

Ethiopia's Legislative Drafting: A Bird's eye View

By

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Introduction

Ethiopia's progress towards being recognised as a democratic republic has largely been hampered by internal elements rather than any external intervention through colonialism, unlike the case for most African countries. Its commitment to socialism ended the age-old monarchical rule in 1974 when the military took over the running of the government and then remained in power for the next 17 successive years. Widespread liberation movements, mostly driven by an ethnic nationalist agenda, finally dealt decisively with Mengistu Hailemariam, the military general, who is currently in Zimbabwe's capital and has been sentenced to life in prison in absentia after fleeing the country in 1991.

The current political system was first used to aid a transitional government and then after consolidating its power on the basis of the Federal Democratic Republic of Ethiopia Constitution (FDRE Constitution) that was adopted in 1995. The Constitution not only decentralised governance, including law-making under the federal arrangement, but it also established at the centre a _nominally 'bicameral parliament. Unlike the American model of federation, it has also adopted a parliamentary system which makes the legislative body the highest political establishment from which the executive organ has to emerge. Although it is not as fine-tuned as the presidential system, the legislative body has an oversight function as well as its law-making role, which also includes budgetary decisions on an annual basis.

This bicameralism is said to be nominal due to the fact that the lower house, the House of People's Representatives, alone performs law-making, while the upper one, the House of Federation, only serves as an arbiter among the units of the federation through, among other things, exercising its power to interpret the Constitution.²

The House of People's Representatives

This house is constituted by members that are proportionally distributed across the nine units of the federation as well as the two autonomous cities, Addis Ababa and Dire Dawa, for a five-year tenure. There are no minimum educational requirements for membership except an endorsement of

2. See Art 56 and 62 of the Constitution of Federal Democratic Republic of Ethiopia Proclamation No 1/1995, *Federal Negarit Gazette*, 1 year, No1, Addis Ababa, 21 August 1995 (hereinafter referred to as the FDRE Constitution).

one's candidacy by the political party upon fulfilling its internal rules, and the requirements under electoral law relating to minimum age (21 years or above), residency as well as other criteria that the law has provided. Some of the key criteria for registering as a candidate to stand for election relate to one being (a) an Ethiopian; (b) versed in the working language of the Regional State of the area of his intended candidature; (c) 21 years old or above on the date of the registration and (d) regularly residing in the constituency of his intended candidature for two years immediately preceding the date of the election, or his birth place is within the constituency of his intended candidature, or where the city or Wereda has more than one constituency or he has been regularly working in the city or Wereda for two years, in the Wereda or city of his choice.³

Structurally, the House is organised in such a way as to include the office of the Speaker, various committees, Secretariat of the House, Sergeant-at-Arms of the House and party (Parliamentary-Groups) whips.⁴ As is the case in many democracies, the lower house has the powers to enact laws and oversee the functions of the executive through various mechanisms, including requesting any official to appear before the House and reporting on issues of concern and then taking appropriate measures, where necessary, by scrutinising various appointees proposed by the executive. Apart from these two key functions of legislation and monitoring, the House also has the duty of representing the electorate, and to that end Regulations provide that the House shall facilitate the conditions for its members to meet with their respective constituencies.⁵

House of the Federation

This is the upper House of the Federal Parliament, where each Regional State is represented by at least one member and then has one additional representation for each one million constituents. Elections are also different from the lower House, in the sense that members of the House of the Federation are elected either indirectly, by the nine State Councils, or directly, by the people upon a decision made by the State Councils.⁶ This House is atypical in two senses when seen in light of what bicameral parliaments present worldwide, including Nigeria. The idea of maintaining a bicameral parliament in federal systems by creating two houses having proportional representation in one (as representatives of citizens) and equal representation (as presentative of States)⁷ in the other is deemed, as explained by Alexander Hamilton, “a result of compromise between the

3. Electoral Law of Ethiopia Proclamation 532/2007, art 45(1).

4. House of People's Representatives of the Federal Democratic Republic of Ethiopia Rules of Procedures and Members' Code of Conduct Regulations No 3/2007, art 5(3) (hereinafter referred to as Regulations 3/2007).

5. Ibid, art 4(1).

6. FDRE Constitution, art 61(3).

7. This was how James Madison explained the nature of the two legislative Houses. Madison, Federalist Papers, No 57.

opposite pretensions of the large and small States'.⁸ Accordingly, 'no law or resolution can be passed without the concurrence, first, of a majority of the people, and then of a majority of the States'.⁹

The conceptualisation of the Senate/upper house as having the equal representation of States and also a direct role in the legislative process is slightly different when it comes to Ethiopia's House of the Federation, where there is neither equal representation of States nor a legislative role bestowed upon it. While each State will have at least one representative in the House of the Federation, they will also have an additional member for every one million people,¹⁰ which in turn accordingly enables bigger States to have a larger representation. The key powers of the House of the Federation do not include legislative functions and rather relate to interpreting the Constitution, making decisions on the rights of nations, nationalities and peoples in relation to self-determination, including the right to secession,¹¹ exercising the powers concurrently entrusted to it and the House of People's Representatives, resolving disputes that may arise between States, determining the division of revenues derived from joint federal and State tax sources and the subsidies that the Federal Government may provide to the States, and ordering Federal intervention if any State, in violation of the Constitution, endangers the Constitutional order.¹² In essence, therefore, the upper House, in Ethiopia's case the House of the Federation, is expected to play an arbiter's role when, as it were, centripetal and centrifugal forces are being negotiated among the federated units.

Various types of legislation in Ethiopia

Apart from the Constitution, which was drafted, adopted and ratified by a Constitutional Assembly, there are two classes of legislation, namely primary (Constitution and Proclamation) and subsidiary (Regulations and Directives). Proclamations are the equivalents of Acts in Nigeria and are promulgated by the House of People's Representatives on an exhaustively identified legislative list of the national legislative body. State Councils, the equivalents of States Houses of Assemblies, combine legislative and executive mandates and similarly promulgate Proclamations on matters not

8. Hamilton, Federalist Papers, No 59.

9. Madison, Federalist Papers, No 62.

10. FDRE Constitution, art 61(2).

11. It is useful to note that Ethiopia's Constitution, after creating the federal units along ethnic lines, grants them the 'unconditional right to self-determination including the right to secession'. This right is believed to have provided an enduring basis upon which the current socio-political order in Ethiopia is constructed. FDRE Constitution, art 39(1).

12. FDRE Constitution, art 62.

expressly given to the House of People's Representatives.¹³ Regulations, the second type of legislation in Ethiopia, derive from Proclamations and are issued by the Council of Ministers. Therefore, the Council of Ministers may only enact Regulations where the House of People's Representatives has expressly bestowed upon it (in the sense of Legislative Delegation) the power to issue such Regulations as part of its mandate, in order to implement all laws enacted by the legislature.¹⁴ Directives, on the other hand, are issued by individual ministries, agencies or departments as tools of implementation for Proclamations and Regulations, finding their immediate source in the latter. Directives bring issues under consideration to their maximum details and come as third in the hierarchy of ordinary legislation in the country. Though Directives serve as tools of interpretation in a particular subject matter, the legislative intent must always be traced back to the highest piece of legislation, in Ethiopia's case the Proclamation, for any form of ambiguity.

The legislative process

This section explains the various stages in the legislative process as they relate to law-making by the House of People's Representatives, the highest legislative body. And by law-making we refer to the enactment of new laws, amending or repealing existing ones and/or ratifying international treaties.¹⁵ As is the case in all jurisdictions, the process commences with an **initiation** whereby those with the right and vested interest in a particular subject have to propose for the law-making machine to be set in motion, which is then followed by subsequent processes described in this section.

Initiation: Who?

For the legislative process to commence, a draft law must be initiated, though the term –Bill‖ or any other qualifier is not employed under Ethiopia's legal system insofar as the initial stages of a legislation are concerned. Reference is made to it merely as a –draft law,‖ and the primary source being the government, it may come from various sources that the law has specified. As legislation is a process through which the government has to _translate publicly-avowed, seriously-intended governmental policies into effectively implementable law¹⁶, the initiation primarily comes from the executive. The Regulations under Art 50(1) clearly state that _initiating law shall be mainly the

13. It is worth noting that power distribution between the two tiers of government is achieved by first exhaustively listing the exclusive powers of the federal government and declaring the residue as belonging to the States. On issues of taxation, however, there are also concurrent areas for the two levels of government apart from the exclusive list of the Federal and State governments. See FDRE Constitution, arts 51 and 52, on general power distribution, and arts 96, 97 and 98 on issues of taxation.

14. FDRE Constitution art 77(1) & (13).

15. Art 49 of the Regulations 3/2007.

16. Ann Willcox Seidman, Robert B Seidman and Nalin Abeyesekere (2004), *Legislative Drafting for Democratic Social Change* (Kluwer Law International Ltd) p 13.

duty of the government', and particularly when it comes to initiating budget draft laws, it is earmarked as falling within the exclusive power of the executive.¹⁷ It then proceeds to enumerate the remaining three bodies that may initiate the legislative process by submitting a draft law to the Speaker of the House in writing: these are members of the House, Committees, parliamentary groups and other bodies authorised by law.¹⁸

Other than members, a process which is relatively clear, a Committee may also initiate a law _on the basis of an instruction by the House, or by the general functions it carries out or the proposal submitted to it by the government body it supervises or follows up'.¹⁹ There are a total of 12 Standing Committees covering extensive areas of social, political and economic affairs relating to capacity building, trade and industry, rural development, natural resources and environmental protection, infrastructure development, budget and finance, legal and administration, foreign, defence and security, women's affairs, information and culture, social affairs, pastoralists' affairs and public accounts.²⁰ The third sources of draft laws are parliamentary groups, namely _a collection of members of a party or parties which have not competed against each other in electoral regions but which have competed in a political programme and consists of a party or parties that have won not less than ten seats'.²¹

It is unclear what _other bodies' might initiate draft laws based on the legal authority granted to them, as mentioned in the last part of the list of initiators. Moreover, there is no classification of the drafts, as evident in the case of Nigeria's legislative system, in which we have three classes of Bills: an Executive Bill, a Member's Bill and a Private Bill²², particularly the latter, which is a Bill _introduced in the interest of an individual or a group of persons, or of a locality'.²³ Whether any other body authorised by law is referring in Ethiopia's case to any possibility of such forms of private Bill is not apparent and requires the reading of other legislation. For instance, the Ethiopian Human Rights Commission and the Ethiopian Institution of the Ombudsman establishment Proclamations both provide as part of their mandate the duty to _make recommendations for the revision of existing laws, enactment of new laws and formulation of policies'.²⁴ Whether _any other

17. Art 50(3) of the Regulations 3/2007.

18. Art 50 (2) of the Regulations 3/2007.

19. Art 156 of the Regulations 3/2007.

20. Arts 164-176 of the Regulations 3/2007.

21. Art 181(2) of the Regulations No 3/2007.

22. This is the classification of Bills adopted under *Senate Standing Orders 2011*, Section 76, as well as the combined reading of sections under ORDER XII (sections 79 & ff) of the *Standing Orders of the House of Representatives* Eighth Edition, 2014.

23. Eme O Awa (1964), *Federal Government in Nigeria* (University of California Press, Barkley) p 140.

24. Human Rights Establishment Proclamation No 210/2000, art 6(5). Similarly, that of the Ombudsman similarly provides as follows: - _... make recommendations for the revision of existing laws, practices or directives and for the enactment of new laws and

body' also includes these types of institutions is not apparent, though it would be one possibility that could be considered as being covered by the provision. Moreover, the Constitution under Art 62(2) envisages that the House of the Federation should determine civil matters which require enactment of laws by the House of People's Representatives'. In earlier Regulations that were repealed by Regulations No 3/2007, the House of the Federation and the Federal Supreme Court were also included in the list of those that were empowered to initiate draft laws.²⁵ However, these organs have been removed from the list, and the reason for so doing is not clear. Where the House of the Federation is to decide on Federal intervention, in particular in relation to a State due to that State's violation of the country's Constitutional order, it may presumably do so only on the basis of legal stipulation, for which it should seek the setting in motion of the House of People's Representative's legislative power by, among other things, submitting a draft law. The same applies where it needs to decide on a State's secession plea. It is therefore important to maintain the House of the Federation as having the legal mandate to initiate laws that need to be considered by the House of People's Representatives for enactment. The Constitution also explicitly states that the House of the Federation shall determine civil matters which require the enactment of laws by the House of People's Representatives'.²⁶ The civil matters on which it may initiate laws are further explained as relating to subjects that the House of the Federation deems necessary to establish and sustain one economic community'.²⁷

Initiation: How?

The law further elaborates on the procedures that need to be complied with while initiating a draft law by any of those legally entitled to initiate the legislative process. Whomever and/or whichever organ initiates a draft law, it should, at the minimum, comply with the requirements outlined under Art 50(8) of the Regulations, which provide the following:

- Detailed contents of the draft law,
- A document explaining the impact which the draft law will have on the government budget, if it becomes law, and
- Amharic and English copies of the draft law.

The draft, with the aforementioned content, and form need to be signed by, as the case may be, those members initiating the law, the Committee chairperson and the head of the institution or the

formulation of policies, with a view to bringing about better governance'.¹ Institution of the Ombudsman Establishment Proclamation No 211/2000, art 6(6).

25. House of People's Representatives Rules of Procedures and Member's Code of Conduct Regulations No 2/2005, art 39.

26. Art 62(8) of the FDRE Constitution.

27. Art 55(6) of the FDRE Constitution.

party whip, and they must then be submitted to the Speaker, who shall then place the draft on the agenda. When it comes to member-initiated drafts, an earlier law that stipulates for the need to affix a minimum of 20 member signatures does not feature in the new law. It was stated in the earlier law, which is now repealed, that any draft law to be [initiated by members] shall be supported by the signature of at least 20 members of the House, including the initiator²⁸.

Readings by the House

Once a draft law has been duly initiated by those mandated to do so, it has to pass through three readings by the House, before being enacted into law. The **first reading** involves the initiator of the draft providing a brief explanation about the content and purpose of the law. For this to happen, however, copies of the draft have to be distributed to members 48 hours prior to the session. If this cannot be realized due to a justifiable cause, the draft has to be presented to members by reading the articles. This first reading may either lead to a referral of the draft to the relevant Committee or joint Committees, or alternatively the decision may be made to move on to the second reading.

It is at the stage of the second reading that in-depth deliberations are undertaken on the draft law, which shall proceed based either on the Committee's report, to whose attention the draft had been referred, or on the initiated draft law where there has not been such a referral after the first reading. The Regulations also provide that where a draft is referred to a Committee, and except in exceptional cases of urgency, it shall be allowed a minimum of 20 working days to deliberate on the draft and prepare its report and recommendations.²⁹ During the second reading, the House will have to decide to reject the draft, make some amendments or pass it on to the next stage as it is. Where the amendment motion is passed, the House still maintains the discretion to re-send the draft back to the Committee for further investigation.

The **third reading** proceeds from either the Committee's report or the previous motion of the House by which the draft was scheduled for a third and final reading. Once again, detailed discussions on the draft and its adoption, article by article, are carried out at this stage, in order to vote finally on the draft as a whole to be passed as a law. This concludes the House's readings, and the Speaker then transmits the law to the President for signature.

Enactment and Gazetting

After the third reading, and the adoption of the draft by the House, to have it passed as a law, two key stages in the legislative process have to be accomplished before the law acquires full force.

28. House of People's Representatives Working Procedure and Members' Code of Conduct (Amendment) Proclamation No 470/2005, art 6(5). This Proclamation had been repealed by a separate Proclamation.

29. Art 56 of the Regulations 3/2007.

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second, **publicity**, has strict legal implications. The Speaker, once adopted by the House, has to transmit the legislation to the President of the Federation, who largely exercises ceremonial powers to stamp his/her signature on the law. The President has 15 days to do so, and in cases of failure to meet this set period, the law shall take its own course to acquire full effect, without such signature. Ethiopia's legal Gazette, called *Negarit*³⁰ *Gazetta*, is used as the official publication medium for laws, and according to its establishment legislation, 'all Federal and Regional legislative, executive and judicial organs as well as any natural or judicial person shall take judicial notice of laws published' in this Gazette.³¹ This provision, in essence, embodies the doctrine of constructive notice, which entails the presumption of knowledge of all laws by the subjects following their pronouncement in the legal Gazette. On the contrary, before publication, the law has no legal enforcement bearing and creates neither rights nor duties for its subjects. Therefore, unlike what is observed in Nigeria, all legislation needs to be published so as to ensure the public and all those organs of government take due notice of the law, thereby entitling the courts to reject a plea of ignorance of law as a defence by those who violate its terms.

30. -*Negarit*, which is an Amharic term, means -drum, which in ancient Ethiopia the Emperors used to not only proclaim laws, but also to call the public's attention to an impending war.

31. Federal Negarit Gazetta Establishment Proclamation No 3/1995, art 2(3).