

# Brief History of the Ethiopian Legal Systems - Past and Present

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As a country, Ethiopia needs no introduction. Its three thousand years of history has been told and documented by many who lived in and traveled to Ethiopia<sup>1</sup> The discovery of Lucy, the 3.2 million years old hominid, iconic fossil in the Afar region of Ethiopia in 1974, attests to the fact that Ethiopia is indeed one of the oldest nations in the world. The origin of the northern Ethiopian Empire, is chronicled in the legendary story of Cush, the son of Ham and the founder of the Axumite Kingdom, who gave the name Ethiopis to the area surrounding Axum and later to his son. Ethiopia is thus derived from it which in Greek means land of the burnt or black faces.

The Ethiopian history began with the arrival of the Sabaeen people, during the first millennium before Christ, crossing the Red Sea and Ethiopia's historical records run from about 150 B.C. to A.D. 350.<sup>2</sup> We also know that from the fifteenth and sixteenth centuries to the present day, navigators and missionaries, royal ambassadors and traders have made their way to Ethiopia. Many of them have lived to tell the tale of their adventures, and few have been able to resist the beauty and strangeness of country and people which

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<sup>1</sup> John H. Spencer was the Emperor's advisor for four decades; Nathan Marein was the Advocate General and General Adviser to the Imperial Ethiopian Government; Christine Sanders lived in Ethiopia from 1920 to 1935 and after a brief interruption during the Italian occupation and from 1942 on. She Knew the Emperor from the time he was a regent and later Emperor; David Abner Talbot was editor of the Ethiopian Herald; Richard Greenfield lived for many years and was Dean of Students at the Addis Abeba University and lived through the coup d'état of 1960; Christopher Clapham lived in Ethiopia to undertake his research for his book; Edward Ullendorff lived in Ethiopia five years working on his book; John Buchholzer who wrote, *The Land of Burnt Faces* traveled in Ethiopia extensively; C.H. Walker: Consul for Western Ethiopia at Gore' and who " was connected with Abyssinia for more than twenty years and Kenneth Redden was Fulbright professor at the Haile Selassie I University (HSIU) later renamed Addis Ababa University.

<sup>2</sup> Perham, Margery. THE GOVERNMENT OF ETHIOPIA 10 (1969)

have frequently inspired their pen with the surfeit of colour and love of the picturesque.<sup>3</sup>

Ethiopia has been mentioned in the Bible; of Homer speaking of distant Ethiopians, the farthest outpost of mankind; and about the kingdom of Meroe, the capital of Ethiopia. Ullendorff writes about the flourishing port of Adulis and the old capital city of Ethiopia, Axum; Ethiopia's commercial ties with Arabia, Persia and India...about Eldad had-Dani, a Jewish traveler's visit, in 1407. We also see accounts of Pietro Rombullo who lived in Ethiopia for thirty-seven years; of Portuguese travelers such as Pedro.<sup>4</sup>

Despite such rich and proud history, however, much cannot be said about Ethiopia's legal history. This is mainly due to the fact that Ethiopia is also a country of great contrasts. The name Ethiopia often evokes images of high mountain ranges; depressions and rivers, and deep gorges in between. Christine Sandford describes this scenario eloquently:

Its geography has helped to make its history and to mould and colour its people. The barren burning deserts that fringe the central plateau, the complexity of mountain ranges and river chasms that isolate province from province, making intercommunication slow and arduous... All these physical features have assisted its independence, diversified its inhabitants, endowed them with qualities of vigour and self-reliance, and at the same time imposed upon them the corresponding drawbacks of lack of cohesion and cooperation of over-confidence and arrogance.<sup>5</sup>

Thus, for centuries these natural barriers and lack of modern infrastructure have provided the *isolation* necessary for the peoples of Ethiopia to live away from each other and from the full tide of foreign influence which in the long run made Ethiopia one of the plural and heterogeneous countries in the world linguistically as well as culturally.<sup>6</sup>

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<sup>3</sup> Ullendorff, Edward. *THE ETHIOPAINS AN INTRODUCTION TO COUNTRY AND PEOPLE* 1 (1965)

<sup>4</sup> *Id.* at 2-3.

<sup>5</sup> Sandford, Christine. *ETHIOPIA UNDER HAILE SELASSIE* 8 (1964)

<sup>6</sup> The Transworld Airlines (TWA) the predecessor of the Ethiopian Airlines did not start until 1945, see Spencer, *Ethiopia at Bay* at 165; the railway that run between Addis and Djibouti did not start until 1917, see Talbot at 145. There were only 2,500 miles of dry weather roads in 1935 see Talbot at 139 and until the Italians built more roads during the occupation, most of the states, particularly the northern states were not connected with the rest of the country.

Notwithstanding the richness in culture and customs, the result of such contrast has been obvious. In a country where eighty languages and over two hundred dialects have been spoken, it has not been possible, until today, to homogenize and unify the legal system of the country as a whole. Even with the promulgation of federal and state laws since 1924, it has not been possible to apply these laws across the board.

Under the new federal Constitution of 1995, the country is made up of nine states. The Amhara State alone, where the lingua franca, Amharic, comes from, there are dialects of it in its own state and other languages such as Aghew, Oromiffa, Guraghe and Weito spoken at the same time. The 1995 Constitution makes Amharic the official working language of the country<sup>7</sup>. At the same time, the Constitution also grants members of the federated states to determine their respective working languages and grants all Ethiopian languages to enjoy equal state recognition, thus encouraging the various tribes to develop their own languages and cultures.<sup>8</sup> It must also be mentioned that because of the diversity in languages within each of the nine States compounded by lack of a dominant language binding them, five of the nine states have chosen Amharic as their lingua franca.<sup>9</sup>

As a result of this wide divide linguistically and culturally over the centuries among the communities, the peoples of Ethiopia were left to develop their own customs and local laws and follow them throughout the ages undiluted and undisturbed by any outside or national law.<sup>10</sup> It has, therefore, been the case that the various tribes of the country seldom knew any customs or laws outside their districts and “Each little community knows little of what is happening the other side of the next range of hills, except for the news they may glean from the traveler or trader.”<sup>11</sup> As a result, each regional king and ruler developed and administered their own laws and regulations that governed their own districts and constituents.

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<sup>7</sup> See Art 5 of the 1995 Ethiopian Constitution.

<sup>8</sup> See Art 5 and particularly Art 39(2) of the 1995 Constitution which states in part that “Every Nation, Nationality and People have the right, to write and develop its own language; to express, develop and to promote its culture; and to preserve its history.”

<sup>9</sup> The States using Amharic as their working language are Afar, Benishangul Gumuz, Gambela and Southern Nations, nationalities and Peoples.

<sup>10</sup> Ethiopia is the only country in Africa that has never been colonized except for the brief occupation by the Italians from 1935-1941.

<sup>11</sup> Sandford *supra* note 5 at 16.

## Introduction to the Legal System

As mentioned above, Ethiopia is indeed a vast land with many tribes in it. Those who attempted to write about the legal system of Ethiopia did so with little knowledge and there was literature on the subject available to them. None of the jurists that lived in the country produced any definitive work. To date, there is no comprehensive or thorough writing as the “Ethiopian legal system” as such. Therefore, when we write or read about the Ethiopian legal system, it must be read with the understanding that we are presenting only the fragmented part of the legal system as a whole.

When we consider that Ethiopia is one of the oldest nations in the world, we must also be cognizant of the fact that its laws had their roots in the very distant past. Thus the laws of Ethiopia that evolved over a long period of time and from its variety over a wide space inhabited by very varying societies, had become, by 1935, a very rich legal amalgam.<sup>12</sup> In addition the country is a conglomeration of many tribal groups that were assimilated into the present ethnographic pattern over many centuries where the various waves of immigrants which coalesced and settled in this land, each, it is natural, brought with them some of their mores, customs and traditions. From these groups and from the aborigines have come the customary laws that run through the system of jurisprudence extant there today.<sup>13</sup>

As all laws begin with customs, Ethiopia is no exception. Most localities developed their customary laws and rules particular to their regions. Customary law is “Law consisting of customs that are conducts; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws.”<sup>14</sup> These un-codified and unwritten laws also known as consuetudinary laws evolved from the three Abrahamic religions, Christianity, Islam, Judaism and other pagan sources. They evolved from time honored oral traditions and customs passed from generation to generation, kept and enforced by their guardians who were either the elders or local chiefs of these various disconnected communities. Thus, the material which constitutes the juridical basis of customary law (called *weg*) were generally collected and defined at meetings of elders, notables, and chiefs, where these assemblies established general principles.<sup>15</sup>

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<sup>12</sup> Perham, *Supra* note 2 at 138.

<sup>13</sup> Talbot, David A. CONTEMPORARY ETHIOPIA 153 (1952).

<sup>14</sup> BLACK'S LAW DICTIONARY 443 (9<sup>th</sup> ed. 2009).

<sup>15</sup> Ullendorff, *supra* note 3 at 185.

Except for the Fetha Negast<sup>16</sup> all these laws were “expressed in the form of maxims which are frequently ascribed to a specific author, usually a tribal ancestor or some outstanding chief.”<sup>17</sup> In later years, they were expressed by the governors of the provinces who acted as appointed judges. Up until the FN became the law of the land, there were no written codes and legislations of any kind that were applied in the Ethiopian courts in general. Even with the FN and after the codification of the Penal Codes of 1930, and 1957, some of the customary laws were in full force and applied in the Ethiopian courts. Therefore, since the customary laws were not recorded the sole effective depository of customary law has been the individual and collective memory of all those who were present at such councils and the long standing precedence and oral traditions.<sup>18</sup>

Until Emperors Theodros, Yohannis, Menelik and Haile Selassie consolidated and the central government and diminished the power of regional kings and rulers, each regional king enforced his local laws in the regions administered by him. However, these local laws did not have any binding effect over a greater geographical area because they were meant to serve the limited number of people under individual kings’ authority and were not applied throughout the country at large.

These local laws were nonetheless as important as the codes that were promulgated in the 1930s and later because first, “the people look to the ruler rather than to the law.”<sup>19</sup> And second, the people looked up to the rulers to be as impartial because, “a ruler who was arbitrary or unfair in the administration of justice would not long enjoy the confidence of the people under his jurisdiction.”<sup>20</sup> Moreover, “The peoples’ sense of justice imposes limitations on his action more so than rules of law.”<sup>21</sup>

Due to their importance to the communities around the country, the customary and religious laws and their courts have been recognized and accorded special place in the 1995 Constitution of the Federal Republic of Ethiopia.<sup>22</sup> Likewise, the nine federated states have followed suite to

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<sup>16</sup> See discussion *infra*.

<sup>17</sup> *Id.* at 186.

<sup>18</sup> *Id.* at 185-86.

<sup>19</sup> Redden, Kenneth R. THE LEGAL SYSTEM OF ETHIOPIA 43 (1968).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See Art. 34(5) of the 1995 Constitution which state in part that, “the Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance to religious and customary laws, with the consent of the

recognize them in their respective constitutions<sup>23</sup> and all States have even gone further in recognizing and legitimizing the social and religious courts that interpret these customary laws.<sup>24</sup>

Emperor Haile Selassie was even careful when he ordered the codification process when he said, “No modern legislation which does not have its roots in the customs of those whom it governs can have a strong foundation.”<sup>25</sup> He adds,

The reason why we have caused a revision to be made of the Law concerning damage for abuse and serious injury and concerning the punishment to takers of life and all other criminals is because we have noted on the eighth page of the preface of the Fetha Negest the principle underlying the orders of the Three Hundred which they gave in the Fetha Negest in the words, ‘act according to your observation of the conditions of times and seasons.’<sup>26</sup>

Emperor Haile Selassie carefully crafted and injected this statement to the preface of the Code because the conservatives of the time, notably the nobility, were not happy with the direction the emperor was taking and he made sure that they were not in any way offended by the new enactments of codes. Therefore, there has been an implied assent on the part of the government and the regional states to accept the time honored traditions and customary laws of the communities and integrate them somehow to the overall change rather than strictly following the newly codified laws and constitutions which did not fully develop until very late and were not fully embraced by the people. More importantly, the people, “...consider valid,

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parties to the dispute. See also Art. 78(5) (which states that the House of Peoples’ Representatives and State Councils can establish or give official recognition to religious and customary courts.

<sup>23</sup> Kebele Social Courts Recognized by State Constitutions Afar Art 99; Beninshangu Art 108; Gambela Art 110; Amhara Art 107; South Art 114; Somalia Art 98; Oromia Art 101; Harari Art 75.

<sup>24</sup> Traditional and religious courts have been recognized by federal and state constitutions. See Harari Constitution Art. 68, Amhara Arts 65 & 66; Afar Art 63 and 65; The Afars call the traditional court as Shemagile Court; Beninshangul Art 66; Gambela Art 67; Southern Art. 73; Oromia Art. 62

<sup>25</sup> The Fetha Negast the Law of Kings ( Peter L. Strauss ed., Abba Paulos Tzadua trans. Page V. (2009). The FN was translated into Italian by Ignazio Guidi and later into Amharic (translator unknown.)

<sup>26</sup> Marein, Nathan. THE ETHIOPIAN EMPIRE – FEDERATION AND LAWS 152 (1955) see also Talbot, supra note 13 at 155.

preserve the rights of the members of their community, not purely from force of the law of the central government, but because they have been customarily born to such a birthright<sup>27</sup> and the people basically were left to “look up to their immediate chiefs, and for the most part they have always followed their own customs unheeded and unchecked.”<sup>28</sup>

### Some Examples of Customary Laws

Apart from the Fetha Negast where marriage is discussed in chapter XXIV, there were no written laws governing marriage. Various marriages were performed according to religion and custom. The following were some types of marriages practiced in some parts of Ethiopia.

### Marriages Conducted Under Church Authority

The Orthodox Church imposed monogamous marriage for all its followers under the doctrine of “one man for one woman” and vice versa because there was no separation between state and religion. Monogamy was also protected by the state particularly the 1930 Penal Code which laid down a penalty for bigamy and imposed a penalty of up to three years of imprisonment.<sup>29</sup> Because of the severity of the church ordinance both on its clergy<sup>30</sup> and its followers, the majority of Christian Ethiopians tended to favor civil marriages which allowed for a couple to easily divorce without penalties.<sup>31</sup>

In sharp contrast were civil marriages for which divorce was not only accepted, but required for proper social standing.<sup>32</sup> Constraints of monogamy were generously relaxed by the practice of multiple divorce and re-marriage, through which most men and women passed several times

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<sup>27</sup> Talbot, *supra* note 13 at 4.

<sup>28</sup> Sandford, *supra* note 5 at 10.

<sup>29</sup> Perham, *supra* note 2 at 116.

<sup>30</sup> *Id.* The clergy and their wives were allowed to marry once and after the death of either spouse, the surviving spouse entered the monastic life.

<sup>31</sup> *Id.* at 116.. Perham comments that Emperor Menelik was allowed to marry Empress Taitu as her fifth husband who would have been impossible to do had he followed the stricter church doctrine on marriage.

<sup>32</sup> Spencer, John. ETHIOPIA AT BAY: A PERSONAL ACCOUNT OF THE HAILE SELASSIE YEARS 205 (19840)

during their lifetimes.<sup>33</sup> It was common to see the ruling households consisting of heirs both legitimate and illegitimate, the “inside” and the “outside” offspring.<sup>34</sup> Over the years, there has been a decline in church marriages because of the Ethiopians of the twentieth Century seeking to liberalize the chances of divorce.<sup>35</sup> The religious marriages commonly known as Bekal Kidan or Kurban were more of civil marriages based on the consent of the parties that took place in church with the priest presiding over the ceremony. This involved the bride and groom receiving a communion from a presiding priest at church. Such a marriage was presumably indissoluble and the couple entered a civil contract that would last their life time. Under such type, a widower could not “remarry”. There was a sanction by the church if and when a couple decided to divorce. Because of the seriousness of the marriage contract they entered into, it was often discouraged by a young couple who was reluctant to enter such a serious and long commitment although it is now fashionable to do so without the intricacies of old rules. The following were practiced outside the stricter rules of the church.<sup>36</sup>

### Semania

Semania denotes the eighty Maria Theresa<sup>37</sup> or dollars bond: this was a more common civil marriage often presided over by a local official, usually a Chika Shum or elders and some witnesses.<sup>38</sup> This type of marriage was called semania because of the fine of \$80.00 Maria Theresa imposed on the

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<sup>33</sup> Id. Because of the relaxing of the monogamous marriages, Spencer writes that Empress Taitu was married four times and Empress Menen was married four times, the last husband being Emperor Haile Selassie.

<sup>34</sup> Id.

<sup>35</sup> Talbot, *supra* note 13 at 47.

<sup>36</sup> These marriages were mostly for people living in the highland areas. The Moslems followed their rituals according Mohammedan laws where their courts had special jurisdiction to handle such matters as marriage and divorce.

<sup>37</sup> Spencer, *supra* at 31 at 102 note 1. Maria Theresa thaler was a silver coin named after Empress Maria Theresa who ruled Austria and Bohemia from 1740 - 1780. It was an Austrian coin of one troy ounce and 83% fitness first minted in 1951. It was the currency throughout Ethiopia until the Ethiopian currency appeared on May 29, 1945 by Proclamation No. 76/45 and later amended by Proclamation No. 112/50 that came out on March 30, 1950. It should be noted that along with the Maria Theresa, the Egyptian, East African and Indian Rupee were used at the same time. The term “shilling” which is still used come from the British currency.

<sup>38</sup> See discussion of Chika Shum *infra*.



wrong doer in cases of divorce or adultery. There may be a contract signed. This type of marriage is now conducted at the municipalities

### **Demoz**

Demoz or wage marriage or sometimes referred to as marriage by month or for hire. It was a temporary arrangement with legal status usually by a man who marries a woman temporarily due to the death of his wife or divorce or who may be away on assignment from home for a period of time. This was a legal association which was dissolvable by either party without any penalty. The man kept the woman by paying her maintenance for a specified amount on a monthly basis, or in installments until the marriage contract ended. Although the wife did not inherit or take a share in the estate, children born out of this marriage were considered legal and were entitled to shares of the father's estate. Marien, however, states that the High Court made exceptions to this rule. If a woman had been a virgin at the time she entered into such a union, she was entitled to all pecuniary benefit and in one case the High Court held and the Supreme Imperial Court affirmed that the woman was entitled to such benefits although the husband was a foreign nationality and she was of Ethiopian nationality.<sup>39</sup>

### **Current Marriage Laws**

All laws pertaining to family law except the Moslem and custom ones that existed before 2000 have been repealed and replaced by the Revised Family Law Code of 2000 by Proclamation No. 213/2000 as published in a separate volume appearing in the Federal Negarit Gazeta and came into force on July 4, 2000. Article 3 of this Code provides that religious marriage shall take place when a man and a woman have performed such acts or rites as deemed to constitute a valid marriage by their religion or the religion of one of them. Art. 26 (1) and (2) also provide that the conclusion of religious marriage and the formalities thereof shall be as prescribed by the religion concerned and the provisions of this Code relating to the essential conditions of marriage shall be complied within religious marriage.

Regarding customary marriage, the Code provided in Art. 4 that marriage shall take place when a man and a woman have performed such rites as deemed to constitute a valid marriage by the custom of the community in which they live or by the custom of the community to which they belong or to which one of them belongs. Art 27 (1) and (2) state that the conclusion of

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<sup>39</sup> Marein, *supra* note 25 at 162.

customary marriage and the formalities thereof shall be as prescribed by the custom of the community concerned. The provisions of this Code relating to the essential conditions of marriage shall be complied with in customary marriage. Article 11 states that a person shall not conclude marriage as long as he is bound by bonds of a preceding marriage and Art. 33 states that the dissolution of a bigamous marriage shall be ordered on the application of either of the spouses of the bigamous marriage or the public prosecutor.

### The Land Legal System

It has been documented and it could still be true today that about 85% of the Ethiopian population has lived in the rural areas most of who derived their livelihood from land. As is the case in most developing countries, the same is true in Ethiopia, “where industry is negligible, almost all material wealth was the direct produce of the herdsmen or the man who worked on the land with his plough and his hoe.”<sup>40</sup> In a very feudal society such as Ethiopia, holding a higher governmental office either by birth or appointment was significant, but what was more important was the feeling the people had toward “the earth, meeting all necessities,... [and] once acquired, was held with the utmost tenacity.”<sup>41</sup> It is no wonder that most of the litigation, particularly in the highland areas, centered on land disputes.

Traditionally, the ownership of land was divided among the Crown, Church and the land lords. This was a tradition that has been followed since Menelik I introduced it<sup>42</sup> and until it ended with the overthrow of the last Emperor. The laws dealing with land were enforced on three levels: 1) the Emperor, through his appointees and local enforcers such as the local army called the *nech lebash*, (white clothes men); 2) the church through its own court; and 3) on the local level, by elders and local chiefs who were all well versed in their respective land rules until those rights were revoked in 1942 and replaced by newer courts established under the 1942 Proclamation.

Until the Civil laws were drafted in 1960 and put into force, “it is the unwritten customary law of the country, subject to variations in different areas, which controls the system of land tenure and which is invoked in the settlement of land disputes.”<sup>43</sup> It should be noted, however, that when the Civil Code was promulgated in 1960, it was done so with the understanding

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<sup>40</sup> Perham, *supra* note 2 at 278.

<sup>41</sup> *Id.* at 280.

<sup>42</sup> Ullendorf, *supra* note at 188.

<sup>43</sup> Sandford, *supra* note 5 at 1.

that all customary laws including those covering land issues were made obsolete. This was not the case, however because “Land law is one of the spheres which has not been completely recast, and since title registration has not been introduced into any of the northern provinces of Ethiopia,<sup>44</sup> it is evident that the rules of customary land law, as far as these apply, are still in force.<sup>45</sup>

In highland Ethiopia, most litigation centered on land right and disputes. Again there were no uniform customary laws applied everywhere and those who enforced the laws had to apply the customary laws that were unique to their localities. At the local level such matters were handled by a Chika Shum<sup>46</sup>. He was the lowest representative of the central government and at the same time acted as Judge. He would be present at local weddings; would preside at meetings of the village council, and would be especially concerned with all transfers or allocations of land and disputes concerning it. He would see that orders from the higher authorities were proclaimed by a crier in the village.<sup>47</sup> Such disputes would then be appealed to the Wereda, Awraja, Teklay Gzat courts and ultimately to the Emperor. (see discussion of these courts *infra*.)

### **Litigation or *Mught***

Ethiopians have been adept at litigiousness. “[T]heir sense of honour and justice is satisfied once the matter has been properly argued out: thus they will present a case with great dexterity and a distinct flair for oratory”<sup>48</sup>. Back when there was no major sport engaging the people, litigation was a national pastime where everyone in the neighborhood, including young children, would attend just about any court proceeding. Most Ethiopians possess an astonishing knowledge of customary law enhanced by clear thinking, memory, and a wonderful facility of eloquent exposition.<sup>49</sup> It is, therefore, not surprising that Abyssinians [the former name of Ethiopians] generally conducted their lawsuits in person, for they usually derived much pleasure

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<sup>44</sup> ARTHUR A. MILLER, *Customary Land Tenure System Among the Highland Peoples of Northern Ethiopia*, 1 Afr. L. Stud.1 (1969)

<sup>45</sup> *Id.* at 3.

<sup>46</sup> Chika shum was the person elected by the villagers themselves or appointed by the provincial governor depending on the locality and he was the person well versed in the customary agrarian laws.

<sup>47</sup> Perham, *supra* note 2 at 275.

<sup>48</sup> Ullendorff, *supra* note 3 at 46.

<sup>49</sup> *Id.* at 186

from the sheer presentation of their case which encourages in them the feeling that justice is being done.<sup>50</sup>

### The Law of Loans

Although Emperor Haile Selassie introduced the law of loans in 1924-25, the ancient customary law of loans was applied concurrently and it still works in most part of the country. In the Ethiopian custom, the word of a man is worth millions. The saying “let the offspring be lost (or die) rather than one’s word (promise)” has been the guiding principle for people to engage in monetary transactions. To this day, one would still witness such practices around the Merkato (the largest open –air market in Africa) and in neighborhoods where no form of paper is signed when such transactions are carried out. Chapter XXXIII of the Fetha Negast addresses this topic as well. Traditionally, if the debtor failed to settle his debt with the stated time, he was obligated to call what was locally known as a wass (ዋስ) or guarantor and if at the expiry of the loan period, the debtor failed short in his obligation to settle the debt, the wass was obligated either to pay the money, or to produce the debtor. It is only at that point the wass was freed from any further obligation. The debtor, meanwhile, must either pay or surrender his person to his creditor, who will then imprison him. This being an entirely private matter between the two, the State refuses to imprison him; it is not its affair.”<sup>51</sup>

Most of the Law of Loans was borrowed from the French Civil Code, and others have been incorporated to fit the special conditions existing in the country.<sup>52</sup> Until the Italian occupation, this law only applied to Ethiopians; if foreigners were involved in the dispute the case was referred to a Special Tribunal set up by the Ethiopian and French governments.<sup>53</sup> According to Perham, in the old days if a man failed to pay his debt, he would first surrender his person to his creditor, who would then imprison him<sup>54</sup> or he would be chained by the wrist to his creditor, who took him whether his relatives would pay what was due.<sup>55</sup>

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<sup>50</sup> Id.

<sup>51</sup> Sandford, *supra* note 5 at 84.

<sup>52</sup> Marein, *supra* note 25 at 152.

<sup>53</sup> Id.

<sup>54</sup> Perham, *supra* note 2 at 84.

<sup>55</sup> Id. at 143

## The Codes Past and Present - The Fetha Negast (FN), or “Justice of Kings”

The Fetha Negast is a collection of religious and secular laws that was originally written in Arabic by a Coptic Egyptian by the name of Ibn al-‘Assal, in 1235-1243 when Cyril III was the Patriarch of Alexandria. When compiling the Code, Ibn al-‘Assal referred to the Old and New Testaments, mainly the writings of Apostolic origin and the canons of early church councils of Nicaea and the Council of Antioch and writings of a number of Fathers of the Church. The secular section relied upon the collection of laws found in four books known as “The Canons of the Kings.”<sup>56</sup> Some say the Original source of the FN was Greek, translated into Arabic by Abraham, the son of Hanna Natyjan, and later translated into Ge‘ez by Petros Abda Sayd who brought the original work from Alexandria during the reign of Zar’a Ya’qob, but was not put into use until the reign of Sersa Dengel in 1563-1597.<sup>57</sup>

Until Emperor Haile Selassie issued the code of law in 1930, the most authoritative legal document in Ethiopia was the Fetha Negast. It was considered sacred because of its religious background. It contained two parts totaling 51 chapters of which part two, chapters 23-51, were devoted to secular matters. Some of the topics in the FN dealt with Loan, confession, succession, etc. Homicide and the appointment of judges<sup>58</sup>

Although the Fetha Negast was the law of the land for a long period of time until the codification of the 1930 laws, the courts never referred to it through the ages because it was never translated from Geez into Amharic until very late and very few of the judiciary could read or understand the Geez language. In addition, “During past centuries many learned and other interpretations of what is written in the Fetha Negast have accumulated and it is therefore difficult for two courts to strike agreements on its application in the courts.”<sup>59</sup> For example, Some judges while strictly interpreting the FN held that that the true interpretation of the Laws in the area of succession was that an illegitimate child could not inherit from the estate of the deceased who died intestate, while some others held that the true interpretations of those laws in matters of succession was that the child could not inherit if the

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<sup>56</sup> See The Fetha Negast The Law of Kings Page xv.

<sup>57</sup> Id. at xvi.

<sup>58</sup> See the Fetha Negast Chapter XLIII page 249 on judges.

<sup>59</sup> Talbot, *supra* note 13 at 154 and Marein, *supra* note 25 at 151. (notice the similar language).

deceased had acknowledged the child before his death. However such a child was both entitled to inherit that part of the estate left to him in a will.

### **The Customary Laws and FN**

Historically, courts applied customary laws and the FN concurrently. If the customary laws contradicted with what was written in the Fetha Negest, the customary law was null and void. In cases where the Fetha Negest was silent on a subject matter the customary law was applied. Talbot and Marein, in very similar language, wrote that “In no case in the High Court, for instance, is the Fetha Negest applied by itself; it is applied only in cases in which the custom coincides with what is written in the Fetha Negest, which occurs especially in matters of inheritance and succession.<sup>60</sup> In regions where the custom in matters of succession and inheritance coincides with what is written in the Fetha Negest, the ancient law applies; otherwise the customary law prevails.<sup>61</sup> Talbot gives an example: some judges held that the true interpretation of the Laws of the Fetha Negest dealing with succession was that an illegitimate did not inherit from the estate of a deceased who died intestate, while other judges held that the true interpretation of those laws in such matters was that the child did inherit if the deceased had acknowledged the child before his death. Both schools of thought, however, held that such a child was entitled to inherit that part of the estate left to him in a will.<sup>62</sup>

### **The Introduction of Modern Laws**

By “modern” it is meant the enactment and codification of laws since the late nineteenth century. The first laws or decrees were on slavery, which had been a common practice in Ethiopia. These laws were an extension of the FN which stated:

[The state of] liberty is in accord with the law of reason, for all men share liberty on the basis of natural law. But war and the strength of horses bring some to the service of others, because the law of war and victory makes the vanquished slaves of the victors. Mosaic law shows that unbelievers and their children must be held as slaves since it is written there... You shall buy [slaves from among them and from

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<sup>60</sup> Talbot, *supra* note 13 at 154 and Marein, *supra* note 25 at 151. Both Talbot and Marein have used similar languages throughout their books. Neither acknowledged the other.

<sup>61</sup> Talbot, *supra* note 13 at 154.

<sup>62</sup> Talbot, *supra* note at 154 and Marein, *supra* note at 151-52

among their offspring born in your hand, shall be for you and your children after you as an inheritance.<sup>63</sup>

Ethiopia had practiced slavery for centuries. These slaves were either prisoners of war and their children or sometimes children who were born into slavery. They were also those who were purchased or in some cases those who were serfs that failed to make payments of dues and services to their owners. Emperor Theodros was the first to address the slave trade by issuing a decree eliminating the slave trade. In 1884, the first of a series of treaties between Ethiopia (Emperor Yohannis IV) and Great Britain concerned entirely with the slave trade.<sup>64</sup> Although Emperor Yohannis IV prohibited slave trading, the practice continued after him despite the fact that Emperor Menelik also imposed severe sanctions against those who practiced it. The Italians also attempted to abolish it. Emperor Haile Selassie was actually the one who outlawed the slave trade and slavery by a comprehensive law that was issued on March 3, 1924 when he was a regent<sup>65</sup> and signed by Empress Zewditu. There was one important factor that led Emperor Haile Selassie HS to enact such a decree: prior to 1923, Ethiopia had applied to be admitted to the League of Nations, but was rejected due to her practice of slavery. She was admitted to the League of Nations on September 28, 1923 on condition that she “accepted the 1919 Convention of Saint Germaine by which she promised to ‘make particular efforts to ensure the suppression of slavery in all its forms...’”<sup>66</sup>

The 1924 law was later amended on July 1931 where certain categories of slaves who had remained slaves for a period of years under the old customary law, were set free.<sup>67</sup> The 1931 law was further amended abolishing slavery altogether by Proclamation No. 22 of 1942 entitled “Slavery (Abolition) proclamation 1942” which appeared on the Negarit Gazeta, dated August 27, 1942.<sup>68</sup> By such law, any person who was found guilty of dealing in slaves, or who assists in any way whatsoever in slave dealing, will be sentenced to death or to imprisonment up to twenty years or to a fine of up to ten thousand Ethiopian dollars.<sup>69</sup>

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<sup>63</sup> See the Fetha Negast Chapter XXXI on page 175.

<sup>64</sup> Sandford, *supra* note at 56.

<sup>65</sup> Marein, *supra* note at 189.

<sup>66</sup> Perham, *supra* note at 225.

<sup>67</sup> Marein, *supra* note at 190.

<sup>68</sup> See discussion *infra*.

<sup>69</sup> Id.

The custom back in the day was to have public executions of those engaged in the slave trade. When slave traders were caught, capital punishment was meted out at the gates of the city, usually by hanging.<sup>70</sup> Capital punishment by hanging was totally abandoned in the city around 1921 with the cutting down of the old tree of execution just outside the St. George church.<sup>71</sup>

After the proclamation to abolish slavery was signed by Empress Zewditu the next proclamation to be promulgated was the 1924/25 Law of Loans. As mentioned earlier, many of the provisions for the said "Law of Loans follow similar provisions of the French Civil Code."<sup>72</sup> This law applied to Ethiopians only and if the dispute was between foreigners, the consular offices of the litigants that applied their respective laws had jurisdiction over them.<sup>73</sup> The law of Loans was rarely applied in the courts as it was not widely distributed to the legal community. Marein, who was advocate General and General Adviser to the Ethiopian Government and who served on the bench of the High Court, claims that he had only heard the law of loans being referred to once or twice during his tenure. The customary law of loans was allowed to continue to this day because of the long held tradition of handling loans and related such matters.

### The Penal Code

The Penal Code was promulgated in 1930 and it was the genesis for modernizing and unifying the Ethiopian penal system. For the first time in the Ethiopian legal history the Penal Code became the binding law in penal cases.<sup>74</sup> It fixed the punishment for each crime and defined the offenses.<sup>75</sup> Unlike past practices where a judge or a governor could arbitrarily decide the fate of the accused by merely looking whether or not the conduct was wrongful and the governor had the power to sentence the accused. The Code outlined that only specific crimes and analogous offenses could be punished;

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<sup>70</sup> Sandford, *supra* note at 82.

<sup>71</sup> Mengistu Neway was the exception to this rule. He was a general who was hanged on March 30, 1960 at the Teklehaimanot Square for his involvement in the aborted Coup d'état of 1960. Since 1921 execution by hanging took place outside Addis Abeba.

<sup>72</sup> Marein, *supra* note 25 at 152.

<sup>73</sup> *Id.*

<sup>74</sup> Redden, *supra* note 18 at 44.

<sup>75</sup> *Id.* It may be argued that the Fetha Negast was the binding law prior to the Penal Code; however, the Fetha Negast only applied to Christian Ethiopia and was not inclusive of all Ethiopians.



there was no danger that an act could be punished because a judge or governor thought it wrongful.<sup>76</sup>

The Penal Code applied to Ethiopians until the Italian occupation and it was reinstated after liberation again to apply to Ethiopians only. In the case of foreigners the courts applied the Italian Penal Code until 1947 when the foreigners forfeited it and preferred the Ethiopian Penal Code because of the many deficiencies or lacunae in it.<sup>77</sup> The codes that were drawn up received full force from the Emperor. The 1931 Constitution also made it mandatory for all judges to give judgments “in accordance with the law.”<sup>78</sup> Accordingly, when on march 30 1942 the Administration of Justice Proclamation (AJP) was enacted, all judges were required to follow what was written in the Penal Code.

### **The Codification of Ethiopian Laws**

The term *codification of laws* has different definitions, and one such definition could be, “The process of compiling, arranging, and systemizing the laws of a given jurisdiction, or of a discrete branch of the law, into an ordered code,”<sup>79</sup> and its historical meaning may also mean the reduction to writing of a country’s laws what previously was only extant in oral form. None of these definitions applied in the Ethiopian context. What codification meant in Rene David’s words was codifying “a civil code for Ethiopia, and not the civil code of Ethiopia.”<sup>80</sup> In other words, the codes were transplanted from various foreign sources and made applicable to the country and was not the codification of the existing laws of the country, customary or otherwise. The customary laws, though recognized by the Constitution, could not be codified because they were fragmented and numerous. The concept of legal rules as binding norms did not exist and customary law was not a separate body of law to be applied in certain cases or to certain persons.<sup>81</sup>

Thus, a new wave of codes was to be drafted in various disciplines in the 1950s and 1960s. Before these codes were drafted it was well known by the drafters and Ethiopian jurists that the time honored traditional or

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<sup>76</sup> Id.

<sup>77</sup> Marein, *supra* note 25 at 180.

<sup>78</sup> See Chapter VI of the 1955 Constitution.

<sup>79</sup> BLACK’S LAW DICTIONARY 294 (9<sup>th</sup> ed. 2009).

<sup>80</sup> Rene, David. A Civil Code For Ethiopia: Considerations on the Codification of the Civil Law in African Countries, 37 TUL. L. REV. 187 (Remy F. Gross, trans.) 1962-63.

<sup>81</sup> Redden, *supra* note 18 at 73.

customary laws were not systematized as was the case in the other African colonies and was often difficult to decipher the existing laws because they were different from place to place and from region to region. In the African colonies,

“Where a nation was under the control of colonial power, a body of modern law had been incorporated into the legal system. After independence... they retained the common law that was “received” from England. Just as the United States retained common law that was “received” from England, the African countries that were former British colonies and had thereby “received” the common law, did likewise.<sup>82</sup>

Similarly, in the French colonies, French codes were imposed and provided a *droit commun* throughout the French West Africa. After independence these codes served as the main body of law.<sup>83</sup>

The reason why the Emperor wanted codes was simple. First, he had the desire to assure as quickly as possible a minimal security in legal relations. Second, a code would provide more certainty than the common law, particularly when the common or customary law had never been applied before.<sup>84</sup> It was not the policy of the government that one set of laws could be applicable to one person and another set of laws applicable to another.<sup>85</sup> A separate system of customary law would also have prevented uniform application of the law. In light of the tremendous variations in customary law, even among the major tribes which shared a common culture, this would have produced a very fragmented legal system.<sup>86</sup>

Moreover, [i]t would be much easier for the judges to apply a code containing specific rules than principles developed from cases – cases which would not be in the official language of the country. Very few judges could read and understand the English or French languages. At the time it was convenient to use the codes because, in a code it would be easier to make the necessary adaptations to Ethiopian conditions; rules needed in Ethiopia could be specifically incorporated into the provisions of the code.<sup>87</sup> This sentiment was evidenced by the Emperor in the preface to the Civil Code which stated

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<sup>82</sup> Id. at 47.

<sup>83</sup> Id. at 48–49.

<sup>84</sup> Although the substantive codes followed continental models, Ethiopia adopted the common-law approach to procedural law.

<sup>85</sup> Redden, *supra*, note 18 at 73.

<sup>86</sup> Id. at 74.

<sup>87</sup> Id. at 52.

“it is essential that the law be clear and intelligible to each and every citizen of our Empire so that he may without difficulty ascertain what are his rights and duties in the ordinary course of life, and this has been accomplished in the Civil Code.”<sup>88</sup>

Therefore, in an effort to modernize the legal system, the Emperor decided to enact different codes derived from different countries. Initially, two Frenchmen and a Swiss were appointed and a codification commission formed to prepare five different codes. These were the Penal Code which was completed first and promulgated in 1957, the Criminal procedure Code came in 1961. The Civil Code and the Commercial Code were promulgated on May 5, 1960 and became effective on September 11, 1960...The Civil Procedure Code was promulgated as a decree in 1965 and was approved by Parliament in 1967.<sup>89</sup>

At the very outset, one thing was made absolutely clear to the drafters and that was to make sure that Ethiopia's independence and sovereignty was not compromised in any way and to guarantee that no single foreign power was to have any monopoly over Ethiopian law. To that end, the Emperor strictly instructed the drafters that the codes were to be taken from various sources,<sup>90</sup> and the drafters were drawn up from different countries.<sup>91</sup>

When the codes were being drafted, a different approach was taken. As a bench mark, no single foreign body of law whether British or French was to be transplanted as a whole although both the French and the British had much influence over Ethiopia particularly the British when they took over the administration of justice after the Italians were driven out of the country. Therefore, those that were made responsible for the development of the legal

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<sup>88</sup> Id.

<sup>89</sup> Rene, David. Sources of the Ethiopian Civil Code, 4 J OF ETHIOPIAN LAW 341, (1967)

<sup>90</sup> In the appendix to “An Introduction to Ethiopian Penal Law Art 1-84 Penal Code” Philippe Graven, for instance, provides the countries from which the main foreign provisions in the drafting of, Art 1-84 of the Ethiopian Penal Code have been taken and they are from Yugoslav, Greek, Danish, Swiss, Italian, Brazilian, German, Dutch, French, Polish, Spanish and Portuguese. See page 217.

<sup>91</sup> The authors of these codes were: Professor Jean Graven from Switzerland who drafted the 1957 Penal Code; Professor R. David from France who drafted the Civil Code in 1960; Professor J. Escarra from France drafted the 1960 Maritime Code, Sir Charles Mathew of England drafted the Criminal Procedure in 1961; Professors J. Escarra and A. Jauffret of France drafted the Commercial Code of 1960 and Ato Nerayo Esayas an Ethiopian jurist, drafted the Civil Procedure Code in 1965.

system had their directives directly from the Emperor that “a body of law, distinctively Ethiopian in character, would be fashioned.”<sup>92</sup> To that end, modern codes based on a variety of comparative sources were to be created.”<sup>93</sup>

There was another problem which the drafters faced. From the start the drafters knew that they could not use any of the existing laws to any degree except a few customary laws that were so important that they could not be left out due to their practicability and wider use and had to be injected somehow into the newer codes. Obvious at this initial stage, however, was that the drafters knew full well that the customary laws did not develop as a defined body of law although they had served as a social web to the communities. The customary laws that existed were very uncertain, and varied considerably from place to place, group to group, and even from time to time. In addition they were derived from the three Abrahamic religions, namely Christianity, Islam, Judaism and others all the while making it to consolidate them into one whole.

Therefore, the drafters had to strike a balance between what was to be taken from foreign sources and what customary laws to keep. The solution they found was to use a comparative approach and borrow from foreign sources and “If there had to be a borrowing, it was to be an eclectic one, drawing the best from the various legal systems ...not only is this approach sound from the standpoint of alternatives for choice, but it was consistent with the Ethiopian tradition of independence not to “receive” the law of any foreign legal system<sup>94</sup> It was decided that the drafters use continental codes because they “constitute an exposé of law sufficient in itself, which is the point of departure for a new development of juridical rules.”<sup>95</sup> Unlike the common-law type code which provides existing principles and in the absence of a pre-existing and established body of law, the continental conception of a code was found to be the solution in an effort to make the rules and laws clearer, thus limiting the law making power and discretion of the judge. It was believed that the danger of arbitrariness would be reduced.

As can be expected, the codes and new legislations that were promulgated competed with the traditional laws and the Fetha Negast that had much more followers. It was noted that the old laws had not lost their

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<sup>92</sup> Redden, *supra* note 18 at 51.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 53.

<sup>95</sup> *Id.* at 52.

importance, particularly with the majority of Ethiopians. It must be noted on the outset that because of these factors, as much as the drafters and the Codification Commission were considering foreign sources to draft the codes, they were also considering to include those customary laws and practices as well. The drafters and the Commission that were to draft the new codes were confronted with such big question.

To what extent then were the local laws that were an intrinsic part to the way of life of the Ethiopians to be incorporated into the codes? One solution the experts used to deal with this problem was to keep some of the customary laws particularly in the areas of family law, succession and land laws that were intrinsically rooted in traditions of the people. They did this not to maintain customary law as a separate part of the system, but rather to take account of customary law and practice in shaping the code along the lines suited to Ethiopia.<sup>96</sup>

Redden cites Professor Krzeczunowicz who lists four conditions that were applied to retain some of the customary laws. (1) the custom was sufficiently general as to be practiced by at least a majority of the highland population; (2) it was not repugnant to the Ethiopian concept of natural justice as reflected in the Fetha Negast; (3) it was not contrary to the economic progress; and (4) it was sufficiently clear and articulate as to be able of definition in civil law terms.<sup>97</sup>

Therefore, following these directives, the drafters kept the customary laws in the codes such as

- In keeping with custom it was provided that the legitimacy or illegitimacy of the deceased or the heirs does not affect succession rights.<sup>98</sup>
- Among some tribal groups females were not permitted to inherit, but among the majority of groups they were. Under the Code it was provided that the sex of the heir did not affect succession rights.
- In keeping with tradition, the Code made provisions for marital arbitration, and where there was not “serious cause” for divorce, the arbitrators had a year in which to try to reconcile the parties.<sup>99</sup> This was a major departure

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<sup>96</sup> Id. at 75.

<sup>97</sup> Id. at 76.

<sup>98</sup> Id. at 77.

<sup>99</sup> Id.

from the traditional practice where divorce had been too frequent and randomly available.

Many of the customary laws that were repugnant to the modernization process were discarded altogether. We know that Article 3347(1) of the Civil Code provided that: Unless otherwise expressly provided all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and hereby repealed.

The Codes also abolished the customary laws in an effort to change the way of life of the people and help them adapt to new rules and to govern the conduct of people in the society which is being created.<sup>100</sup> Some of the major changes made were in the area of marriages. As discussed above, there were different types of marriages among which was the “demoz” or wage marriage that was prevalent. Although it was directly contrary to the local practices, no legal status was accorded to this type of marriage because the existence of such an institution could not be permitted in the modern society.<sup>101</sup> The customary types and incidents of marriage have been abolished, and the only type of marriage recognized under the Code is that of a union which is permanent unless terminated by death or divorce.<sup>102</sup>

Another major change from customary law was the abolition of the effect of the payment of “blood money” upon a criminal prosecution. Traditionally the payment of such money to the family of the deceased was meant to prevent a criminal prosecution for homicide, even for what would be considered first degree murder. This tradition was so strong that it was retained in the 1930 Penal Code. However, under the Penal Code of 1957, payment of blood money has no effect on the criminal prosecution...<sup>103</sup>

A very significant change was the abolition of personal servitude in connection with immovable property where it has been a traditional practice to require the user of land to perform services for the person who granted him the land.<sup>104</sup>

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<sup>100</sup> Id. at 79.

<sup>101</sup> Id.

<sup>102</sup> Id.

<sup>103</sup> Id. at 79-80.

<sup>104</sup> Id. at 80.

## The Fetha Negast and the Codes

By the time the Code of 1930 was drafted, it was made apparent that the Fetha Negast had no purpose in the administration of the courts and was pushed aside and made to recede to the realm of church law alone. The emperor was, however, very careful not to completely disregard the respect it held by the Ethiopian Orthodox Church and the conservative generation of the time and the services it provided in the administration of justice as a whole. As a precaution he injected the following to the preface of the Code:

The reason why we have caused a revision to made of the laws concerning damages for abuse and serious injury and concerning the punishment of takers of life and other criminals is because we have noted on the eighth page of the Preface of the Fetha Negust that the principle underlying the orders of the Three Hundred which they gave in the Fetha Negust in the words, ‘act according to your observations of the conditions of times and season.’<sup>105</sup>

This was interpreted as giving the courts some leeway to use the Fetha Negast should there be a deadlock in interpreting the Code and to fall on to the Fetha Negast as a substitute. There was no direct conflict emanating from using two separate codes because at the time, the Fetha Negast was used by the High Court itself, “when such court is conversant with the Geez language, from time to time as a reference book regarding the sources of customary law.”<sup>106</sup>

## How Laws were Enacted and Disseminated: The Beginnings

As was mentioned earlier the laws that were based on oral traditions were passed from generation to generation by word of mouth. These laws were preserved in the customs and were highly enforced by the communities. In the old days when the laws were enacted by the government or local rulers, the clerks in Addis Abeba or in other major cities would announce them to the public by crying “awaj awaj awaj” and a drum would also be struck forty-four times by which time all the people at the market would have gathered to listen to the new law.<sup>107</sup> In the country side this method would be replicated and in addition to the above procedure a sheep skin or debello would be hung

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<sup>105</sup> Marein, *supra* note 25 at 152.

<sup>106</sup> *Id.*

<sup>107</sup> Walker, C. H. *THE ABYSSINIAN AT HOME*, 163( 1933)

heralding that a new law was about to be read.<sup>108</sup> It would be the role of a *chika shum* with his clerk who would take up that responsibility. Sometimes also, a crier would go around the neighborhood and announce the new law. In some cases the new laws would be sent to the government officials in the country side and they would announce it to the public. The new laws were also affixed to the laws of the municipalities.

Starting with the beginning of the nineteenth century and before the *Negarit Gazeta* was introduced some laws appeared in the *Brehanena Selam*<sup>109</sup>. Old practices continued to be employed so as to reach the wider population as the circulation of the newspapers were merely confined to the major cities and their environs. The printing of laws in the paper was suspended after the Italian occupation. When the British arrived they reinstated the practice by first re-printing the 1931 Constitution in English as an appendix to the British Military Legislation which came out in 1941.

In 1942, the *Negarit Gazeta*, the official gazette, was published on March 30, 1942 and it has come out continuously ever since containing constitutions, all laws, decrees and notices which have come out under their respective names. All laws were published in the *Negarit Gazeta* before they come into force. The first proclamation published in the it was the establishment of the paper itself which declared that, “courts of justice must take judicial notice of all Proclamations, Decrees, Laws, Rules, Regulations, Orders, Notices and subsidiary legislation published in the *Negarit Gazeta*.”<sup>110</sup> The *Negarit Gazeta* was first published under the Ministry of Pen before that responsibility was taken up by the Parliament.<sup>111</sup>

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<sup>108</sup> *Id.*

<sup>109</sup> The *Brehanena Selam* was a weekly newspaper that appeared on Thursdays. The first publication appeared on Thursday, January 1, 1925 both in Amharic and French. There were no decrees or legal notices on the first issue, however, there were some laws that appeared in later newspapers and there were three cases reported from the Crown Prince’s Chilot (highest appellate court) and one of the cases was between Altaye and Dejazmatch Seyoum and the case dealt with will.

<sup>110</sup> Marein, *supra* note 25 at 31.

<sup>111</sup> The chartered cities and states have their own gazettes: Addis Abeba city has *Addis Negarit Gazeta*, the city of Dire Dawa has *Dire Negarit Gazeta*, The state of Oromia has *Megeleta Oromia*, Tigray has *Negarit Gazeta Beherawi Mengiste Tigray*; Benshangul Gumuz has *Lisane Hig*; Amhara has *Zikre Hig*; Harari has *Harari Negarit Gazeta*, Afar has *Dinkara* and Southern Nations, Nationalities and peoples has *Dehub Negarit Gazet*.



## **Enactment of Laws Since 1995**

Laws deliberated upon and passed by the House shall be submitted to the Nation's President for signature. The President shall sign a law submitted to him within fifteen days. If the President does not sign the law within fifteen days it shall take effect without his signature.<sup>112</sup>

## **The Parliament**

The Ethiopian Parliament is of recent origin and it has undergone several changes since its inception. It has been called the parliament of Ethiopia of Emperor Haile Selassie, The National Shengo of the communist regime and the Parliament of the Federal Democratic Republic of Ethiopia by the current government. It was dissolved both during the Italian occupation and during the communist regime.

## **The Parliament of the Imperial Era**

For the first time, the Ethiopian Constitution of July 16, 1931 created a bicameral Parliament, the Chamber of the Senate, otherwise locally known as Mewesegna and the Chamber of Deputies aka Memria. Members of the Senate were appointed by the Emperor himself from among the nobility, dignitaries or mekuanents who have had a long service for the government as princes, ministers, judges or army leaders and members of the Deputies were chosen by the dignitaries and local chiefs.<sup>113</sup> There were no major changes with the 1955 Constitution except for the fact that the House Deputies were elected by their constituents from among 20 electoral districts in each of the twelve provinces. These elections were closely supervised by the governors of the provinces along with ecclesiastical and other dignitaries.

Art. 34 of the 1931 Constitution states that, "No law shall be put into force without having been discussed by the chambers and having received the confirmation of the Emperor." Art. 35. Gives the members of the Chamber of Deputies to receive and discuss proposals transmitted to them by the ministers of the various departments. Deputies had also the right to propose a legislation when it "might be of use to the empire or to the people, the law reserves to them the right of communicating it to the Emperor through their

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<sup>112</sup> See Art 57 of the 1995 Constitution.

<sup>113</sup> See Art 31 and 32 of the 1931 Constitution.

president, and the chamber shall discuss the subject if the Emperor consents thereto.”<sup>114</sup>

Additionally, Art. 36. Provides that “Each of the two chambers shall have the right to express separately its opinion to His Majesty the Emperor on a question relating to legislation or on any other matter whatsoever. If however the Emperor does not accept this opinion, the chambers may not reconsider the question in the same parliamentary session.”<sup>115</sup>

### **How the Laws Were Enacted During the Imperial Era**

According to Article 86 of the 1931 Constitution, laws may be proposed to either or both chambers of Parliament: (A) by the Emperor, or (B) by ten or more members of either Chamber of Parliament. The only exception to this rule was bills proposals for an increase in government expenditure or a new tax increase shall first be presented to the Chamber of Deputies. Bills were also presented by various ministries to the Chamber of Deputies. The following were the most common laws that came out at different times.

#### **A. Proclamation**

With the establishment of parliament, major laws came out in the form of proclamations which had to receive the approval of both the Senate and House and most importantly the Emperor.

#### **B. Decrees**

These were laws enacted by the Emperor by the power of the 1955 Constitution during an emergency when Parliament was not in session. These laws were, however, submitted to the Parliament when it reconvened in new session. These decrees had to be approved by two-third majority and in this case also the Parliament had the veto power to repeal those decrees. Some of these decrees were on Administration regulations [see decree no 1 of the Negarit Gazetta of 1/42 published on December 27, 1942, the amendments of such regulations appeared on Negarit Gazeta on June 28, 1946, etc. Other decrees include, decrees administering various religious missions,

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<sup>114</sup> See Art 35of 1931 Constitution.

<sup>115</sup> See Art 36 of the 1931 Constitution

amendments to existing regulations, appointment of special judges, etc.

C. Orders

Orders were a form of legislation coming from the Emperor. These dealt with the powers and duties of the ministries [departments], the Executive Departments of the Emperor, etc. Unlike decrees, the parliament had no veto power. Examples of these would be the power to define the powers of the ministries. [see order n 1/43 which appeared on NG on January 29, 1943.

D. Legal Notices

These were delegated laws giving power to the ministries authorizing them to issue rules concerning their respective activities. In the same category were also general notices dealing with the appointment of judges and government officials. All legal and general notices were legislation signed by a Minister under a proclamation that usually gave the Minister ...power to legislate thereunder.<sup>116</sup> Examples of a notice would be Legal Notice No. 20 of 1943 appointing three members to the Legislative, price control, curfew orders, public health rules, tobacco regulations, etc.

E. Decisions

These were decisions from the tribunals of the administrative agencies such as the Labor relations Board, the Civil Aviation Board, etc. The decisions of these agencies came out in the form of decisions and communicated to the concerned parties by letter.

F. City Ordinances

These were laws enacted by the city council of Addis Abeba with the approval of the mayor and the Ministry of Interior. The rest of the municipalities did not have such power except to execute and administer those laws enacted by the national government.

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<sup>116</sup> Marein, *supra* note 25 at 29.

## **The Military Government**

The Ethiopian Parliament was dissolved in 1974 when the military junta took power. There was no parliament in the country from 1974-1987 until the communist regime established what they called the National Shengo in 1987. In 1987 the working people of Ethiopia established the Parliament by referendum on February 1, 1987. Article 62 of the Constitution creates the National Shengo as the supreme organ of the state power. Art. 64 of the same Constitution states that candidates of the Shengo shall be nominated by organs of the Workers' Party, mass organizations, military units and other bodies so entitled by law for a term of five years. There were 835 members to it.

## **How the Laws Were Made During the Military Government**

Article 72 of the 1987 Constitution states that The Council of State, the President of the Republic, Commissions of the National Shengo, members of the National Shengo, the Council of Ministers, the Supreme Court, the Procurator General, shengo of higher administration and autonomous regions, and mass organizations through their national organs have the right to initiate legislation.

The Shengo was given broad power to decide on any national issue and other powers to:

- Enact, amend and supervise the observance of Constitution and proclamation
- Enact proclamations by which they are administered
- Establish the Council of State, The Council of Ministers, ministries, state committees, commissions and authorities, and the Supreme Court
- Elect the President, Vice President and
- Ascertain the validity of election of its members.<sup>117</sup>

## **The Parliament Since 1995**

The 1995 Constitution of the Federal Democratic Republic of Ethiopia states that there shall be two Federal Houses: The House of Peoples' Representatives (HOPR) and the House of the Federation (HOF)<sup>118</sup>

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<sup>117</sup> See Art 63 of the 1987 Constitution.

<sup>118</sup> See Art.53 of the 1995 Constitution.

## Members of the House of Peoples' Representatives

Members of the House of Peoples' Representatives are elected by the people for a term of five years on the basis of universal suffrage and by direct, free and fair elections held by secret ballot from candidates in each electoral district by a plurality of the votes cast. Provisions shall be made by law for special representation for minority Nationalities and Peoples.<sup>119</sup> Members of the House, on the basis of population and special representation of minority Nationalities and Peoples, shall not exceed 550; of these, minority Nationalities and Peoples shall have at least 20 seats. Particulars shall be determined by law.<sup>120</sup>

Some of their responsibilities include the power of legislation in all matters assigned by the Constitution to federal jurisdiction. Also, enactment of specific laws on the following matters:<sup>121</sup>

- (a) Utilization of land and other natural resources, of rivers and lakes crossing the boundaries of the national territorial jurisdiction or linking two or more States;
- (b) Inter-State commerce and foreign trade;
- (c) Air, rail, water and sea transport, major roads linking two or more States, postal and telecommunication services;
- (d) Enforcement of the political rights established by the Constitution and electoral laws and procedures;
- (e) Nationality, immigration, passport, exit from and entry into the country, the rights of refugees and of asylum;
- (f) Uniform standards of measurement and calendar;
- (g) Patents and copyrights;
- (h) The possession and bearing of arms. It shall enact a labor a commercial code and penal codes. It shall also enact civil laws which the House of the Federation deems necessary to establish and sustain one economic community.<sup>122</sup>

## Adoption of Laws

Laws deliberated upon and passed by the House shall be submitted to the Nation's President for signature. The President shall sign a law submitted

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<sup>119</sup> See Art. 54(1) and (2).

<sup>120</sup> See Art 54(3).

<sup>121</sup> See Art 55(1) and (2).

<sup>122</sup> See Art. 55 of the 1995 Constitution for more duties.

to him within fifteen days.<sup>123</sup> If the President does not sign the law within fifteen days it shall take effect without his signature. The House shall adopt rules and procedures regarding the organization of its work and of its legislative process.<sup>124</sup>

### **The House of the Federation**

The House of the Federation is composed of representatives of Nations, Nationalities and Peoples. Where each Nation, Nationality and People shall be represented in the House of the Federation by at least one member. Each Nation or Nationality shall be represented by one additional representative for each one million of its population.<sup>125</sup> Members of the House of the Federation shall be elected by the State Councils. The State Councils may themselves elect representatives to the House of the Federation, or they may hold elections to have the representatives elected by the people directly.<sup>126</sup>

### **Powers and Functions of the House of the Federation**

The House has the power to interpret the Constitution; organize the Council of Constitutional Inquiry; in accordance with the Constitution, decide on issues relating to the rights of Nations, Nationalities and Peoples to self-determination, including the right to secession and promote the equality of the Peoples of Ethiopia enshrined in the Constitution and promote and consolidate their unity based on their mutual consent.<sup>127</sup> In addition It shall exercise the powers concurrently entrusted to it and to the House of Peoples' Representatives; strive to find solutions to disputes or misunderstandings that may arise between States; determine the division of revenues derived from joint Federal and State tax sources and the subsidies that the Federal Government may provide to the States; determine civil matters which require the enactment of laws by the House of Peoples' Representatives and it shall order Federal intervention if any State, in violation of this Constitution, endangers the constitutional order. It shall also elect the Speaker and the Deputy Speaker of the House<sup>128</sup>

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<sup>123</sup> For power of the President see Art 71 of the 1995 Constitution.

<sup>124</sup> See Art 59.

<sup>125</sup> See Art 61.

<sup>126</sup> Id.

<sup>127</sup> See Art 62.

<sup>128</sup> See Art 62 for more of the powers.

## The Court System

Generally the court systems in the country varied from place to place. Their designated court officers also carried different names from region to region. The most dominant part of the court system has been that of the highlanders.

### The Traditional First Instance or Trial Courts

Traditionally it was customary for two litigants to find a common arbitrator from among the community to hear their cases. Anybody could be a judge; a bystander or someone who held high regard in the community either because of his position as an elder or leader in that community or has been known to be an impartial one. The person locally known as *dagnia* or judge would then select some arbitrators or jurors in some cases from among the community. The cases were held once a week, in a market place, or under a tree or in an open field. As Ethiopians take litigation as a national past time, people often volunteered to become jurors and were often asked to attend the hearings. It must also be mentioned that Ethiopians are well versed when it come to their customary laws and the impromptu courts as well as the litigants had no difficulty in following the local procedural rules and proceedings without difficulty. The litigants did not hire local *tebekas* or attorneys at this stage of the litigation. The attorneys themselves did not have any formal legal education, but relied on what they learned from oral tradition.

The people of Ethiopia from time immemorial have settled their disputes through negotiations and arbitrations. There were many reasons for this. Primarily as was mentioned in the introduction, the peoples of Ethiopia were isolated from one another for far too long due to lack of means of transportation. Even in later years as the means of transportation improved, the new enacted laws were could not reach the population. Additionally, the newly enacted laws were foreign to all as they were imported from foreign countries. For that reason, the customary laws were allowed to run concurrently with the Fetha Negest and later the codified laws.

As much as the Italians wanted to abolish all local laws and transplant their own, they let the customary laws be applied in localities outside the main cities and in faraway lands. Today, they are recognized by the 1995 Constitution and the customary laws are practiced everywhere. Even in modern times, there were no trained Ethiopian lawyers to travel to remote areas of the country and apply the new laws. For that reason, traditional courts have had the force of law on decisions they made. They have been

very effective because of their proximity to the people, their close relationship between the judges and the people, and the respect the judges commanded from their communities. They have been popular among the people for the simple reason that they employ the basic approach to arbitration rather than imposition of imported laws that were very ineffective and unwelcomed. Such courts, rampant throughout the country, were well followed because the presiding judges spoke the peoples' languages in a manner that were understood by the people. In addition, since the judges resided among the judged, they were very careful in passing their judgments because their credibility and respect were very important to them.

The Chalo traditional court system is one such example. A three panel of judges presides over local matters. Limited in scope, they are instrumental in settling cases that are very local in nature. The problem with the Chalo system is that it lacks the appeal process within itself and appeals had to go to the kebele or zonal courts.<sup>129</sup>

The Ghurage system is another one. There are two levels of courts: the Yakoja, or high courts, and village and clan judicial assemblies.<sup>130</sup> The assemblies settle civil disputes between parties who are members of the same village (and, usually of the same lineage) or of the same clan. The Ghurage high courts settle civil disputes between members of different clans and hear criminal actions defined as such according to Ghurage custom<sup>131</sup>.

### **The Local Appointed Court Officials**

Traditionally no two regions organized their courts hierarchy in precisely the same manner. Each region and within regions each community has had its own peculiarities although we see some similarities. When the litigants could not settle their disputed with the help of the impromptu courts headed by the ordinary people, they took their cases to the local official known as the *Chika Shum*.<sup>132</sup> He was the representative of the Emperor at the lowest level and was responsible for five to ten villages. Appointed for a term

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<sup>129</sup> The Chalo system is practiced in the Fufa Toba area located in the Southern Nations, Nationalities, and Peoples region.

<sup>130</sup> Kaplan, Irving, et al. AREA HANDBOOK FOR ETHIOPIA 284 (1970). Since these courts are generally recognized by the 1995 Constitution, it is assumed these and similar courts still exist.

<sup>131</sup> Id.

<sup>132</sup> Chika Shum or officer of the mud or land so called because he is a person attached to the land permanently until he is replaced. In some areas this position was hereditary. For more readings, see Sandford at 17 and Perham at 143, et seq.



of one year, he was also responsible for collecting taxes and dues owed to the government and land owners; overseeing land transfers; announcing and enforcing laws coming from higher authorities and representing his constituents should unsettled disputed go before the mislene who is a higher officer. This person was so important that he was retained by the Italians to help them enforce their laws.

We also have the melkegna who formerly was a netch lebash (plainclothesmen) who were local security officers enforcing government orders. Melkegna was the governor's deputy at the lowest level who acted as judge in criminal matters. Appeals from him would go to the governor or his representatives, the wombers.<sup>133</sup> There were two wombers (chairs); kegn and gra (right and left chairs) who had the power to imprison and fine wrongdoers. Melkegnas were also responsible for collecting taxes and enforcing law and order. At the next level we have the mislene (alter ego) who was appointed by the governor of the province and recognized by the Emperor. Just like the officers below him, his responsibility was to enforce the laws and make sure that the taxes were collected in time. All these three officers also had judicial duties. They acted as judges when disputes came before them. The provincial governors also acted as appeal judges from the decision that came via the wombers. These traditional courts that existed from centuries were all abolished in 1975 when the communist government created the Peasants' Associations. Chapter Four of the 1987 Constitution of the communist regime rearranged the judiciary. John Buchholzer describes eloquently how the chika shum conducted his business on a daily basis.<sup>134</sup>

## Discovery

In the old days until the public prosecutor was created and where there were no police to investigate criminal or civil matters until the police force was again introduced by the British and later enacted into law by the "Police Proclamation 1942" on March 30, 1942, the localities had their own methods of finding the wrong doers in their villages or district depending on the seriousness of the crime. The public Prosecutor was established by law on October 31, 1942 whose main job, among many, was to prosecute cases before the courts which affected public security in general.<sup>135</sup> The principal

<sup>133</sup> Perham, *supra* note at 145.

<sup>134</sup> Buchholzer, John. *LAND OF THE BURNT FACES*, (TRANS. translated from Danish Maurice Michael, 61 (1955) For more info on local system read more from this book and also from C.H. Walker's *The Abyssinian at Home*.

<sup>135</sup> Marein, *supra* note25 at 113. For more on public prosecutor go to pages 113-114.

and deputy prosecutors were appointed by the Emperor and received their directions from the Ministry of Justice.<sup>136</sup> The local people use the following methods to investigate crimes.

### **The Afersata**

This was one of the methods employed locally and which the Italians retained as well to find a criminal. The local chief, elders, *chika shum* or *melkegna* would ask a representative of a family to be assembled usually under a tree and the official would announce the charge or the reason for such assemblage. They were held until they pointed out the culprit among them. They would stay there for days and sometimes weeks without leaving the area.

### **The Awchachgne (awcha chin)**

This is the highest level of investigative method where all the adults would be rounded up and put in an enclosure for days and sometimes for weeks. This method was relaxed by the emperor because it was so severe that the people were offended by it.

### **Restructuring of Courts and Judges**

Both the 1931 and 1955 Constitutions recognize the establishment of courts and that the judicial power shall be exercised by the courts established by law. The 1995 Constitution establishes the Supreme Imperial Court and such other Courts as may be authorized by law. There were two other important proclamations that came out which transformed the judicial system. They were the Administration of Justice Proclamation No 2 which appeared in the *Negarit Gazeta* on March 30, 1942 and the Establishment of Local Judges Proclamation No 90 which appeared on the *Negarit Gazeta* on June 28, 1947. Under the Administration of Justice Proclamation the following courts were created: At the highest we have the Supreme Imperial Court, High Court which included circuit courts, *Awraja* or district court and *Wereda* Courts.

### **The Chilot –The Highest Appellate Court**

Although the Chilot is not mentioned in the 1942 Administration of Justice Proclamation, or in any of the Constitutions<sup>137</sup>, the Chilot was the

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<sup>136</sup> Id.

highest court of the land up to 1974. It was a court presided over by the Emperor and assisted by the Afe Negus (the mouth piece of the Emperor.) The Emperor's power to judge came from what Sedler calls the "sovereign prerogative" which gave the Emperor, "the power to review court judgments and... set them aside for reasons which may be different from the reasons which an appellate court reverses a judgment of a subordinate court."<sup>138</sup> He was at the same time "head of the government and of the judiciary and also combined in his person the function of both the chief legislator and chief executive. He did in fact both reign and rule."<sup>139</sup>

Sedler adds that one of the elements to "sovereign prerogative" was to ensure that justice was done and included that the sovereign possessed a residuum of justice to which men may turn when the courts have failed either ... because of defects in the law the courts apply or in a manner in which they administer or fail to administer the law.<sup>140</sup> This meant the Emperor would interfere if it was found that the courts may have misapplied the law, their proceedings may have been unfair, or the law may be inadequate to meet the needs of justice in the particular case.<sup>141</sup> Thus the ultimate arbiter of cases was the Emperor himself who had the power... to dispense justice and to see that justice is done.<sup>142</sup>

The two Imperial Constitutions do not mention the Chilot specifically. According to Sedler the power of the Chilot lied in the sovereign prerogative of the Emperor. The Administration of Justice Proclamation of 1942 establishes the Supreme Imperial Court and no mention is made about the Chilot. However, he states that Article 181 of the Criminal Procedure Code provides that an appeal should lie in accordance with the provision of article 182, which establishes appellate jurisdiction. The final tribunal mentioned in article 182 is the Supreme Imperial Court.<sup>143</sup> He found the clue within article 183 of the Criminal procedure Code where it is stated, "nothing

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<sup>137</sup> It could be argued that the power of the Emperor to sit in Chilot came from Art. 26 of the 1955 Ethiopian Constitution which states that the Sovereign of the Empire is vested in the Emperor and the supreme authority over all the affairs of the Empire is exercised by Him as the Head of State, in the manner provided for in the present Constitution.

<sup>138</sup> Robert A. Sedler, *The Chilot Jurisdiction of the Emperor of Ethiopia: A Legal Analysis in Historical and Comparative Perspective*. 8 J. Afr. L 56, 67 (1964)

<sup>139</sup> Greenfield, Richard. *ETHIOPIA A NEW POLITICAL HISTORY* 290 (1965)

<sup>140</sup> Sedler, *supra* note 135 at 64.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 59.

<sup>143</sup> *Id.* at 67.

in Art. 182 shall prevent an appellant who has exhausted his rights of appeal under Article 182 from applying to His Imperial Majesty's Chilot for a review of the case."<sup>144</sup>

Thus the Chilot for all practical purposes was the highest court. It was a court of final appeal for litigants who claimed that there were errors in the application of the law through the appeal process or in lower courts. The emperor did not need to sit at Chilot as his duty to sit was discretionary. Moreover, the "Emperor was not bound by the provisions of the strict law, but may mitigate the rigours of the law in the particular case,"<sup>145</sup> which made his decision capricious and arbitrary. The courts had to exercise judicial power in accordance with the law, i.e., the Constitution, statutes and codes.<sup>146</sup>

### **The *Fird Mirmera* and the *Seber Seme***

There were departments "investigating a verdict" and *Fird Mirmera* and the *Seber Seme* were the two departments that assisted the Chilot in investigating a verdict and appeals from a court of cassation.<sup>147</sup> These were two departments of inquiry that were created by the emperor to assist him in the administration of justice when he sat in his capacity as head judge in Chilot to deliberate on some important cases coming to him. The main function of the *fird mirmera* was to screen petitions for review in Chilot and decide whether they have any merits. It made recommendations to the Emperor as to whether the case should be reviewed in Chilot; and may make recommendations as to the disposition; it may also recommend ...and the Emperor may order that another appellate court hear a case.<sup>148</sup>

The *Seber Seme* on the other hand provided opinions on question of law when such questions arose in Chilot and when the Emperor referred the case to it.<sup>149</sup> He also heard a case upon the recommendation and direction of the Emperor.

It must be noted that the Emperor did not act alone whenever he sat to hear cases at the chilot. There were people of the nobility and foreigners who always advised him whenever he sought for their services. Until it was

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<sup>144</sup> Id.

<sup>145</sup> Id. at 71.

<sup>146</sup> Id.

<sup>147</sup> Interpretations of these two terms are mine.

<sup>148</sup> Id. at 73-74.

<sup>149</sup> Id. at 74.

superseded by the Anglo-Ethiopian Agreement of 19<sup>th</sup> December 1944, the earlier such agreement signed between the two countries on January 31, 1942 reads in part: His Majesty the Emperor having requested the Government of the United Kingdom to assist him in obtaining services of British subjects as judges and magistrates, the Government of the United Kingdom will use their best endeavours to assist His Majesty the Emperor in this matter.<sup>150</sup>

As a result of such Agreement, “British advisers were appointed in the following months to the ministries of interior; finance; justice; commerce and industry; education; communications and posts and telegraphs, while there were also provincial advisers of Harar, Jimma and Dessie.”<sup>151</sup> The British did not stop there. Not only did they bring British judges with the agreement, they also imposed English procedure in all the higher courts and the abolition of the mixed consular court for the trial of cases in which a foreigner was concerned.<sup>152</sup>

## **Courts Established by Proclamation No. 2 The Administration of Justice Proclamation of March 30, 1942**

### **The Supreme Imperial Court**

This was a court of appellate jurisdiction with three judges sitting en banc. The Afe Negus (mouth piece of the Emperor) was the President of the court. It heard appeals from the high court only. Any appeal from this court went to the Chilot. Because of the volume of appeals coming to it, this court was later divided into several divisions with each division having Deputy Afe Negus<sup>153</sup> There were foreign nationals serving as justices on this court.

### **The High Court**

This court had original and appellate jurisdictions with several divisions to it each assigned to specific area such as hearing appeals from the provincial courts, hearing criminal, civil and commercial matters, land disputes, hearing cases where the government was a party to a law suit. There was no jurisdictional limitation to this court. This court also had Europeans serving as judges. This court had also additional duties to hear appeals from

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<sup>150</sup> Perham, *supra* note 2 at 464, 474( see Appendices E and F Perham Article 2 (A).

<sup>151</sup> *Id.* at 93.

<sup>152</sup> Sandford, *supra* note 5 at 80.

<sup>153</sup> For more reading on this court and the others created by 1942 Proclamation, see Marein at 70.

the Ministry of Health and examining all arrests made under the Public Security Proclamation of 1942 issued on March 30, 1942. Some of the judges of the High Court were Europeans who sit as presiding judges in one or two of its divisions. Any sentence of death by this court was appealed to the Supreme Imperial Court and could be executed unless the sentence was confirmed by the Emperor. This court also had limited jurisdiction to hear foreign judgments when that judgment was given by a proper court outside Ethiopia in cases between two parties in a civil and commercial matter. When dealing with foreign judgments, the court applied international law and foreign rules. Marein provides one such judgment dealing with land disputes.<sup>154</sup>

### **Provincial Courts**

The provincial courts were called teklay gizat courts and had three judges, all Ethiopians, to it. Under Decree No. 1/42 published in the Negarit Gazeta dated August 27, 1942, the Governor General (or Inderase meaning “as myself” as they were called) of a province sat as the presiding judge of this court in the city where he had his residence.<sup>155</sup> This court had jurisdiction over criminal matters imposing imprisonment not exceeding five years or a fine not exceeding two thousand birr (Ethiopian currency) and corporal punishment not exceeding twenty-five lashes, or any combination of the three punishments. In civil matters the jurisdictional limit was two thousand dollars [birr].<sup>156</sup> These courts also hear appeals from the awraja (regional) and Wereda (sub-regional) courts.

### **The Awraja or Regional Courts**

These courts were composed of three judges and their criminal and civil jurisdictions were limited to imprisonment not exceeding a year and a fine of five hundred birr.

### **The Wereda or sub-regional courts**

This court was composed of two judges and their jurisdiction on criminal and civil matters was limited to imprisonment of three months and a fine of fifty and hundred dollars, respectively.

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<sup>154</sup> Marein, *supra* note 2 at 96.

<sup>155</sup> *Id.* at 72.

<sup>156</sup> *Id.* The dollar has since been changed to Birr starting with the military government.

### **The Miktl Wereda Court**

This court had one judge and a jurisdictional limit of twenty and fifty in criminal and civil cases, respectively. Beside these courts there were traffic courts, military courts, Land Board Commission, Moslem and Christian courts and local courts.

### **The Wembar**

These were higher courts in the provinces that heard appeals from the *melkegnas*. There were two members, the right and left *wembar*s. If they did not agree on a case, it was further appealed to the governor or the *wembar* in Addis Abeba. Each of the fourteen provinces had its *wembar* that served as an appeals court. Appeal from this court went to the *afe negus* or the Emperor's *chilot*.

### **Tribunals Special**

Foreigners have lived in Ethiopia for centuries as advisors and businessmen. Although it was not clear how the cases between Ethiopians and foreigners were handled in the old days, there was a special tribunal created under an agreement between Ethiopia and France that would handle such matters. Cases between Ethiopians and foreigners were tried before this tribunal and were composed of an Ethiopian judge, with an assistant, and a consul of the nationality concerned. In this special court the legal code of the defendant was applied; and execution of judgment was in the hands of the special court, where damages were given against an Ethiopian, or he was convicted of a crime, and in the hands of the consul where the foreigner was liable or adjudged guilty.<sup>157</sup>

The Law of Loans mentioned *supra* was modeled after the French Civil Code and by incorporating other laws to fit the special conditions existing in this country and was published in 1924-25. Before the Italian occupation, the "Law of Loans" applied only to Ethiopians but was later applied to all foreigners. However, in disputes between non-Ethiopians, it was the consular agent of the defendants who had jurisdiction in the matter, and the consular agent no doubt applied his own National law.<sup>158</sup>

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<sup>157</sup> Sandford, *supra* note 5 at 86.

<sup>158</sup> Marein, *supra* note 25 at 152-3.

### **The Atbia Dagna or Zonal Judge**

The Atbia Dagna was one such judge who handled matters arising from local disputes. This office was created by proclamation No. 90/47 published in the *Negarit Gazeta* on June 28, 1947 and was called the “The Establishment of Local Judges Proclamation. The jurisdictional limit in civil cases was twenty-five birr and in criminal cases, the jurisdiction was fifteen birr. The Atbia Dagna was meant to settle matters between two litigants in a manner consistent with the traditional customs thus creating that bridge or link between the modern court system and the traditional ones. This was “the first meaningful attempt on the part of the Amhara power structure to recognize individual system within the Empire and to use them as the foundation for a gradual integration of many diverse peoples into one system.”<sup>159</sup> The Atbia Dagna was not to act independently outside the national court system because all appeals went to the already established hierarchical courts, but it was used as “part of an overall development scheme with the ultimate aim of creating a unified society in which all persons assumed Amhara social ideologies.”<sup>160</sup>

### **The Ethiopian Orthodox Church**

Until the jurisdiction of the church was reorganized by a decree on November 30, 1942, it had powerful influence on the Ethiopian emperors throughout its history. It had personal jurisdiction over the land it owned and such jurisdiction was given to it by the Land Tax Proclamation of October 31, 1947. The government enacted laws changing the status of the church by making it under the supervision of the government. The church could also bind private persons involving marriage, divorce and inheritance if the parties involved submitted to its jurisdiction voluntarily.

### **The Italian Court System**

The Italians came in with the declared intention of sweeping away the old Ethiopian system. On the 1st of June 1936 a new code of law was issued. Laws in force in Eritrea were to apply to the newly defined province of Amhara and to the capital; those in force in Somalia were to be extended to the new provinces of Harar and Galla-Sidamo [now part of Oromia]. Special

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<sup>159</sup> Singer, Norman J. Singer, A traditional Legal Institution in Modern Legal Setting: The Atbia Dagna of Ethiopia, 18 *UCLA L. REV.* 308, 313-314 (1970-1971).

<sup>160</sup> *Id.* at 314.



courts were set up for Italians.<sup>161</sup> By this law all the higher structure of the old judicial system disappeared. Criminal courts became, in effect, Italian, the grading of courts running from those of the Italian resident to the governor.<sup>162</sup> Because the Italians could not control the whole country under their rule, they recognized the customary laws of the Muslims and Copts in civil matters, and at the lower level the native civil courts, those of the *kadis*, and *danyas*, and *wombars*, were still allowed to function under control, their procedures being greatly accelerated.<sup>163</sup> The Italian Code was retained for some years even after the liberation

An interesting feature of the Italian regime was the extremely strong and open effort to retain, by means of severe laws, what was called racial purity. Inter-marriage or cohabitation between Italians and natives was forbidden under severe penalties, and the Italians were obliged to issue, in addition to their racial purity laws, another measure to ensure that half-caste children were absorbed into the native population and not given equality with the Italians or, as in some French colonies, a special status. We also see some military tribunals that were created in 1938.

Part XV Articles 159 of the *Ordinamento Giudiziario* which was in full force in Eritrea and applied in Ethiopia stated that the Judicial Administrators were appointed by Decree of the [Italian] Governor after hearing the opinion of the judge of the colony, from amongst practicing advocates, stagieres, graduates in commercial or economic science, accountant, and such Italian citizens who possess the knowledge and competence in a specific commercial matter.<sup>164</sup> For the brief period they were in Ethiopia, the Italians also had a constitution for Ethiopia which defined the political and administrative organization of Italian East Africa which included, "The territories of the Empire of Ethiopia, Eritrea and Somaliland" which constituted the Italian East Africa.

A new constitution had been promulgated in 1936 which claimed to destroy the old feudal power of the great rases, and divided the empire, including Eritrea and Italian Somaliland, into five provinces, each with an Italian governor assisted by an executive council, a secretariat, and a number of administrative officers and technical advisers. It also provided for six Ethiopians to sit on the advisory council which met annually. The military

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<sup>161</sup> Perham, *supra* note 2 at 152.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> Marein, *supra* note 25 at 441.

tribunals were now closed down, and a system of native courts, presided over by Italian officials, introduced for civil cases

### **The British Rule**

On January 31, 1942 the Anglo-Ethiopian Agreement and the Military Convention were signed later to be replaced by another such agreement on December 19, 1944. The Agreement was written both in Amharic and English, both of which shall be equally authoritative, except in case of doubt when the English Text shall prevail.<sup>165</sup> Articles 3 and 4 of the 1944 Agreement state that:

#### Article 3

1. The Imperial Ethiopian Government will retain or appoint British or other foreign persons of experience and special qualifications to be advisers or officers of their administration and judges as they find necessary
2. The government of the United Kingdom will assist The Imperial Ethiopian Government in finding suitable persons of British nationality whom they may desire to appoint

#### Article 4 states

1. Jurisdiction over the British subjects, British Protected Persons and British Companies shall be exercised by the Ethiopia Courts constituted according to the Statute for the Administration of Justice issued by His Imperial majesty the Emperor in 1942 and Rules of Court issued in 1943, provided (a) that in Article 4 of Section III of the Statute there shall be substituted for 'judges of British nationality', and (b) that, in the hearing by the High Court of any matter, all persons shall have the right to demand that one of the judges have had judicial experience in other lands.
2. British subjects and British Protected Persons shall be incarcerated only in prisons which are approved by an officer who has had experience in modern prison administration.

Although the Emperor and the Ethiopians had the distaste for such an agreement because they felt it was oppressive, the British made sure that the Emperor was to appoint British advisers, a British commissioner of police and

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<sup>165</sup> See Article 13 of the 1944 Agreement. And for further reading on the Agreement see Perham at 474.

British police officers, inspectors, judges and magistrates.<sup>166</sup> Such an agreement also allowed the British to make the British East African shilling the official monetary unit and Ethiopia's currency board was set up in London rather than in Addis Ababa.<sup>167</sup> The British also brought with them British procedural laws that were used in the higher courts.

## **1995 to the Present**

### **The Judiciary of the Peoples' Democratic Republic of Ethiopia**

The Federal Courts were restructured pursuant to Article 55(1) of the 1995 Constitution and in accordance with the Federal Courts Proclamation No. 25/1996.

Article 78 of the 1995 Constitution establishes an independent judiciary. At the Apex of the federal judicial system is the Federal Supreme Court. The Constitution vests the whole judicial authority in one Supreme Court, and other Federal High Courts and First Instance Courts established nationwide or in some parts of the country as the House of Peoples' Representative (hereinafter HOPR) shall from time to time, ordain and establish by two-third majority vote. Unless the lower courts are established in accordance with Art 78(1), the jurisdictions of the Federal High Courts and the First Instance Courts are delegated to the States.<sup>168</sup> Article 78(3) also establishes State Supreme, High and First Instance Courts.

### **Common Jurisdiction of the Federal Courts**

According to the "Federal Courts Proclamation No. 25/1996", all Federal Courts have jurisdiction over

- Cases arising under the Constitution, Federal Laws and International Treaties
- Parties specified in the Federal Laws and
- Places Specified in the Constitution or in Federal Laws

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<sup>166</sup> Spencer, *supra* note 31 at 98.

<sup>167</sup> *Id.* at 99. Throughout this article you will see two spellings: Addis Ababa and Addis Abeba. Abeba is used when it is included in a citation and Abeba is my preferred spelling of the city.

<sup>168</sup> See Art 78(1) of 1995 Constitution.

## **Criminal Jurisdiction**

Federal Courts shall have jurisdiction over the following criminal offenses/cases against:

- The Constitutional order or against the internal security of the state;
- Foreign states;
- The law[s] of nations;
- Fiscal and economic interests of the Federal Government;
- Counterfeit currency;
- Forgery of instruments of the Federal Government;
- Security and freedom of Communication services operating within more than one Region or at the international level;
- Safety of aviation;
- Foreign nationals;
- Illicit trafficking of dangerous drugs;
- The jurisdiction of courts of Different Regions or under the jurisdiction of both the Federal and Regional Courts as well as concurrent offences and;
- Committed by officials and employees of the Federal Government in connection with their official responsibilities or duties.

## **Civil Jurisdiction**

Federal Courts shall have jurisdiction over the following civil cases:

- cases to which a Federal Government org an is a party;
- suits between persons residing in Different Regions
- cases regarding the liability of officials or employees of the Federal Government in connection with their official responsibilities or duties;
- cases to which a foreign national is a party;
- suits involving matters of nationality;
- suits relating to business organizations registered or formed under the jurisdiction of Federal Government " organs;
- suits regarding negotiable instruments;
- suits relating to patent, literary and artistic-ownership rights;

- suits regarding insurance policy;
- application for Habeas Corpus.

### **Substantive Laws to be Applied by Federal Courts**

Federal Courts shall settle cases or disputes, submitted to them within their jurisdiction on the basis of:

- Federal laws and international treaties;
- Regional laws where the cases relate to same;
- Regional laws to be applied pursuant to sub-Article (1) (b) hereof shall not be applicable where they are inconsistent with Federal laws and international treaties.
- Hear a case brought before them gives rise to issues of Constitutional interpretation, Federal courts shall refer the case to the Council of Constitutional Inquiry prior to giving decision on the matter.

### **Procedural Laws Applied by Federal Courts**

The Criminal and Civil Procedure Codes as well as other relevant laws in force shall apply with respect to matters not provided for under this Proclamation insofar as they are not inconsistent therewith.

### **Jurisdiction of the Federal Supreme Court**

#### **First Instance Jurisdiction of the Federal Supreme Court**

The Federal Supreme Court shall have exclusive first Instance jurisdiction over the following:

- offences for which officials of the Federal Government are held liable in connection with their official responsibility;
- without prejudice to international diplomatic law and custom, offences for which foreign ambassadors, consuls as well as representatives of international organizations and foreign states are held liable;
- application for change of venue from one Federal High Court to another or to itself, in accordance with the law.

### **Appellate Jurisdiction of the Federal Supreme Court**

The Federal Supreme Court shall have appellate jurisdiction over:

- Decisions of the Federal High Court rendered in its first instance jurisdiction;
- Decisions of the Federal High Court rendered in its appellate jurisdiction in variation of the decision of the Federal First Instance Court.

### **First Instance Civil Jurisdiction of the Federal High Court**

- The Federal High Court shall have first instance jurisdiction over the following civil cases involving an amount in excess of Birr five hundred thousand (500,000);
- Other civil cases arising in Addis Ababa and Dire Dawa.
- The Federal High Court shall have first instance jurisdiction over the following civil cases: cases regarding private international law; (b) cases regarding nationality; Application regarding the enforcement of foreign judgments or decisions; applications for change of venue from one Federal First Instance Court to all other or to itself, in accordance with the law.

### **First Instance Criminal Jurisdiction of the Federal High Court**

The Federal High Court shall have first instance jurisdiction over the following criminal cases:

- 1) criminal cases specified under sub-Articles (1), (2), (3), (8) and (to) of article 4 of the Federal Courts Administration Proclamation
  - other criminal cases arising in Addis Ababa and Dire Dawa and -falling under the jurisdiction of the High Court pursuant to other laws in force.

### **Appellate Jurisdiction of the Federal High Court**

- The" Federal High Court shall have appellate jurisdiction over decisions of the Federal First Instance Court.

### **Civil Jurisdiction of the Federal First Instance Court**

- The Federal First Instance Court shall have jurisdiction over the following civil cases involving an amount not in excess of Birr five hundred thousand (500,000) or over civil cases the value of which cannot be expressed in money;
- Without prejudice to the jurisdictions of the Federal Supreme court and High court under Article 8 and sub-Article (2) of Article 11 hereof, federal civil cases submitted pursuant to articles 3 and 5 of this Proclamation;
- Without prejudice to judicial power vested in other organs by law, other civil cases arising in Addis Ababa and Dire Dawa.

### **Criminal Jurisdiction of the Federal First Instance Court**

- The Federal First Instance Court shall have jurisdiction over the following criminal cases: 1) criminal cases specified under sub-Articles (4) (5) (6) (7) and (9) of article 4 hereof;
- Without prejudice to judicial power vested in other organs by law, other criminal cases arising in Addis Ababa and Dire Dawa as well as other criminal cases
- Under the jurisdictions of Awraja and Wereda Courts pursuant to other laws in force.

### **Concurrent Jurisdiction of Courts**

Article 80 of the 1995 sets out this jurisdiction whereby

- The Federal Supreme Court shall have the highest and final judicial power over federal matters

### **The Addis Ababa City Courts**

Under the 1995 Constitution two chartered cities were created. Addis Abeba, the capital city of the federal state is under the federal administration. The city of Addis Abeba has two courts: the City and kebele Courts. In addition there are the Labor Relations Board; the Civil Service Tribunal; the Tax Appeal Commission; and the Urban Land Clearance Matters Appeal

Commission, each with its jurisdictional power. [See arts 46-49 of the city charter for jurisdiction]

### **City Government Laws**

Art 11 of the City Charter gives the city council the power to make laws and exercise judicial and executive powers. The City Council also has the power to issue regulations.

The Judicial Administration Commission in consultation with the Federal Judicial Administration is responsible for the administration of the city courts and for submitting a list of candidates for judgeship. The City Council selects the judges that sit in the city courts. The Judges may not be removed from their offices unless they are found to be incompetent or violate the rules; they are ill and when their dismissal is approved by the City Council. The city courts have first instance and appellate courts having jurisdiction over civil and criminal matters.

### **Civil Jurisdiction**

The courts have jurisdiction over matters pertaining to possessory rights; issuance of permit and land use; suits against its officers and suits between city executive bodies; suits on fiscal matters, etc. [See art 41 of the city charter]

### **Criminal Jurisdiction**

City courts have jurisdiction over cases of petty offenses; cases brought in accordance with articles 33, 35, 53, and 59 of the Code of Criminal Procedure of 1961 (amended Proc. No. 408/204, Art 2(2); charges brought in connection with fiscal matters set out under Art 52 of the City Charter.

### **Conflict of Jurisdiction**

If there is a conflict of jurisdiction between the City courts and the federal courts, it will be decided by the Federal Supreme Court.<sup>169</sup> Any fundamental error of law in final judgment of the city appellate court and the city courts may be appealed to the Cassation division of the Supreme Court.<sup>170</sup>

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<sup>169</sup> See Art 42 of the Charter.

<sup>170</sup> Id.



The following are excerpts from Proclamation No 408/2004 coming into force on June 15, 2004) As amended by Addis Ababa City Government Revised Charter (Amendment)

## **Other Courts**

### **Kebele Courts**

After 1974 revolution kebele courts replaced the traditional courts of weredas. These kebele courts were established by Proclamation Nos.47/1975 and 101/1976. During their initial formation they had three tiers, viz.; kebele was at the lowest level followed by kefetegna and the highest form was the Central Dwellers' Associations. Similar organizations were created for people residing in the country side by Proclamation No. 8/1976. Again there were three levels. They were Kebele, Wereda and Awraja each having its original and appellate jurisdictions. These are administrative sub divisions of the city as well as the countryside that were established in July of 1975 by proclamation No. 47. They are the lowest unit of government both in the cities and country side. The officers replace what were once the chika shums, mislene, melkegna in the country side and the mikitul weredas, etc., in the cities.

In July 1975, the Derg issued Proclamation No. 47, which established kebeles, or urban dwellers' associations, in Addis Ababa and five other urban centers. Organized similarly to peasant associations, Addis Abeba's 291 kebeles possessed neighborhood constituencies ranging from 3,000 to 12,000 residents each. Like the peasant associations in the countryside, the kebeles were initially responsible only for the collection of rent, the establishment of local judicial tribunals, and the provision of basic health, education, and other social services in their neighborhoods. Kebele powers were expanded in late 1976 to include the collection of local taxes and the registration of houses, residents, births, deaths, and marriages.

In April 1981, the Derg issued Proclamation No. 25, which provided kebeles with extended powers and a more elaborate administrative structure. According to this new structure, the general assembly, composed of all kebele residents, was empowered to elect a policy committee, which in turn was authorized to appoint the executive committee, the revolution defense committee, and the judicial tribunal. At the time of this proclamation, there were 1,260 kebeles in 315 towns.

## **Powers and Functions of a Kebele**

The city is divided into numerous kebeles as discussed earlier. Each Kebele has have a Council, a Spokesperson, a Secretary, a Chief Executive, a Standing Committee, a Manager, a Social Court and different executive bodies.

### **Kebele Social Courts**

The organization and procedure of Kebele Social Courts is to be determined by law the City Council shall issue. Art 50(5). Kebele Social Courts shall have jurisdiction over cases of property and money claimed where the amount involved does not exceed Birr 5,000.00(five thousand Birr). Any party dissatisfied with the decision of a Kebele Social Court may appeal to the corresponding First-Instance Court of the City. The decision of the latter Court shall be final unless the final judgment rendered by the City's First-Instance Court in a case lodged with it on appeal contains a fundamental error of law in which application for cassation thereon may be brought before the City's Appellate Court.<sup>171</sup>

### **Moslem Courts**

Ethiopia has had a large population of Moslems scattered all over the country. They have co-existed with those who practiced Christianity, Judaism and paganism. Just like their Christian counterparts, the Moslems have had their own laws with regards to marriages. Customs regarding marriage, including divorces, children and other family relationships were dealt with the Mohammedan Law.

The first proclamation recognizing these courts appeared in 1942 under The Kadis' Courts Proclamation which appeared in the Negarit Gazeta on April 30, 1942 which was later repealed by Proclamation No. 62/1944 appearing in the Negarit Gazeta of May 29, 1944 entitled "The kadis' and Naibas' Council Proclamation 1944."<sup>172</sup> This Proclamation dealt with all Moslems irrespective of their origin whether they were Ethiopians or foreigners. By this proclamation three courts were established: Naibas Councils, Kadis Councils and the Court of the Shariat. The Shariat was to be the court of last resort. These courts have had jurisdiction over marriage,

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<sup>171</sup> See Art 50 of the City Charter.

<sup>172</sup> Marein, *supra* note 25 at 174.

divorce, guardianship for minors, endowments, gifts and succession of wills with the consent of parties thereof.

These courts were again recognized by the 1995 Constitution. The Kadis and Naibas Councils Establishment Proclamation No. 62/1944 was repealed and replaced by the Federal Courts of Sharia Consolidation Proclamation No. 188 of December 7, 1999.

The House of Peoples' Representatives and State Councils are empowered, under Sub Article (5) of Article 78 of the Constitution, to establish, as necessary, religious and customary courts that exercise judicial functions on the basis of cultural and religious laws. In cases where such courts are not in existence, Article 34 (4) and (5) of the Constitution further recognizes a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted and the Constitution shall not preclude disputes relating to personal and family laws in accordance with the religious or customary laws, with the consent of the parties to the dispute.

### **Federal Courts of Sharia Consolidation Proclamation**

The Federal Courts of Sharia Consolidation No. 188/1999 establishes the sharia courts at three levels: the Federal First Instance Court of Sharia, Federal High Court of Sharia, and the Federal Supreme Court of Sharia all accountable to the Federal Judicial Administration have been established having the following common jurisdiction;

- Any question regarding marriage, divorce, maintenance, guardianship of minors and family relationships; provided that the marriage to which the question relates was concluded, or the parties have consented to be adjudicated in accordance with Islamic law;
- Any question regarding Wakf, gift/Hiba/, succession of wills; provided that the endower or donor is a Muslim or the deceased was a Muslim at the time of his death;
- Any question regarding payment of costs incurred in any suit relating to the aforementioned matters.
- Federal Courts of Sharia shall adjudicate cases under their jurisdiction in accordance with Islamic Law and in conducting proceedings properly, the courts shall apply the civil procedure laws.

### **Jurisdiction of the Federal Supreme Court of Sharia**

The Federal Supreme Court of Sharia shall have jurisdiction over:

- Decisions of the Federal High Court of Sharia rendered in its first instance jurisdiction;
- Decisions of the Federal High Court of Sharia rendered in its appellate jurisdiction.

### **Jurisdiction of the Federal High Court of Sharia**

- The Federal High Court of Sharia shall have first-instance jurisdiction over cases involving an amount in excess of Bin two hundred thousand (200,000).
- The Federal High Court of Sharia shall have appellate jurisdiction over decisions of the Federal First Instance Court of Sharia.
- It shall have jurisdiction over applications for change of venue from one Federal First Instance Court of Sharia to another or to itself.

### **Jurisdiction of the Federal First Instance Court of Sharia**

- The Federal First Instance Court of Sharia shall have jurisdiction over cases involving an amount not in excess of Birr 200,000 (Birr two hundred thousand) or cases the value of which cannot be expressed in money.

### **The Federal High Court and First Instance Court of Sharia**

- The Federal High Court and First Instance Court of Sharia shall each have a head, representing the respective court, as well as Kadis, registrars and personnel necessary for their respective functions.

### **Decisions and Orders of Federal Courts of Sharia**

- Federal Courts of Sharia, of all levels, may order that decisions and orders given by them on matters under their jurisdiction, be enforced by executive organs.

- Any Executive Organ as well as individuals who receive the decisions or orders of any Federal Court of Sharia shall execute or cause the execution of same.

### **Pending Cases**

- Cases pending in the Addis Ababa and Dire Dawa Courts of Sharia, prior to the coming into force of this Proclamation, shall be transferred to the Federal Courts of Sharia having jurisdiction pursuant to the provisions of this proclamation.

### **The Ethiopian Constitutions**

Ethiopia has had four constitutions or five if we include the Italian Constitution that was applied during the occupation. These were the 1931, 1955, 1987 and 1995 Constitutions. Further discussion of these constitutions will appear in another article.

### **The Codes**

The civil, criminal and commercial Codes have all been codes that enacted in the 1950s and have been amended since 2000.

### **Conclusion**

Jurists around the world may get some comfort in knowing that Ethiopia has modern laws national and international governing many areas similar to other civilized nations. These laws, how modern and practical they may look in the eyes of those who compare the Ethiopian legal system with that of the world, should understand that these laws are meant to govern those who have access and need for them. As we have seen in the discussion above most part of the country follows what has been traditional whether in the Christian, Moslem or other localities. Although church law and the Fetha Negast may have ceased to exist, Moslem and traditional laws have been recognized by the present Constitution and they are well and alive. The modern laws that have been promulgated over the years have been useful in covering some fields that have not been addressed by the local laws. However, we should not take it for granted that because there are modern laws, does not mean they are applicable everywhere. As we all know, the legal system is evolving and changing by the day and we must give it time until the peoples of Ethiopia get to know, learn and apply them alongside their

local laws. In order to fully integrate the new laws, those educated in the law must be assigned to different regions and educate the peoples about the needs for these laws. The people must willingly accept the new laws rather than imposing them upon the people. A swift replacement of the customary laws with “modern laws” has its consequences.

One noteworthy recent development in the Ethiopian Legal system is the introduction of *stare decisis* (precedent) by Proclamation No. 454/2005. Provision 2(1) states that interpretation of the law by the Federal Supreme Court’s Cassation Division, with no less than five judges, shall be binding on all federal as well as regional courts. In my discussions with the Honorable Menberetsehay, the former Deputy Chief Justice of the Federal Supreme Court, I learned that they are applying the doctrine of *stare decisis* or precedent at the highest level for which there are some examples in the reported cases. For *stare decisis* to work, however, courts at all federal and state levels must publish their cases online or in print so that the courts, and those engaged in pedagogy and practice may learn from precedents.

Ethiopia has seen many governments, from absolute to constitutional monarchy, from Marxist and despot to democratic governments, each imposing its laws on the peoples of Ethiopia. All of these changes in government had not helped the country to have a unified system of government. It is our hope that the democratic institutions that have been established over the years will flourish and become the foundation for more democratic institutions to appear and become functional.