character of the Amharic term used to announce the accused's disposition. 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.<sup>15</sup> 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 prosecutor may later prosecute the accused on the same charge.<sup>16</sup> The Amharic version of the Criminal Procedure Code generally uses the verb “መልቀቅ፣” (*melkek*), literally, “to release” or “to let go” for both English terms, although it often qualifies the verb with the adjective “በጊዜው፣” (*begizew*), meaning “temporarily,” or “በነጻ፣” (*benetsa*), meaning “free,” to indicate discharge and acquittal respectively.<sup>17</sup> But, at times “መልቀቅ፣” (*melkek*) alone is used to translate “discharge.”<sup>18</sup> Since the terminology 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*<sup>19</sup> the trial court ruled that continuing to hold the accused for trial was unwarranted; as for disposition, the court said of the accused, “ለቀነዋል፣” (*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*,<sup>20</sup> 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 ambiguously phrased: “ተከላኹ፣ በፍጥነት፣ እንዲለቀቅ፣ አዘናል፣” (*tekasashu beftnet endilekek azenal*), literally, “the accused should be released immediately.”

Similar difficulty is encountered with the Amharic word “ክስ፣” (*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.

17. In Arts. 130(2) (b), 158, 177, and 221(2), “acquittal” is translated as “ነጻ፣ መልቀቅ፣” (*netsa melekek*), literally, “to be released to be free;” and in Pen. C. Arts. 12(2) and 16(2) as “ከቅጣት፣ ነጻ፣ መውጣት፣” (*kekital netsa mewtat*) literally, “to be free from punishment.” “Discharge” is translated as “በጊዜው፣ መልቀቅ፣” (*legizew melekek*), literally, “to be released temporarily,” in Arts. 181(1), 184, 185(2) (a), Crim. Pro. C.

18. Arts. 122, 158, Crim. Pro. C. In Pen. C. Art. 16(2) “discharge” is rendered as “ክስ፣ ውጭ፣ መሆን፣” (*kekis witch mehon*), literally, “being outside accusation.”

19. (High Ct., Addis Ababa, 1965), Crim. Case No. 257-54, unpublished, Library, Faculty of Law, H.S.I.U.

20. (High Ct., 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."<sup>21</sup> "Complaint" is at times translated by "አቤተታ፡" (*abetuta*),<sup>22</sup> literally, "notice," at times by "የክስ፡አቤተታ፡" (*ye kis abetuta*),<sup>23</sup> literally, "a notice of accusation" and elsewhere simply by "ክስ፡" (*kis*).<sup>24</sup> "Accusation" is translated either by "ክስ፡" (*kis*), alone,<sup>25</sup> or by "የወንጀል፡ክስ፡" (*ye wenjel kis*),<sup>26</sup> literally, "an accusation of crime." "Charge" and "prosecution" are both translated simply by "ክስ፡" (*kis*).<sup>27</sup> One can readily imagine the ambiguity which can arise from the use of "ክስ፡" (*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,<sup>28</sup> 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 Amharic 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.

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 as "አቤት፡ባይነት፡" (*abet baynet*) meaning "telling one's grievance to some one in authority".
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 of the Amharic term "የእምነት፡ቃል፡" (*yemnet kal*), literally, "word of belief," to signify both "confession" and "plea of guilty," two quite distinct concepts in the Criminal Procedure Code.

