

## Chapter I: History of Legislation

### Section I. Documents of Public Law Nature (Axumite - Middle age)

#### 1.1.1 Fewuse Menfessawi (Code of Cleansing the Sprit )<sup>1</sup>

According to available documents, the first ever attempt to compile a Law was made by Emperor Zar'a Ya'eqob (during 1434-1468). Desiring to govern his realm by written law rather than by none-written law of oral tradition, the Emperor ordered distinguished Ethiopian Orthodox Church scholars to compile one. The drafting submitted around 1450 was entitled "Fewuse Menfessawi," (meaning, *Remedy of the Spirit*), which reference has been made to in the Amharic version of the Fetha Negest. Regarding this document, *Lique Saltanat Abba Habte-Mariam Workineh* wrote:-

*"[a]bout this code, scholars of the Ethiopian Church held that it was compiled on the order of Atse Zar'a Ya'eqob to serve as a code of laity. Foreign scholars, on the other hand, state that it was compiled to bring the administration of the Church under a centralized canon law."*

The major sources of this code were religious precepts by the Ethiopian Orthodox Church. The rule that this embodied mainly governed matters that were more of a spiritual rather than of a secular nature.

The sources of this code are believed to have been the: (a) Old Testament, (b) Didascalia Apostolorum, (c) Epistle of Peter to Clement, (d) Synods, and (e) Canon of Hippolytus (Abulidus).

Concerning matters of law, the compilation had 62 Articles – mainly on criminal matters. Though the extent of its application still remains uncertain, it is presumed to have been for a short period of time, during the reign of Emperor Zar'a Ya'eqob. Since that document of law

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<sup>11</sup> Abera Jembere, An Introduction to the Legal History of Ethiopia, 1434-1974 1<sup>st</sup> Edn (Rotterdam, Erasmus Universiteit, Leiden: Africa-Studiecentrum, 1998), pp 183-84.

wasn't comprehensive enough and couldn't have resolved many of the legal problems that arose even at that period, it is presumed to not have been in use for long a time.

### **1.1.2 The 'Fetha Nagast' (since 15<sup>th</sup> Century)<sup>2</sup>**

The '*Fetha Nagast*', or the "Law of the Kings", is a collection of laws, orders which had been in use in the northern parts of Country's territories, which, mostly, used to have a populace worshipping the Christian faith for many centuries.

"Law of the Kings" was originally written in Arabic by the Coptic Egyptian writer Abu-l Fada'il Ibn al-Assal (commonly known as Ibn al-'Assal), during the time, when Cyril III was Patriarch of Alexandria (1235-1243). Ibn al-'Assal divided his work into two distinct parts. The first dealt with religious matters and the second with secular matters. In compiling the first, he relied largely on the Old and New Testaments, writings supposed to be of apostolic origin, and the Canons of early Church Councils such as the Councils of Nicaea and the Council of Antioch, and the writings of a number of Fathers of the Church like St. Hippolytus and others. These sources were also consulted in the compiling process. The second part of this latter effort of Ibn al-'Assal relied most heavily on a collection of laws found in four books, known as "The Canons of the Kings".

C.A. Nallino and G.A. Costanzo have carried on the work begun by two German scholars, Sachau and Riedel, towards identification of these four books. According to them, the first book is the *Procheiros Nomos*, a handbook of Roman Byzantine Laws, enacted between 870 and 878 by the Byzantine Emperor Basilus the Macedonian. The second is an Arabic version of what is commonly known as "The Syro-Roman Law Book". This was originally written in Greek at about 480 A.D. as a handbook, probably of didactic character, intended to explain the ancient Roman *ius civile* in light of the *ius novum*. The third book has been identified as an Arabic version of another handbook of Roman-Byzantine Law, the *Ecloga* of the Emperors Leo-III (Isauricus) and Constantine-V (Copronimus), which was published in Constantinople in the year 726. The fourth book has been identified as the "precepts of the

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<sup>2</sup> Abba Paulos Tzadua, "The Fetha Nagast, The Law of the Kings", (Faculity of Law, HSIU Addis Abeba Etiopia, 1968), Forward, pp. XV-XXI.

Old Testament”, a compilation of ritual and moral precepts from the Pentateuch, together with some Christian interpolations.

Given the Roman background of three of the major sources of the secular part of Ibn al-Assal’s work, it is no surprise to find it pervaded by principles of Roman law. Rules regulating various types of contract, guardianship, manumission and servitude, and many principles governing wills and succession are taken from Roman Law; i.e. of ancient pre-Justinian and Justinian principles. In particular the Family Law, especially that part which deals with the dissolution of marriage, is strongly influenced by Justinian’s Novellae.

As might be expectable, these principles came down to the *Fetha Nagast* through the Roman-Byzantine earlier source document, mentioned. All the same, as it still might be appropriate to trace them back to their initial expression, this had been attempted through footnotes to their translation.

The Arabic version of the *Fetha Nagast* was originally entitled “Collection of Canons”, which was compiled as a guide for the Christian Copts living at the time among the Muslim populace of Egypt. The Coptic Church of Egypt used it and regarded it as a very authoritative work. Some authors are of the opinion that it ought to be considered as one of the works prepared for use by the Episcopales Audientiae Church institutions of the time for purposes of judicial nature as they were permitted to adjudicate by the Moslem conquerors of Egypt over certain disputers among Christians and others from areas of the Middle East.

Although it is not possible to say at this time when exactly the Law of Canon of Ibn al-’Assal was introduced into Ethiopia, traditional hearsays hold that the *Fetha Nagast* was introduced into Ethiopia during the reign of Zar’a Ya’qob (1434-1468). The story relates that one day a certain Petros Abda Sayd, an Egyptian by origin, asked of his sadness, the latter replied that he has displayed that justice in his empire was still administered on the basis of the Old Testament, although he and his people lived in the era of the New Testament. Then, Petros Abda Sayd notified the Emperor that there was a book of laws which had been compiled by the 318 fathers of the Council of Nicaea, which then was promulgated as law by the emperor Constantine. The book which Petros said had been translated into Arabic and could be found in Alexandria resulted in to a call: “Why not send somebody to fetch a copy of it?” According to the story, Zar’a Ya’qob responded: “*You know the language of this country and*

*that country. Go and bring me the book*”, and gave Petros 30 ‘*weqets*’ of gold. Petros brought the book and subsequently translated it into Ge’ez.

If the above is taken at face value, then the *Fetha Nagast* was introduced into Ethiopia some time around the middle of the 15<sup>th</sup> Century. On the other hand, what is apparently the first record of use of the *Fetha Nagast* dates back from the time of reign of Sarsa Dengel, who reigned over Ethiopia from 1563 to 1597. The most ancient Ge’ez manuscripts of the *Fetha Nagast* conserved in European libraries and dates to the time of reign of Johannes-I (1667-1682). It has been suggested by Professor P. Sand that the few earlier references to the work may have been based upon the Arabic version.<sup>3</sup>

The man who translated the *Fetha Nagast* from Arabic to Ge’ez gives his name at the end of the book as “Petros, the son of Abda Sayd”. In Ethiopian history, this person is identified as the same man who brought the Arabic text to the Emperor Zar’a Ya’qob. In the same closing passage, there is a reference to the “Priest Abraham, the son of Hanna Natyjan” [who] has taken care of the *Fetha Nagast*. Those conserved in European libraries are from the time Johannes-I (1667-1682) reigned. Though European scholars offer a variety of other explanations, the most likely, traditional explanation in reference to this is that the book was originally written in Greek (by Ibn al-‘Assal), which Abraham translated into Arabic and, thereafter, Petros translated into Ge’ez.

Since its introduction into Ethiopia, the *Fetha Nagest* has circulated in Ethiopia in two manuscript forms. The more common form contains the Ge’ez text with some marginal glosses in Amharic and Ge’ez, which is followed by an Amharic translation and comments.

*Fetha Nagast* has two parts – the entire first part consists of twenty-two chapters on the clearly and the laws of the divine service, such as the Church, fundamental books, baptism, patriarchs, bishops and the likes. The chapters of the second part dealing with secular matters are twenty-nine [in number]; i.e. together with the chapters of the first part it comprises fifty-one chapters.<sup>4</sup>

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<sup>3</sup> Id., pp 17, quoted from P. Sand, *Origins of the Fetha Nagast*, (1968, unpublished, Library, Faculty of Law, Haile Sellasie I University), p. 5..

<sup>4</sup> Id., Preface, pp 9-10.

Chapter XXIII	Food, clothing, habitations and trades
Chapter XXIV	Betrothal, dowry and marriage
Chapter XXV	Prohibition against concubines
Chapter XXVI	Donation
Chapter XXVII	Loan, guarantee, pledge and mandate
Chapter XXVIII	Free loan, such as clothing, animals and other things
Chapter XXIX	Deposit and similar things
Chapter XXX	Mandate
Chapter XXXI	Slavery, liberty and manumission of slaves
Chapter XXXII	Guardians and the Guardianship of Minor in all their dealings
Chapter XXXIII	Sale, purchase, and manumission of slaves
Chapter XXXIV	Joint ownership and things similar to it
Chapter XXXV	Coercion and violence
Chapter XXXVI	Lease of house and land rent such as “gammata”
Chapter XXXVII	Construction of buildings and related matters
Chapter XXXVIII	Loan
Chapter XXXIX	Admission of liability
Chapter XL	Finding lost things, such as animals or similar things
Chapter XLI	The making wills to dispose of property
Chapter XLII	Succession
Chapter XLIII	Judges and those who sit with them
Chapter XLIV	kings
Chapter XLV	Provision from the old and the new testament
Chapter XLVI	The punishment of apostates
Chapter XLVII	Homicide
Chapter XLVIII	The punishment for fornication
Chapter XLIX	The punishment for thieves
Chapter L	On various other faults
Chapter LI	On other things in details

One might say that the *Fetha Nagast* has, in most cases, attempted to incorporate suitable legal principles conceivable to those days. It obviously lacks systematization and other

qualities of modern codes such as differentiating the specific from the general, the exception from the rule.

The Fetha Negest was accessible to and understood by the clergy, only. Also, some aspect of that book is of a wider import; e.g. the already mentioned clauses on Commercial Law. The fact that it had ideological–political significance(s), a significance as being a kind of “Charter”, buttressing the Ethiopian Monarchy (i.e. the Solomonic Dynasty) and the Orthodox Christian faith that underlay it, should, however, be kept in mind.

## Questions

1. See the Serata Mengist. list of code of protocol, can you observe any reason on which the list of code of protocol must have been based upon?
2. How about Fetha Negast? See the division between list on Ecclesiastical matters. I
  - a. Is this not one major step forward from that of Serat Mengist?
  - b. See the list on secular matters. All the item are designated by chapters i.e. chapter 23-60: Are those listed in these chapters are independent to one-another? And are they of equal merit?

## Section II. Legislations During Emperor Menilik II

If at all Emperor Menilik II is to be credited for modernizing the Ethiopian administrative system, he must also get a few credit for the role he played in the shaping of the future of Ethiopia’s legislation.

### 1.2.1 Nomenclature<sup>5</sup>

In the “laws” issued by Menilik II we see different designations – Proclamation or ‘*Awaj*’, Regulations or ‘*Demb*’ and Order or ‘*Ti-ezaz*’.

For example, a pronouncement made by the Emperor to the “soldier”, ‘*Dejazmach*’ Tessema, on 24<sup>th</sup> of June 1906, was captioned as Proclamation or ‘*Awaj*’. The pronouncement to oblige the people of ‘*Wag*’ to pay their tithe faithfully was also given the same title.

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<sup>5</sup> Shiferaw Wolde Michael, Legal Drafting. (Unpublished, A/Ababa University, March, 1986), pp 3-4.

On the other hand, the pronouncement issued to “Telegram Writers and Telephone Maintenance Workers” on 21 of May 1906 was issued as an order or ‘*Ti-ezaz*’, while the pronouncement on “Hot Springs” or ‘*Fil-weha*’, issued on 12 January 1908 was captioned as Regulation – ‘*Demb*’.

Although the above examples indicate that different designations were used when issuing laws, all the same this does not seem to warrant any definite conclusion concerning the hierarchy of laws. This makes one be inclined to think, rather, that one form is in no way different from the other as we see the same person – that is, the Emperor – promulgate laws as ‘*Awaj*’, ‘*Demb*’ and ‘*Ti-ezaz*’; meaning, without first discerning, giving distinction of each. In fact, an examination of these legislations shows that the word Proclamation or ‘*Awaj*’ means “pronouncement-notice for all” – and no more. It is also appropriate to note that all legislations issued during the reign of Menilik II sound as though they were issued by the Emperor himself, in person.

### 1.2.2 Publicity<sup>6</sup>

In his own way, Menilik II tried to notify the public of the laws he issued. The following show these efforts.

#### a) *The ‘Negarit’ and the ‘Meleket’*

During his reign, laws were to be read out to the people at places of where people usually gathered like in Churches, market places. This is evidenced by many of the letters Menilik II wrote to his officials concerning laws. One example is the following:-

*“To Ras Bitwaded Mengesha.*

*“I have hereby sent you a Proclamation (Awaj) letter. Make pronouncement of the same in market places and urban centers.” “Written at Addis Ababa on 22<sup>nd</sup> January 1908.”*

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<sup>6</sup> Id., pp. 5-7.

The picture of a soldier standing at the gate of the Grand Palace beating a drum or the 'Negarit' and blowing at a horn-like instrument or the 'Meleket' proclaiming the appointment of dignitaries, which can be seen on the cover of 'Zekre Neger' is further evidence of the methods Menilik II employed to proclaim laws.

Berkley, in his book "The Campaign of Adwa and the Rise of Menilik", makes a statement on how a Proclamation (on the Declaration of War) was read out as follows.

*"The method of raising an army is very simple. On the declaration of war, the Negus/King/ orders a Proclamation to be read out in the market and other public places, while the long rolls are beaten on the 'Negarit' or great war-drums, the date and place of assembly are also given out by the crier of the king, who can be seen by all, standing high on the upturned drum, with the lace and mantle insignia of his office, held at his side by a slave."*

That this was the standard practice in issuing the 'Awaj' is confirmed by Walter C. Plowden, who wrote:

*".. the highest beat of forty-eight drums, others twenty-four, others twelve, all Proclamations are made by those in possession of the Negarit by beating the large drum, till a number of people are collected, when the order is repeated by the drummer, and those who hear, exclaiming 'May it prosper', run to spread it from ear to ear. It is then law until he changes his mind, and no excuse of ignorance is admitted."*

The reader is also invited to read 'Zekre Neger', by 'Balambaras Maheteme Selassie Wolde Mesquel' for greater insight into the matter.

At times, over and above the pronouncements in public places, the copy of the law proclaimed was given to the person or office directly concerned. An instance that shows this is the pronouncement made concerning *Sheik Zakaria and Associates* on May, 1906:

*"Concerning Sheik Zakaria and Associates Proclamation"*



*“You are hereby permitted to preach Islam wherever you want.”. “Copy to Sheik Zakaria.”*

In some cases that law itself was written and posted at appropriate places; for example in front of the Customs Offices (for laws concerning import and export) and matters concerning municipalities – at centers of towns. An illuminating example of this is the Addis Ababa Land Purchase Regulations (‘*Demboch*’) issued on 27<sup>th</sup> October, 1907. The last part of these regulations was Article 32, which read: “.. *posting in Public Places [t]hese regulations shall be written and posted in the city.*”

### **Section III. Legislations from 1917 to 1931 Constitution<sup>7</sup>**

On 11<sup>th</sup> February 1917, Princess Zewditu Menilik was formally crowned and became the Empress of Ethiopia and Ras Tefferi Mekonnen, the Crown Prince, (actually, it was as of September 27, 1916, that she took over the throne.) With very few exceptions, all laws issued during that period had been issued in the name of the Empress and the Crown Prince. Regulations (‘*Demboch*’) that had been issued on 2<sup>nd</sup> of September 1918 by the Empress concerning her Advisory Council, ‘*Ye Amakariwoch Demb*’, and the Addis Ababa Municipality Land Ownership Notice (‘*Mastaweqia*’) that had been issued on 5<sup>th</sup> October, 1921 can be cited as illustrations of the said exceptions.

During this period, Order (‘*Ti-ezaz*’), as a means of pronouncement of legislation can hardly be seen. Instead, the term “Notice” (‘*Mastaweqia*’) and “Government Notice” (‘*Yemengist Mastaweqia*’) were used to designate laws. In fact, the law that appeared with the designation of “Notice” was the “Addis Ababa Municipality Land ownership Registration Notice” of 5<sup>th</sup> October, 1921 (*Meskerem 1914 EC*). And the first law that was designated as “Government Notice” was the “Issuance of Entry Visa into Ethiopia” issued on 10<sup>th</sup> December, 1928.

This period marks the beginning of issuance of legislations by Ministers, Mayors and other Government Officials. The first legislation issued by an official of the Ethiopian Government,

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<sup>7</sup> Id., pp. 7-11.

other than those issued by Monarchs themselves, was the Flour Mills Law – ‘*Ye-Babur Bet Sira Hig*’. In all probability, this law was issued sometime between July and September 1917 (‘*Hamle*’ 1909 – ‘*Meskerem*’ 1910 E.C.), for this, an amendment to it was made on 13<sup>th</sup> September 1917 and no such law was issued prior to July 1917.

The other legislation that can be cited as an example of legislation issued by a low ranking official, a Division Head, was the regulations concerning “Bathing and Washing Clothes in and Taking Water from and Watering Cattle in the Addis Ababa ‘*Filwoha*’”. This was how the legislation read in relevant part.

*“Filwoha Regulation issued by Ato Legesse Cheru with the concurrence of the Ministry of Agriculture.*

#### *NOTICE*

##### *Part One*

*Regulations issued for Bathing, Washing Clothes In and Taking of Filwoha Water and Watering Cattle in Addis Ababa Filwoha.*

*Imperial Ethiopian Government Ministry of Agriculture and Works, Head of Addis Ababa Filwoha Division.”*

It is also during this period that we start to see laws being published in a foreign language – French. The first Ethiopian law that had been published in a foreign language was the “*Reglement de l’Enregistrement*” of 20<sup>th</sup> January, 1923 (or ‘*Ttir 12 1915 EC*’).

The first legislation issued in the form of “Supplement” (‘*Techemari*’) is the “Wool, Warp and Textiles’ Proclamation”<sup>8</sup> (‘*Dir, Mag-ina Cherq Awaj*’)

1<sup>st</sup> Supplementary Notice.

The first Proclamation to ratify a treaty appeared (12 March 1931) on the 7<sup>th</sup> year, No. 11 issue of ‘*Aimero*’ news paper printed by *Berhanena Selam*. This was how the relevant part of the law read.

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<sup>8</sup> Id., p. 12.

*“A Proclamation to ratify the Temporary Trade Agreement entered into between the Imperial Ethiopian Government and the Government of Egypt on 1<sup>st</sup> January 1931 (‘Tahisas’ 20, 1923 E.C.).*

*“.. 6<sup>th</sup> We hereby proclaim that the Temporary Trade Agreement entered into between the Imperial Ethiopian Government and the Government of Egypt by the letter of 4<sup>th</sup> December (1930) and 1<sup>st</sup> January 1931 (‘Hidar’ 25 and ‘Tahisas’ 20 1923 E.C.) shall come into force as of 1<sup>st</sup> January 1931.*

*“Any party wishing to annul this Temporary Trade Agreement has to give the other party three months prior notice.”*

### **1.3.1 Publications in Newspapers**

*‘Aimiro’*, the first newspaper to be printed by the Country itself was established by Menilik II in 1903 E.C. It began with only 20 hand-written copies, weekly. By 1906, it started to weekly appear in the form of mimeograph, while the first printed copy of this paper appeared in 1914. The hand written and mimeographed copies of this paper do not seem to be available at all. From the printed copies available one can learn that laws were published in *‘Aimiro’*.<sup>9</sup>

*‘Berhanena Selam’*, the second weekly newspaper of the country came out in January 1925. However, it is only as of the 24<sup>th</sup> of October, 1928 (4<sup>th</sup> Year, 43<sup>rd</sup> issue of *‘Berhanena Selam’*) that we see laws being published in this paper. This, we can say, set the standard practice, as there is clue that laws published earlier to this date of publication appeared on the next, Thursday issue. Some of the numbers of legislations thus published were:

- “Land Ownership and Education Proclamations”, issued on 20<sup>th</sup> October, 1928 were published on the 24<sup>th</sup> October issue of *‘Berhanena Selam’*.
- “Issuance of Entry Visas into Ethiopia, which appeared in the form of Government Notice and was issued on 10<sup>th</sup> December, 1928, was published on the 15<sup>th</sup> December, 1928 issue of *‘Berhanena Selam’*.”

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<sup>9</sup> Id., Note. No. 5, pp. 12-16.

Another phenomenon of that period worth mentioning is that laws that had applicability or relevance to foreigners and foreign trade was issued as well in French.

The laws that appeared during that period were neither numbered, nor was there any standardized form or category to legislations; i.e. all five names of pronouncements were inter-changeably used; i.e. 'Awaj', 'Ti-ezaz', 'Demb', 'Mastaweqia', 'Ye-Mengist Mastaweqia' were used to Proclamations issued by the Emperor as well as His officials alike. There was also no particular designation of law used in specialized areas or any mechanism set to indicate hierarchy of importance to legal provisions issued.

### **1.3.2 From the Constitution of 1931 to the Establishment of the Negarit Gazetta<sup>10</sup>**

This covers the time between 16 July, 1931 and 30 March, 1942. Ethiopia's first written Constitution was promulgated on 16<sup>th</sup> of July, 1931.

The laws that were issued during that period were, in many aspects, similar to those issued during the period immediately preceding it. The marked differences that one can note are:

- A) Legislations began to have Preambles;
- B) The Preambles contained statements to the effect that the draft laws were deliberated upon by the then existing Parliament and the Council of Ministers. The institution directly concerned with them sometimes gave its recommendations, too;
- C) The relevant, enabling articles of the Constitution begin to be cited in the Preamble of laws;
- D) Formal definitions are introduced in the legislations;
- E) Laws emanating from the Emperor were made to bear the Seal of the Emperor and the same was made to be notified to the public by the 'Tsehafti Te-ezaz' in compliance with Article 48 of the 1931 Constitution;
- F) As of January 31, 1942, French was replaced by English as the foreign language in which laws were published.

Besides, the following facts may interest curious Ethiopian students of history of legislation.

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<sup>10</sup> Id., pp. 16-18.

The word “Corrigenda” (*Arem*) was used for the first time in the law that appeared on the 7<sup>th</sup> Year, 32<sup>nd</sup> issue of *‘Berhanena Selam’*. The Translation of which read as follows:-

*“Replace the phrase “Food items: Provision” in the column of line 16 page 2 of the Consumption Tax Proclamation issued on Hamle 9/1923 E.C. by the phrase “Paste Alimenther Provisions (like Macaroni).”*

The recommendation of the relevant Ministry for the issuance of legislation was for the first time mentioned in the Monetary Proclamation issued on 24<sup>th</sup> September, 1931. In that proclamation, it was stated in the Preamble that the law was issued upon the recommendation of the Ministry of Finance. Likewise, it was in the Administration of Justice Proclamation made on 10<sup>th</sup> December, 1931, that the fact that Parliament discussed the legislation before it was issued was mentioned.

The first law, on which deliberation by the Council of Ministers was made and that was mentioned was the one designated as “Administration of the Bank of Abyssinia Proclamation” that appeared on the 8<sup>th</sup> Year, 24<sup>th</sup> issue of *‘Berhanena Selam’*, of January 9, 1932 E.C.

The word “Acid Pyroligneous” and “Acid Pyridine” were the first to be formally defined in the history of Ethiopia’s legislation. These words appeared in the Regulations Relating to the Importation of Denatured Alcohol. These regulations were issued on May 10, 1934. Particularly, this law appeared in Amharic and French. Article 1(b) of the French version of this law is reproduced below:

*“b) Pyridine (base Definition: La pyridine doit être claire ou jaunâtre et ne doit contenir plus que 10% de l’eau. En distillant 100cm. Doivent être retombés à l’état liquide si la température a atteint 140 Celsius la pyridine mêlée avec de l’eau dans toute proportion ne doit pas se troubler de même elle doit être libre d’ammoniac.”<sup>11</sup>*

The first law issued after liberation from Italian occupation was the Administration of Justice Proclamation issued on the 31<sup>st</sup> of January 1942. This Proclamation was also the first

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<sup>11</sup> Id., p. 15.

Ethiopian law that was published in Amharic and English (as opposed to the practice of Amharic and French, of that time).

### **1.3.3 Establishment of the Negarit Gazette**

30 March, 1942 is an important date in the history of Ethiopian legislation. Before that date, laws were at best issued in ordinary, unofficial newspapers like '*Aemiro*' and '*Berhanena Selam*'. From 30<sup>th</sup> of March onwards, however, the *Negarit Gazette*, the official Journal for publication of laws was established. The law establishing it is still valid, and since it is a milestone in the history of legislations in Ethiopia, it has been reproduced in full.

“ESTABLISHMENT OF THE *NEGARIT GAZETTA*

No. 1 OF 1942

CONQUERING LION OF THE TRIBE OF JUDHA

HAILE SELASSIE I

ELECT OF GOD, EMPEROR OF ETHIOPIA.”

“WE PROCLAIM AS FOLLOWS:-

1. This Proclamation may be cited as the Establishment of the '*Negarit Gazette*' Proclamation, 1942.
2. There is hereby established the Official Gazette which shall be called '*Negarit Gazette*' in which shall be published:
  - a) all Proclamations; Decrees, Laws, Rules, Regulations, Orders, Notices and subsidiary legislations,
  - b) the notification of all senior appointments, dismissals from office, titles, decorations and honours,
  - c) Notices concurring the establishment of Societies for promoting Education and Chamber of Commerce,
  - d) Notices for general information concerning matters of public interest.
3. Our Keeper of the Great Seal, the Minister of the Pen, shall be responsible for publishing the '*Negarit Gazette*' at least once a month.
4. The Official Gazette shall be referred to in all legislation as the '*Negarit Gazette*' and shall include any supplement thereto or any Gazette extraordinary.

5. A Court shall take judicial notice of:

- a) All Proclamations, Decrees, Laws, Rules, Regulations, Orders, Notices and subsidiary legislations published in the '*Negarit Gazetta*';
- b) The accession to office, names, titles, functions and signatures of the persons filling for the time being and public office in any part of Our Empire, if the fact of their appointment to such office is notified in the '*Negarit Gazetta*'."

"Addis Ababa 10<sup>th</sup> March, 1942."

"TSEHAFI TE-EZAZ WELDE GIORGIS

Keeper of the Great Seal

Minister of the Pen"

From the day of the establishment of '*Negarit Gazetta*' all types of laws started from number 1 and continued to be given consecutive numbers. The number of Proclamation issued in the next year's issue of the '*Negarit Gazetta*' was a continuation of the number of the last Proclamation in the preceding year's issue. This statement equally applied to the other types of legislations, which continued so until 11 September, 1974.

From 12 September, 1974 onwards, however, all types of laws that were issued in the following new Ethiopian calendar year were made to begin all over again from number 1. By this, it was meant that the first law issued by the Provisional Military Government of Socialist Ethiopia, which happens to be the Proclamation Establishing the Provisional Military Government was made Proclamation No. 1/1974. The same was made applicable to all the other types of legislations

So far we looked into the numbering of the different legislations. Let us now consider the numbering of the '*Negarit Gazetta*' itself. The year in which the '*Negarit Gazetta*' appeared for the first time was taken to be the first year of issuance. The numbers of '*Negarit Gazetta*' issued within one Ethiopian calendar year – from 11<sup>th</sup> September to 10<sup>th</sup> September the following year (A.C., Gregorian Cal.) – are always given consecutive numbers beginning from 1, for the first issue, and closing at the last number of the issue in that same year. For the next New Year, the numbering of the first issued '*Negarit Gazetta*' starts all over again

from number 1. Thus, for example, in the 2<sup>nd</sup> year of the issuance of the '*Negarit Gazetta*', 12 gazettes were published, while during the 20<sup>th</sup> year, 19 gazettes were published.

#### **1.3.4 Remark: Drafting Styles<sup>12</sup>**

During the formative years of Ethiopian Legislations, i.e. the first few years after the establishment of the Official Gazette, one notes that the drafting style follows English legislative drafting style. This was clearly exhibited by annotations on the side of the articles which can be taken to be the titles of the Articles or summary of the contents of the Article. This is typical English drafting style. No wonder this is so, because the British were allowed to exercise special powers on legal matters and had special privileges in Ethiopia by virtue of the treaty signed between Ethiopia and the United Kingdom on 31<sup>st</sup> of January, 1942 E.C.<sup>13</sup> According to Article 2 of that Treaty, the two Countries agreed that the British should act as advisors to the Emperor and to the Ethiopian Government and that British nationals would serve as judges in Ethiopia.

The Administration of the Justice Proclamation was the second proclamation issued by the Ethiopian Government after independence, was drafted by the British and given to the Emperor to be proclaimed. This can be easily inferred from Article 5 of the same Treaty and from the fact that the said Proclamation was issued as an annex No. 1 to same Treaty. The Public Security Proclamation No. 4 of 1942 is a good proof that the British acted as drafters of Ethiopia's legislation. (The style itself exhibits the British hand on it.)

*"PROCLAMATION No. 4 OF 1942"*

*"A PROCLAMATION TO PROVIDE FOR THE ARREST AND DETENTION OF PERSONS INCLUDING IN ACTIVITIES OF NATURE CALCULATED TO DISTURB PUBLIC SECURITY."*

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<sup>12</sup> Id, pp. 19-22.

<sup>13</sup> Margery Perham, *The Government of Ethiopia*, (Faber and Faber Limited, London, 1969), pp. 153-155.



1. *This Proclamation may be cited as the Public Security short title. Proclamation, 1942, and shall be deemed to have come into force on 31<sup>st</sup> January, 1942.*
2. *The Commissioner of Police may order the arrest without warrant and Power of any person who in his opinion would by reason of the matters set out arrest and in the Schedule to this Proclamation, be danger to Public Security if he remained at large.*
3. *Any person so arrested shall without any delay be brought before the Persons High Court, arrested to be brought before the High Court.*
4. *If the High Court is of the opinion that the Commissioner of Police Powers of ... was justified in arresting and detaining any person under the High Court.*
5. *Provisions of this Proclamation, the order for detention shall remain in force for three months and may be renewed for further periods not exceeding three months each on application being made to the High Court by the Commissioner of Police or by some person on his behalf.*
6. *The Commissioner of Police may at any time, with the permission of Powers of the High Court, order the release of any person so order to be detained.”*

Another hint of the influence of English style of drafting over our drafting style is the famous phrase “.. *unless the context otherwise requires*”, that we even today continue to use in our definition articles.

Article 2 of the Police Proclamation No. 6/1942 can be cited to demonstrate this;

*“.. 2. In this Proclamation, unless the context otherwise requires:- “Commissioner” means the Commissioner of Police and includes the Deputy Commissioner of Police; “Constable” means any police officer below the rank of non-commissioned officer; ..”*

Over the years, we see that the side annotations cease to exist, but the famous phrase “.. *unless the context otherwise requires*” still hangs on. In fact, up until 1963, titles were given mostly to parts of a law as opposed to individual Articles. Looking at the Charter of the former University College of Addis Ababa, General Notice No. 185 of 1954 surely would be of an example. Similarly, even after 1963 the style of giving titles to each Article was not consistently adhered to; e.g. almost all the tax laws that appeared before 1963 have no given titles for individual Articles.

#### **Section IV. The Written Constitutions of Ethiopia**

Up to the writing of this book, Ethiopia had three written Constitutions. The first was promulgated in 1931, the 2<sup>nd</sup> about twenty four years later, and the third, in 1979.

Though, there were a lot of developments in the field of legislation between the first and the second Constitutions, it would be better here to treat the two constitutions together rather than following the consecutive dates of issue or chronology.

#### **1.4.1 The Constitution of 1931**

Ethiopia's first written Constitution was promulgated by Emperor Haile Selassie-I in July 1931. *Bejerond Tekle Hawariat*, the then Minister of Finance, was credited for the drafting of that Constitution. There are indications that, when drafting the Constitution, he relied heavily on the Meiji (Japanese) Constitution of 1889. The draft Constitution was discussed by the nobility before its publication. The 1931 Constitution was divided into seven Chapters and had fifty-five Articles.

#### **1.4.2 The Revised Constitution of 1955**

The Revised Constitution of Ethiopia replaced the Constitution of 1931 after the latter remained in force for twenty four years without any amendment. It is said that the drafting of the Revised Constitution took six years, and the first completed draft appeared on 2<sup>nd</sup> February 1954.

The preparation of Constitution was carried out by a Constitutional Commission composed of three Ethiopians: *Tsehafe Tezaz Wolde Giorgis Wolde Yohannes*, *Aklilu Habte-Wold* and *Blatta Mersie Hazen Wolde-Qirqos* and three American lawyers, J.H. Spencer, Garretson, and Edgar Turlington. The research and the actual drafting were done by expatriate members of the Commission.

The draft had to be revised five times to incorporate the views of the Emperor, the Nobility and Church Leaders, before it was finally promulgated in June 1955.

One of the drafters of that Constitution – Mr. J.H. Spencer – said that the Articles on Human Rights that were put in the Constitution were based on that of the “*United States and*

*European Constitutions, and the Universal Declaration of Human Rights*”.<sup>14</sup> (The U.S. Constitution was the most frequently used model.)

As can be concluded from what has been said so far, the Revised Constitution was drafted in English and was then translated into Amharic. The Constitution had one-hundred and twenty-two Articles. It was amended once by Proclamation No. 334/1954 and, as mentioned earlier, was suspended on 11<sup>th</sup> of September, 1974 by the first Proclamation issued by the Provisional Military Administrative Council.

## **Section V. Codification**<sup>15</sup>

### **1.5.1 The Codes**

The first Ethiopian “Modern” codified law is the Penal Code of 1931. This code is said to have been prepared by a French Jurist who lived in Djibouti. The Code is based on the *Fetha Nagast* as well as on the Siamese Penal Code. The drafter, whose name I could not find, lived in what used to be called French Indo-China, before he came to Djibouti, which was another French Colony. The Penal Code of 1931 contained 487 Articles. It was replaced by the more modern and sophisticated Penal Code of 1957.

Ethiopia’s modern codes started to appear after 1957. These codes are:

- a. The Penal Code;
- b. The Civil Code;
- c. The Commercial Code;
- d. The Maritime Code;
- e. The Criminal Procedure Code; and
- f. The Civil Procedure Code.

The drafts of all these codes were submitted to a Codification Commission (the ‘*Fetha Negest Gubae*’ in Amharic) established on 26 March, 1954 by the Emperor. The Codification Commission was composed of Ethiopians as well as foreign members.

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<sup>14</sup> Shiferaw, ob cit., Note No. 5, p. 24.

<sup>15</sup> Id., pp. 24-29.

The Codification Commission was actually divided into two main sub-commissions:

- The Commercial and Maritime Codes' Commission, and
- The Civil and Penal Codes' Commission.

The three professors who did the actual drafting were members of both Commissions.

We will now briefly examine the legislative histories of Ethiopia's modern codes.

The drafting of the Penal Code of 1957 began in 1954 by the Swiss Professor Jean Graven who was Dean of the Faculty of Law of the Geneva University. The draft was submitted to the Codification Commission (the '*Fetha Negest Gubae*' in Amharic) and after that to the Parliament. It was published in the special issue of the Negarit Gazeta as Proclamation No. 158/1957. It contains 820 Articles.

***(a) The Civil Code of 1960.***

Work on the drafting of the Ethiopian Civil Code started in 1954. The drafter was the well known French scholar, Professor Rene David. The draft was deliberated upon by the Codification Commission before it was finally approved by Parliament. The Civil Code was published in the special issue of the Negarit Gazetta as Proclamation No. 165/1960.

***(b) The Commercial Code***

The drafting of the Commercial Code was begun in 1954 by Professor Escara, who died before completing it. Professor Alfred Jaufferet took over the work, and like the Penal and the Civil Codes, it was first submitted to the Codification Commission and finally to Parliament. The Commercial Code was promulgated in 1960 in the special issue of the Negarit Gazetta as Proclamation No. 166/1960.

***(c) The Maritime Code***

It was Professor Escarra, who is credited for drafting the Ethiopia's Maritime Code, started drafting the Commercial Code in 1954. It also passed through the processes we discussed, till the Maritime Code was issued as Proclamation No. 164/1960.

***(d) The Criminal Procedure Code***

It is said that the Criminal Procedure Code was however referred to Sir Charles Mathew by the Codification Commission with specific instructions. Sir Mathew gave the Code the shape it presently has. The draft of Sir Mathew, who was advisor to the Ministry of Justice, was as well submitted to the Codification Commission and finally to Parliament.

The Criminal Procedure Code was issued in the Negarit Gazetta as Proclamation No. 185/1961. This code is a rather short and has only 224 Articles.

***(e) The Civil Procedure Code***

The Civil Procedure Code was prepared by a Codification Department of the Ministry of Justice, headed by Ato Nerayo Isaias, who at the time was Vice Minister with the Ministry. Unlike the other Codes, this draft was not submitted to the Codification Commission. It was rather submitted to the Council of Ministers and finally to Parliament. The Code was, however, issued as Decree No. 52/1965.

The source of the Civil Procedure Code is said to be the Civil Procedure Code of India of 1980.

### **1.5.2 The Consolidated Laws of Ethiopia<sup>16</sup>**

Another unimportant development in the history of legislations in Ethiopia is the Consolidated Laws of Ethiopia. The purpose of the project of the Consolidated Laws "*is to provide a useful source and reference work on the laws of Ethiopia*". The Consolidated Laws of Ethiopia initially contained laws which were, in effect, included at the end of the Ethiopian year 1961 (September 10, 1969). A supplement was issued in 1975 in which were included as

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<sup>16</sup> Id., pp. 30-31.

laws which were, in effect, proclaimed at the end of the Ethiopian year 1965 (September 10, 1973). Since then, no supplement has been issued. Besides, the Consolidated Laws “*contains numerous tables. And other means of assisting the user to find the legal provisions he is searching for*”.<sup>17</sup>

This important work was begun by the former Institute of Public Administration of the Ethiopian Government but was later on turned over to the Faculty of Law of the Haile Selassie I University (now the Addis Ababa University). The work was completed in October by Mr. William H. Ewing, who was a member of the staff of the Faculty of Law and the project’s head.

The other laws and regulations relating to Addis Ababa appeared in the Consolidated Legislations of Addis Ababa.<sup>18</sup>

### **1.5.3 Types and Hierarchy of Laws**

The four major types of Ethiopian Law (Orders, Proclamations, Decrees and Legal Notices), which are the subjects of this monograph, although never so officially prescribed, are in accordance with the divisions of legislative authority set out in the Constitution of 1931 and the Revised Constitution of 1957. The first three (i.e. Orders, Proclamations and Decrees) are best known as Primary Legislations. Thus, under the title of “Order”, the Emperor exercised His Prerogative under Article 27 of the Constitution of 1957 to determine the organization, powers and duties of all ministries, executive departments and the administration of the government. Expressed another way, an Order used to be the formation passed by Parliament and approved by the Emperor was entitled a “Proclamation”. The Emperor, acting alone, was entitled to promulgate substantive legislation only in cases of emergency that might arise when the Chambers were not sitting and which come out as a “Decree”.

The fourth - “Legal Notice” – was used mainly for the publication of Rules or Regulations, and Municipal Laws; i.e. legislations, authority for which has been delegated to various government officials. This can be best labeled subordinate legislation.

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

The two minor forms of law which are not discussed herein are “General Notice” and “Notice”; i.e. “General Notice” is mainly used to announce government appointments and awards of honour by the Emperor; “Notice” is the vehicle for the announcement of certain matters of public interest, such as Notice No. 10 of 1950 dealing with the encouragement of foreign investment in Ethiopia. In recent times, “Notice” has more or less dropped into disuse except for the publication of the periodic financial statements of the Development Bank and similar organizations.

There used to be some inconsistencies or overlapping in the use of all of these terms in the early years of the *Negarit Gzetta*, but the above general description is now the established pattern of exercise.

Excepting a shift from

1. systematic, a lesser or sketchy type of drafting,
2. clarity to vagueness and ambiguity, and
3. Western to Eastern economy, which was reflected in the words, phrases in various legal instruments, there was not much difference in the style of legal drafting in general.

Having said this, it would be appropriate to see the legislative process under FDRE constitutional arrangement.

After having this birds seen of the legislative history of Ethiopia, it would be proper to observe the law making process under FDRE Constitution, before embarking onto the science and techniques of drafting in general.

