



**ADDIS ABABA UNIVERSITY**  
**SCHOOL OF GRADUATE STUDIES**  
**COLLEGE OF LAW AND GOVERNANCE STUDIES**

**ADMINISTRATIVE RULE MAKING: THE LAW AND THE PRACTICE IN ETHIOPIA**

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**A Thesis Submitted to the School of graduate Studies, College of Law and Governance of the Addis Ababa University, in partial fulfillment of the requirement for Masters of Law (LLM) Degree in Constitutional and Public Law Stream.**

**ADDIS ABABA**

**September, 2024**

### **Declaration**


I hereby declare that this thesis is my original work and has not been presented in any level of other university and any information and all primary and secondary sources of materials used in this thesis have been well referenced.

Declared by: **Asnake Temam Jemal**

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Date—**23 May 2024**-----

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## **List of Acronyms**

FDRE Federal Democratic Republic of Ethiopia

Con Constitution

Art Article

MoF Ministry of Finance

MoR Ministry of Revenues

MoJ Ministry of Justice

NBE National Bank of Ethiopia

FAPP Federal Administrative Procedure Proclamation

## **Acknowledgement**

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## **Abstract**

*Procedure is the key instrument to control power and by the subsequent it avoids random working habits of the agencies and helps to protect arbitrary violation of the rights of citizens. In addition it assures to the administrative agencies whether enacting the rules as per given power via the delegation.*

*Currently, in Ethiopia there is adopted consistent administrative procedure law is cited as the Federal Administrative Procedure Proclamation No. 1183/2020. Of course there was not a mandatory and consistent administrative procedure law in Ethiopia before 2020. Even though, Ethiopia solved the legal problems relating administrative procedure law, but there are procedural gaps of administrative agencies during their rulemaking and agencies do not respect the aforementioned proclamation fully. Keep in mind, this work made an attempt at showing the practical gaps of agencies, and then coming up with some points as recommendations for agencies filling those existing practical gaps during rulemaking.*

**Key terms:** *administrative rule-making, the law and the practice, Ethiopia*

## Chapter One

### Introduction

#### 1.1. Background of the Study

According to Dr. D. Umamasheswari, "Administrative law is the body of law that governs the tasks of administrative agencies of the government which contain rulemaking power when delegated to agencies by the legislature."<sup>1</sup> As Austin, administrative law is "as the law which determines the ends and modes to which the sovereign power shall be exercised;" Schwartz, narrowly has defined administrative law "as the applicable to those administrative agencies, which possess delegated legislation and adjudicative authority;" Jennings has defined administrative law "as the law relating to the administration, it determines the organization, powers and duties of administrative authorities," Dicey like Jennings with-out differencing administrative law from constitutional law defines it in the following way. Firstly, "it relates to that portion of a nation's legal systems which determines the legal status and liabilities of all state officials." Secondly, "defines the rights and liabilities of private individuals in their dealings with public officials." Thirdly, specifies the procedures by which those rights and liabilities are enforced."

It can fairly be explained it as 'infant' a recent phenomenon. Its emergence could be dated back to the end of 19<sup>th</sup> century. Currently, in most legal systems administrative law is significantly developed and undoubtedly known as a unique branch of law.

Most countries introduced specific and organize rules and procedures governing administrative adjudication and rule-making in the 20<sup>th</sup> century. One such example of organized response to deal it is U.S. Administrative Procedure Act which was enacted law in 1946. Even though it was not as comprehensive and influential as the U.S. counterpart, similarly, in England the Statutory Instrument Act was promulgated in the same year (1946)

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<sup>1</sup> Dr.D. Umamasheswari, *administrative law*, Labor & Administrative Law Department of School of Excellence in Law in the Tamil Nadu Dr. Ambedkar Law University, Chennai, see also [www.abysinnialaw.com](http://www.abysinnialaw.com) to look at all above definitions of Austin, Schwartz, Jennings and Dicey together.

However, the development of the administrative law is not limited to statutory prescriptions of rules and procedures governing the administrative process. In shaping the form, substance and scope of the administrative law courts have also played vital roles. There is a separate system of administrative courts which deal with administrative cases exclusively in Italy, Germany, France, and in many other nations. To talk about the history of administrative law in Ethiopia is very challenging. Before the Administrative Procedure Proclamation was issued in 2020, administrative law was an underdeveloped field of law marked by a lack of legislative reform. It also receives insufficient attention in terms of study and publications. But, it cannot be ignored that there are some specific legislations scattered here and there, which are relevant to the study of administrative law.

There was a long standing belief that there had been a need for a long framework and procedure in place that governs their day today activities in Ethiopia. As different sources show that this effort moved with noticeable magnitude during the reign of Emperor Haile Seassie I. It even progressed to the extent of preparing a draft, which failed to materialize due to various reasons. There was also an attempt during the Dergue regime, but didn't show any progress at the time.

The 1987 Constitution was not able to limit the power of the government. Hence, one should not expect administrative law to deviate from the prevailing constitutional structure and develop as an instrument of checking the executive. Therefore, an arbitrary and unlimited form of government continued after the over through of the Emperor. Thus, there was no a formal system that deals with administrative rule making power, procedure and control mechanisms in the past three written constitutions of the 1931, the revised 1955 constitution and the 1987 constitution.

The present Federal Democratic Republic of Ethiopia of the 1995 Constitution laid down the constitutional framework for the development of administrative law. Since the Constitution, under Article 12, provides that governmental actions should follow the principle of transparency and accountability<sup>2</sup>, studies indicate that multiple efforts were made to prepare draft laws and sent to Council of Ministers for deliberation. Whereas all of these attempts have remained at trial stages and failed to materialize and translated into result.

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<sup>2</sup> See Federal Democratic Republic of Ethiopia Constitution, art 12

Currently, Administrative Procedure Law has become an integral part of the Ethiopian legal system for the first time in Ethiopian history which could be applicable at all Federal administrative agencies including city administration of Addis Ababa and Dira-Dawa with the exception of prosecutor and police when they perform duties administered by the Criminal Procedure Law and Military and Security Institutions.<sup>3</sup> However, security institutions issuance of directives and decisions making relating to regulatory and service provision functions shall be subject to the requirements of this Proclamation. This thesis tries to focus mainly on the practical gaps of agencies while issuing administrative directives comparatively with the procedures on the law helping to fill those gaps and it assess to what extent administrative agencies follow the Procedures in the law .

## **1.2. Literature Review**

Administrative rule-making in Ethiopia is a subject in which too little attention is given in terms of research and publication. Even some of them do not directly deal with the issues of administrative rule-making. Certain researches have been done around this issue. Explanatory Note for the Provisions of Federal Administrative Procedure Law prepared by high legal expert team led by Dr. Mehari Redae & his colleagues, which helps to have a clear picture for the new Administrative Procedure Proclamation and could be served as a fertile ground for the Proclamation. The Note contains the purpose of the Proclamation, required procedures to follow by administrative agencies to make directives, definition, scope of application, administrative decisions making with its enforcement procedures and judicial review over directives to explain each provision with the necessary description & supporting with examples. The Note also indicates that Ethiopia had been attempted to have legal framework to cover day today activities at the different time though failed due to different reasons. Moreover, Aron and Abdulatif wrote an article titled "Administrative Rule Making in Ethiopia, a normative and Institutional Framework". Its scope and content is more limited to the 'meaning of and theoretical issues in relation to administrative legislation. Aman Assefa and Associates also tries to write 'Brief Note on the new Proclamation'. This Note tries to brief the procedures to make directives by administrative agencies.

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<sup>3</sup>See the Federal Administrative Procedure Proclamation No. 1183/2020, art 3

Generally, my research tries to evaluate the law and, the prospect of administrative rule making at federal agencies, challenges and suggest the possible solutions for practical facing problems.

### **1.3. Statements of the Problem**

Previously in Ethiopia, aside from a few constitutional principles requiring the Government to be transparent and public officials to be held accountable for their actions, there was never any predictable, coherently organized and clear legislative regime governing the actions of the executive in the performance of its day to day activities.<sup>4</sup>

Currently, Ethiopia is adopted consistent administrative procedure law. Of course there was not a mandatory and consistent administrative procedure law in Ethiopia until the promulgation of Administration Procedure Proclamation 1183/2020 to apply on administrative agencies. Prior to 2020, administrative agencies' rules or directives did not adhere to any necessary procedures. However, following 2020, they advanced one step further by issuing Administrative Procedure Proclamation, which Ethiopia had been missing for a considerable amount of time. Even though the Federal Government adopted the Administrative Procedure Law, however administrative agencies do not respect the law to some extent during issuing administrative directives. So, the problem now is not lack of regime governing the issue rather the gap on the practice during rulemaking process and disrespecting the procedure as expected. As a logical extension of the above fact, the research is aimed at the procedures administrative agencies follow will be assessed.

### **1.4. Research Questions**

The thesis answers the following questions one after the other:

- i. To what extent do administrative agencies respect or adhere to the Federal Administrative Procedure Proclamation when issuing administrative rules?

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<sup>4</sup>Aman Assefa & Associates, 'Brief Note on the Recent Administrative Procedure Proclamation No.1183/2020', p 2

## **1.5. Research Objectives**

**General Objective** of this paper is predominantly to assess whether the Federal Administrative Agencies are practically enacting their directives properly based on Administrative Procedure Proclamation or not.

**Specific Objectives:**-to evaluate the validity of rule-making practice with the law;

- To find out the practical facing problems or challenges throughout the whole process of making the directives by administrative agencies and to recommend the solutions for those above mentioned challenges or gaps.

## **1.6. Significance of the Study**

As mentioned earlier, administrative rule-making is less studied area in Ethiopia. It is also an area with little emphasis given in terms of legislative reforms and publication. Thus, undoubtedly this study will initiate those scholars and students who have aspiration on the area as well as it will create awareness for those concerned government organs on the administrative rule making area. In particular the study will have the following significances:

- . To contribute its own part to administrative agencies to fill their gaps during the rule-making in Ethiopia, thus it serves as the warning bell for administrative agencies in respecting the procedure during rulemaking.
- . To attract the attention of legislative members, the executives especially administrative agencies, policy makers, and human right advocates in the area and make to discharge their duties properly.
- . To solve the practical problems by administrative agencies during rulemaking

## **1.7. Research Methodology**

Applied and Qualitative research methodologies will be used largely in this thesis. The study has attempted to make an appropriate review of the existing literature on administrative law in general and administrative rule -making in particular to set up the proper conceptual, legal, practical and theoretical framework, which serves to determine the above research questions. Moreover, primary sources like the Federal Administrative Procedure Proclamation including its explanatory note, the FDRE constitution, administrative directives enacted by administrative

agencies, articles, journals and books, regulations, proclamations and extra will be used. For the purpose of this study questionnaires and interviews is used as a mechanism of data collection.

### **1.8. Scope of the Study**

The study will be conducted in some selected Federal Administrative agencies found in Addis Ababa city. Administrative rule-making will evaluate the extent of the practice and the implementation of the laws and procedures being implemented. The study also checks the extent of respecting the Proclamation by administrative agencies.

### **1.9. Organization of the Study**

The study will be divided in to five chapters, each of which has its own sections and subsections. The first chapter is the introduction; introduces the background of the study, literature review, statement of the problem, research question, objective and significance of the study, research methodology, scope of the study and limitation of the study. Chapter two gives a brief explanation the concept and the power of administrative rule-making. It explores the conceptual and theoretical framework of administrative agencies, their power and administrative rule making, restriction of delegated legislation, administrative and eventually the ideal of control of administrative action. Chapter three deal with administrative rule-making in some countries. Chapter four will be devoted about rule making procedure in Ethiopia. Chapter five is about conclusion and recommendations

### **1.10. Limitation of the Study**

Handling of the study was not as such an easy task. Access to information concerning the study has been difficult and tedious. The study is surrounded by all round problems like unwilling to give interview and relevant information or data on the part of agencies' high officials and officers. Bother to fill the research questionnaire both on intentionally and lack of knowledge about the questions provided to them based on the research title or due to lack of understanding about the new proclamation (Administrative Procedure Proclamation No.1183/2020) Suffering from relevant domestic researches, resources or literature was another limitation for the study.

## CHAPTER TWO

### Administrative Agency and their Rulemaking Power: An Overview

#### 2.1. Introduction

Rule-making and administrative agencies are two sides of the same coin. Therefore, the study of administrative law is inseparable with the study of agencies. In Modern government, rulemaking may be difficult without administrative agencies. Thus, according to William F.Fox, modern government is said to be predominantly administrative government.<sup>5</sup> As Lindseth, Peter, no country is monopolize legislative power by the legislature that even if the primary task is doing it.<sup>6</sup> As such, a good deal of legislation is made by the administration under the powers conferred by the legislature.<sup>7</sup> However, such power is not unlimited rather it lies possible limitation by the law.

Therefore, like the existence of limitation on the part of legislature with regard to the scope of granting administrative rule making power, once power is delegated there are also scopes within which the administration is allowed to act. David Herling and Ann Lyon, state executive does not have powers beyond those granted to them by the law.<sup>8</sup> Speedy development of administrative agencies and the expansion of delegated legislation is significant factors that necessitated legislative measures interference aimed at controlling the manner of exercise of power of these entities so as to ensure protection of rights and freedoms. Consequently, specific and comprehensive rules and procedures governing administrative adjudication and rule making is introduced by many countries. Henceforth, the need for administrative rule making similarly the need to set up mechanisms of control of such power becomes the two ambiguities that encounter every government in all countries in the world.

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<sup>5</sup> William F.Fox, 'Understanding *Administrative Law*', (4<sup>th</sup> ed.2000)

<sup>6</sup> Lindseth, Peter, 'Agents without principals? Delegation in an Age of Diffuse and Fragmented Governance,' provides at <http://Isr.nellco.org/uconn wps/18> (accessed on December, 2014)

<sup>7</sup>Ibid

<sup>8</sup> David Herling and Ann Lyon, a Brief Case on constitutional and administrative law, Cavendish publishing limited-London, p 8

## 2.2 Power of Administrative Agencies

Agencies may be defined as government entities, although they affect the rights and duties of persons are neither courts nor legislatures. As Herling and Lyon, one thing it is true that agencies are not located within the legislative or judicial organ of the government.<sup>9</sup> although, they are within the executive branch, most of them are not mainly accountable to executive branch. Black<sup>15</sup> Law dictionary defines agency as a government body with authority to implement and administer particular legislation.<sup>10</sup> More detailed definition of an administrative agency is given in the New York Administrative Procedure Act, which reads:

*"An agency is any department, board, bureau, commission, division, office, council, committee or officer of the state or a public benefit corporation or public authority at least one of whose members is appointed by the government, authorized by law to make rules or to make final decisions in adjudicatory proceedings but shall not include the governor, agencies in the legislative and judicial branches, agencies created by interest compact or international agreement, the division of the military and naval affairs, the division of state police, the identification and intelligence units of the division of criminal justice services, the state insurance fund, the unemployment insurance appeals board."*<sup>11</sup>

According to Dr. D. Umamasheswari, in her book of 'administrative law' in general, "administrative agencies have power of rulemaking action or quasi-legislative action, rule decision action or quasi-judicial action, rule application action or administrative action and ministerial action." As Rosenbloom, government and public dependence on administrative agencies enabled administrators, as a class, to emerge as powerful actors in national and sub-national political systems.<sup>12</sup>

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<sup>9</sup>Id

<sup>10</sup> See the definition of agency in Black's Law dictionary

<sup>11</sup>See the New York Administrative Procedure Act

<sup>12</sup> David H Rosenbloom, 'Administrative Law' Department of Public Administration and Policy, American University, USA

This condition was fully predicted by Max Weber (1864-1920), who remains one of the greatest theorists of bureaucracy. Weber noted that over time politics vest more and increasingly complex functions in administrative agencies. The executive is not merely to implement a law made by legislature but it makes rules and adjudicates. In order to realize their purpose efficiently and effectively administrative agencies need wider power and discretion due to which they blend together three powers of government.<sup>13</sup>

Even though in principle the power of rulemaking and adjudication powers grants to the legislature and courts respectively, administrative agencies has become a compulsive necessity for an effective and efficient administration. Thus, they have the power to make binding rules, a quasi-judicial power to pass a binding decision, and an inherent power of administration or implementing the law.

Based on their accountability administrative law puts agencies as executive or independent in general. Executive agencies are directly accountable to the executive, whereas independent agencies are accountable to the legislature. The scope of power of an agency should be interpreted in line with its enabling act. The enabling act, sometimes called parent act or establishment act, is the necessary statute for the material and legal existence of the agency. Normally, the typical power of an agency is enforcement of law or administrative power. Besides it also shares legislative and judicial powers. Generally, administrative agencies, in order to realize their purpose efficiently and effectively, need wider power and discretion but with the necessary limitation. For this reason, they blend together three powers of government: executive, legislative and judicial powers.

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<sup>13</sup>Dr.J.J.R. Upadhyaya, *Administrative Law* (6<sup>th</sup> ed. 2006) p8

### 2.2.1. Rule Making Power of Administrative Agencies

As Rosenbloom rulemaking is a clear exercise of administrative power<sup>14</sup>, but it is not solely context in which administrative agencies are key actors in political systems. Agencies also exercise considerable discretion in implementing policy mandates from law makers or other political authorities. The principle of division of powers recognized by modern constitutional states determines the mechanism of the law making and the place of the legislative bodies in it. Legislative power of administrative agencies, usually known as rule-making power and more formally delegated legislation is the power of administrative agencies to enact binding rules through the power assigned to them by the legislator.

Many of their law making powers are therefore delegated to administrative agencies. Thus according to Peter, the delegation of law making power to the administrative organ becomes a compulsive necessity.<sup>15</sup> Agencies power shall be ultra-virus unless they enact rules with the limits set by the law maker. Practically, since it is difficult to avoid instances in which power may corrupt<sup>16</sup>. The lawmaker when delegating power should simultaneously introduce controlling mechanisms to ensure that individual's liberty and freedom is not violated by the administration. Most importantly, the lawmaker, when granting power, is expected to provide specific procedure of rulemaking. Administrative law also regulates the procedures used in agency.

In democratic political systems it is axiomatic that law making resets with the citizenry or its representatives as Rosenbloom said<sup>17</sup> However in practice modern democracies are apt to delegate some portion of this function to administrative agencies.

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<sup>14</sup> David H Rosenbloom, 'Administrative Law' Department of Public Administration and Policy, American University, USA, supra note 12, at 4

<sup>15</sup> Lindseth Peter, 'the Paradox of Parliamentary Supremacy: Delegation, Democracy and Dictatorship in German and France'. 1920s-1950s (2004) University of Connecticut Schools of Law Articles and working Papers. Paper 49, it also provides at <http://Isr.nellco.org/uconn wps/49> (accessed on December 2014)

<sup>16</sup> David H Rosenbloom, supra note 12, at 7

<sup>17</sup>Id, at 6

Rosenbloom categorized the three types of administrative rules may issue by administrative agencies are procedural, interpretative, and legislative (also called substantive). As him Procedural rules govern an agency's internal operations, such as how it deals with employee complaints of unfair treatment or processes appeals of various kinds. Interpretative rules are essentially policy statements explaining how an agency understands its statutory mandate. Legislative rules are like laws; they regulate conduct generally and such matters as private parties' eligibility for licenses and other benefits.<sup>18</sup>

Most importantly, the law maker, when granting power, is expected to provide specific procedure of rulemaking. One of administrative agencies actions is rulemaking or quasi-legislative action. The law-making organ of any country is legislature. The law making power is expressly vested in the legislature in some written constitutions, like the American and Australia. However, in the Indian Constitution though this power is not so expressly vested in the legislature, yet it is that the law making power can be exercised for the Union by Parliament and for the States by the respective State legislatures. It is the intention of the Constitution makers that those bodies solely must exercise this law-making power in which this power is vested. But in the twentieth Century today these legislative bodies cannot give that quality and quantity of laws, which are required for the efficient functioning of a modern intensive form of government.

Therefore, as the saying of Peter the delegation of law making power to the administration is a compulsive necessity. According to Dr. D. Umamasheswari, when any administrative authority exercises the law making power delegated to it by the legislature, or quasi-legislative action and commonly known as delegated legislation.<sup>19</sup> On the basis of Lindseth Peter idea the inherent power of the legislature, in most cases the legislature enacts a law covering the general principles and policies and leaves detailed rulemaking to the government to allow for expediency and flexibility.<sup>20</sup> Executive is required to frame the rules in accordance with the policy put down by the legislature.

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<sup>18</sup>Id

<sup>19</sup>Dr.D. Umamasheswari, *Administrative Law*, supra note 1, at 21

<sup>20</sup> Lindseth Peter, supra note 17, at 2

But certain functions and powers like framing the legislative policy however cannot be delegated to the government.

As of Umamaheswari, in her book of 'Administrative Law government and public dependence on administrative agencies enabled administrators, as a class to emerge as powerful actors in national and sub-national political systems. By taking a very basic human requirement, food, one can readily see how almost absolute dependence on public administration develops<sup>21</sup> in hand to mouth agriculture the government may make policies to produce agricultural products but cannot reach to each person. Therefore to make rules that may help to reach the products to each community, there should be delegation of powers to administrative agencies. Parliament is forced to delegate very extensive law-making power over matters of detail and to content itself with providing a framework of more or less permanent statutes.

According to her reminds Salmond<sup>s</sup> definition of delegated legislation as "that which proceeds from any authority other than the sovereign power and is, therefore, depend for its continued existence and validity on some superior or supreme authority."<sup>22</sup> An agency may only exercise authority within the delegation of authority provided for in its enabling legislation, or subsequent legislation granting specific additional power. This specified authority is all the authority the legislature has "handed over" to the agency, and since the agency has no inherent authority outside of this "handed over" authority<sup>23</sup>, there is no other authority to wield.

Legislative power of administrative agencies, usually known as rule-making power and more formally delegated legislation is the power of agencies to enact binding rules through the power delegated to them by the legislator. Elected representatives are not capable of passing laws to cover every situation. Many of their lawmaking powers, as well as the power to administer and implement the laws, are therefore delegated to administrative agencies.

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<sup>21</sup> Dr.D. Umamasheswari, *Administrative Law*, supra note 1

<sup>22</sup> Id, at 24

<sup>23</sup> See at <https://www.abyssinialaw.com/study-on-line/365-administrative-law/7199-power-of-administrative>

These agencies are involved in virtually every area of government activity and affect rights of ordinary citizens in many ways, whether these citizens are home owners needing a building permit to erect a new room, or injured employees seeking workers' compensation, or farmers selling their product.

Efficient and effective administration necessarily requires promulgation of laws, flexible to the existing situation and dealing with detailed technical matters. These laws have to be provided in the required quantity and quality. However, due to the limitation of the parliament as regards to availability of sufficient time and expertise, the lawmaker will be compelled to delegate some of its powers to the administrative agencies. When legislative power is delegated to administrative agency, it has to be exercised fairly and only with a view to attain its purpose. The agency should also enact rules within the limits of delegation set by the lawmaker.

It is difficult to avoid instances in which power may corrupt practically. Thus the law maker when delegating power should simultaneously introduce controlling mechanisms to ensure that individual's liberty and freedom is not violated by the administration. Most importantly, the lawmaker, when granting power, is expected to provide specific procedure of rulemaking. An administrative agency exercising its legislative function is required to give notice to the public of the proposed rule and incorporate comments from the public in most countries. This ensures public participation in the administrative process. The rules issued by the agencies should also be published in a formal instrument, which is easily accessible to the public, thus, encouraging openness in the public administration.

Rulemaking power of administrative agencies emanated their powers delegated to them by the legislator. Thus, power is transferred from the principal lawmaker to the lower body, which may be executive, cabinet, council of minister, or a specific administrative agency, by the mechanism of delegation. In general, delegation refers to empowering another to act as agent or representative. Similarly, delegation of legislative powers means the transfer of law-making authority by the legislature to the executive, or to administrative agency, this is because parliament does not have time or resources to enact every single piece of legislation that is needed in the form of primary legislation, which can be fully debated and scrutinized in accordance with legislative procedures. The result is delegated legislation, legislation produced by an 'inferior body' which nevertheless has the force of law.

### **2.2.2. Executive (Administrative) Power or Action**

As known that the major task of the administrative agencies is the administration or execution of laws. It is the typical power of an agency. However, the executive does not have powers beyond those granted by the law. Of course, the executive makes rules and adjudication not merely to implement a law made by legislature. They have executive powers since they are part of the executive. According to Dr.D. Umamasheswari, administrative agencies have power of "rule application action or administrative action and ministerial action."

Therefore, rather than legislative or judicial actions, executive action is the major action to administrative agencies. It is regarding with the treatment of a particular situation and is devoid of generality. It has no procedural obligations of collecting evidence and weighing argument. It is based on subjective satisfaction where decision is based on policy and expediency.

Administrative action may be statutory, having the force of law, or non-statutory, devoid of such legal force. The bulk of the administrative action is statutory because a statute or the constitution gives it a legal force but in some cases it may be non-statutory, such as issuing directions to subordinates not having the force of law, but its violation may be visited with disciplinary action. Though by and large administrative action is discretionary and is based on subjective satisfaction, however, the administrative authority must act fairly, impartially and reasonable. The next chapter will deal the experiences of rulemaking in some selected countries.

## **Chapter Three**

### **3.1. Administrative Rule Making Procedure in Some Selected Countries, (England, USA and German)**

Procedure is one of the main controlling mechanisms of administrative rules making and it plays a significant role to eradicate random working habits.<sup>24</sup>

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<sup>24</sup>Abreham Yohannes, *Introduction to Administrative Law*, Amharic version p 96

According to Dacian C. Dragos, administrative procedure relates to the methods and processes before administrative agencies, as distinguished from judicial procedure, which applies to courts.<sup>25</sup> Administrative procedure law is understood as a law that deals with the manner how and the time when the roles and responsibilities of administrative agencies are to be carried out.<sup>26</sup> According to professor Emil Balan as puts the Romanian perspective of administrative procedure is as it represents in a simple way the rules that apply to the activities of public administration structures (even if it concerns the drafting, the execution or the control of administrative acts or the realization of administrative operations)<sup>27</sup> It can be defined as a succession of acts and operations issued or performed by an administrative body on its own motion or upon request, in order to adjudicate on rights, interests, and obligations of parties of the procedure or decide based on the public interest, according to the laws and other regulations in force. Administrative Procedure is the formal path, established in legislation, which an administrative action should follow.<sup>28</sup>

### **3.1.1 Administrative Rule Making Procedure in England**

According to the British jurist Albert V. Dicey, "the system of administrative law and the very principles on which it rests were unknown in England until recently." This, however, does not mean that administrative law and its components are completely alien to England because the British parliament and the courts have always been and still are active in controlling the functions of administrative authorities. Administrative law in the United Kingdom has a slightly different purpose and function than it for example in the United States.

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<sup>25</sup> Dacian C. Dragos, *Administrative Procedure*, Center for Good Governance Studies, Babes Bolyai University, Romania

<sup>26</sup> See the Federal Administrative Procedure Proclamation No. 1183/2020, supra note 3, art 3

<sup>27</sup> Emil Balan, *General Principles of the administrative procedure*. The Romanian perspective

<sup>28</sup> Administrative procedures in EU member states, document prepared for conference on public administration reform and European integration held in Budva, Montenegro 26-27 March 2009

Reed Hepler stated in the United Kingdom, administrative law is created exclusively through judicial review. By creating administrative law, judges can hold bureaucratic agencies of the government accountable for their actions that affected the citizenry of the United Kingdom. They can also hold those who have executive power in the government accountable.<sup>29</sup>

On the part of Theodora Ziamou, the English system provides a definition of rules not according to substance, but according to form.<sup>30</sup> Secondary legislation takes primarily the form of statutory instruments. According to section 1 of the Statutory Instruments Act, statutory instruments comprise Orders in Council, rules made under ministerial powers stated to be exercisable by statutory instrument<sup>31</sup> and rules made under statutes governed by the old Rules of Publication Act of 1893.<sup>32</sup>

According to Ziamou described that in English law, non-statutory rules are made by the administration without delegation of rulemaking authority; they are based on the inherent power of the administration to exercise its discretion and are legislative in character in that they have a generality of application.<sup>33</sup> However, the difference between statutory and non-statutory rules is not always clear-cut, as regards to their legal bindingness.<sup>34</sup> In England Administrative procedures developed as the state interfered more and more in individuals'lives.<sup>35</sup> It was a movement propelled by two huge war efforts in the twentieth century and the legacy of imperial expansion.

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<sup>29</sup> Instructor: Reed Hepler, 'What is Administrative Law in the UK?'

<sup>30</sup> Theodora Ziamou, 'Public Participation in Administrative Rulemaking': The legal tradition and Perspective in the American and European (England, German, Greek) Legal Systems, p 50

<sup>31</sup> Sub sect 1 of UK Statutory Instruments

<sup>32</sup> Id, Sub sect 2

<sup>33</sup> Theodora Ziamou, supra note 32, at 50

<sup>34</sup> Ibid

<sup>35</sup> <http://www.iuscommune.eu/hml/activities/2015/2015-11-26/workshop-4Birkinshaw-Varney>

In England, where the doctrine of parliamentary sovereignty is propounded, parliament as a matter of principle can enact or repeal legislation as it sees fit. The doctrine of parliamentary sovereignty, or parliamentary supremacy, is a product of the constitutional settlement at the end of the 17<sup>th</sup> century. It has two elements: that parliament may make or unmake any law; and that a parliament statute is the highest law known in the UK. This doctrine implies that parliament is the supreme and has unrestricted power to make any law.

According to David Stott and Alexander Felix, where in England while delegating powers abstains from laying down elaborate procedure to be followed by the delegates. But for certain acts provide the consultation of interested bodies and sometimes of certain advisory committees which must be consulted before the formation and application of rules and regulations. Under English administrative law, the rules of natural justice/fairness<sup>36</sup> do not apply to delegated legislation, and as such failure to consult parties does not entail invalidity of the rules by court.

In U.K. many agencies use prior consultation though it is not as a mandatory requirement to them. Here, previously retained the notion of parliamentary supremacy as a fundamental constitutional doctrine. But even in British, the necessity of excessive delegation what they usually call 'the Henry clause VIII' has been questioned and recommended for its abolishing from enabling statute by British student and even the committee on ministerial' power<sup>37</sup>, this stated by Bernard Schwartz and H.W.R. Wade Moreover, the Statutory Instruments Act of 1946 with its laying procedure and the court's roles in shaping the form, substance and scope of the administrative law has developed after 1945.

Generally, in England, unless comply with review mechanism by parliament most rules and regulations issued through power of delegation will not have a binding force. Laying procedure is commonly such parliamentary review mechanism that affords an opportunity for the legislature to control the exercise of the power of delegation by subordinate bodies.

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<sup>36</sup> David Stott and Alexander Felix, *principles of administrative law* (1<sup>st</sup> ed. 1997) Clarendon Cavendish Publishing Limited, Sydney London

<sup>37</sup> Bernard Schwartz and H.W.R. Wade, *legal control of Government* (1972) Clarendon press, Oxford

Dr. D. Umamasheswari, in England, Parliament is supreme and, therefore, unhampered by any constitutional limitations, Parliament has been able to confer wide legislative powers on the executive.<sup>38</sup> Where in England, the doctrine of parliamentary sovereignty is propounded, parliament as a matter of principle can enact or repeal legislation as it sees fit. Whether there is a clear limitation or not, the legislature is in charge of making laws in the form of primary legislation. Any other legislation that is subordinate or auxiliary to primary legislation is known as delegated (or sometimes ancillary) legislation.

### **3.1.2. Administrative Rule Making Procedure in USA**

Richard B. Stewart classified U.S. administrative law over the past century successively developed different models or approaches like the common law model, the traditional model of administrative law, the New Deal model of regulatory management, the interest representation model and analytic management of regulation.<sup>39</sup> With an exception of the common law model, because which does not deal about law making rather it is about adjudication and as a result is not my concern.

Therefore, he explained each model as follows, so, beginning in the late nineteenth century, legislatures created rail-road commissions and other regulatory agencies to deal with the consequences of industrialization according to the traditional model of administrative law. Tort actions would have been an awkward method of reviewing their decisions. In response, courts and legislatures developed what have called the traditional model of administrative law.<sup>40</sup> under which agencies were required to conduct trial-type adjudicatory hearings before adopting rate orders or other regulatory requirements. Administrative law functioned as a "transmission belt" to legitimate the exercise of regulatory authority by ensuring, via judicial review, that particular impositions on private persons had been statutorily authorized by the democratically elected legislature.

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<sup>38</sup>Dr.D. Umamasheswari, *administrative law*, supra note 1

<sup>39</sup>Richard B. Stewart, 'Administrative Law in the Twenty-First Century,' New York University pp439-443

<sup>40</sup>Id

The New Deal model of regulatory management, the New Deal congress created a raft of new federal regulatory agencies and endowed them with very broad powers through open-ended statutes. This step intensified democratic anxieties to the point of crisis. As an unconstitutional "fourth branch" of government, agencies were attacked.

While application of the traditional model might ensure that agencies acted within the bounds of their statutory powers, those bounds were so wide as to give agencies vast discretionary powers, creating a palpable democracy deficit and the threat of arbitrary powers. The Supreme Court went so far as to strike down the National Recovery Act as unconstitutional delegation of legislative power to agencies, a step that it has not since repeated.

The interest representation model, here basic changes in administrative law were made in the late 1960s in response to interrelated developments like the rise of public interest law through the proliferation of new legal advocacy groups in environmental, consumer, civil rights, labor, and other fields and also response to a new wave of environment, health, safety, civil rights, & other social regulatory programs adopted by Congress as part of a "rights revolution." (Richard B.) As Richard, in response, agencies shifted, often in accordance with congressional mandates, from case-by-case adjudication to rulemaking as a more efficient, explicitly legislative procedure for implementing the new, far reaching regulatory programs.

Analytic Management of Regulation is the last model (approach). At the very same time that the interest representation model was reaching full bloom, in 1981, President Reagan issued Executive Order No. 12,291, it requiring agencies to perform cost-benefit analysis of proposed major regulations and alternatives. These analyses, as well as agency compliance with the executive order, were made subject to review by the Office of Management and Budget (OMB) but not by the courts. As Richard B., this initiative reflected a very different view of agency failure.

In June 11 1946, the Administrative Procedure Act (APA) was enacted by the federal government. It enacted that governs the way in which administrative agencies of the federal government of the United States may propose and establish regulations.

It grants U.S. federal courts oversight over all agency actions.<sup>41</sup> It is the procedural roadmap for the federal executive branch. As of *Hickman and Pieces*, it is one of the most important pieces of United States administrative law, and serves as a sort of "constitution" for U.S. administrative law.<sup>42</sup>

The Administrative Procedure Act sets up the procedures to be followed for administrative rule making. Before adopting a rule an agency generally must publish advance notice in an Official government's daily publication News Paper is called the Federal Register. This practice gives opportunity for interesting parties to participate in the decision making by submitting the necessary written data or by oral arguments, before adopting a rule, is adopted in its final form, and 30 days before its effective date, the agency must publish it in the Federal Register. The place of administration which planned to make a rule, time, and general features, proclamation which that could be source for the future enacted rule and contents of the enacted rule must include in the notice. Procedural, interpretative, and legislative are the three types of rules promulgate by administrative agencies.

Agency's organization and methods of operation is identified by Procedural rules. Interpretative rules are issued to show how the agency intends to apply the law. Legislative rules are statutes enacted by a legislature. Unless agencies grant authority by the legislature, they cannot promulgate legislative rules. APA subdivides the categories into formal and informal proceedings in 1990.<sup>43</sup> A Formal Rulemaking Procedure: Is considered when the proceeding is required by another statute to be "on the record after opportunity for an agency hearing." Section 4 (b) provides that Where rules are required by statute to be made on the record after opportunity for an agency hearing."

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<sup>41</sup>Available at <http://en.m.wikipedia.org/wiki> to see date of enactment of Administrative Procedure Act, its purpose and other detail information about it

<sup>42</sup>Id

<sup>43</sup>Abreham Yohannes, *supra* note 26, at 98

The requirements of sections 7 and 8 shall apply in place of the provisions of this subsection."<sup>44</sup> Thus, where a rule is required by some other statute to be issued on the basis of a record after opportunity for an agency hearing, the public rule-making proceedings must consist of hearing and decision in accordance with sections 7 and 8.<sup>45</sup> Noted that section 7 and 8 did not become effective until December 11, 1946, and, pursuant to section 12, did not apply to any public rule making proceedings initiated prior to that date.

**B Informal Rulemaking Procedure:** The statement informal rule making procedures may be couched in either specific or general terms, depending on whether the agency has adopted a fixed procedure for all its rule-making or varies it according to the type of rule to be promulgated. In every case of the proposed informal rule-making according to the requirements of section 4 (a), section 4 (b) provides that "the agency shall afford interested persons an opportunity to participate in the rule-making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner. It may take through conferences, and consultation with industry committees, submission of written views, or any combination of it.

Generally, in U.S. these informal procedures have already been extensively used and forced by federal agencies with the minimal criteria of notice, participation and publication<sup>46</sup>. Besides, nowadays it is accepted in most jurisdictions as to the requirement of the clear and specific procedures governing the rule-making process. The rule-making procedure may be applicable universally by every administrative agency (like the Administrative Procedure Act, 1946, USA) Otherwise the enabling act may specifically require minimum procedures to be followed in each particular case. Put in mind now is going to see the rule making procedures of administrative agencies in Ethiopia on the basis of the new law in detail as follows.

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<sup>44</sup> section 4 (b) of the U.S. Administrative Procedure Act

<sup>45</sup> Id, at section 7 & 8

<sup>46</sup> Abreham Yohannes, supra note 26, at 98

### 3.1.3. Administrative Rule Making Procedure in Germany

According to Prof. "Thomas Schmitz, in Germany administrative law is concerned primarily with the validity or revocability of administrative acts and the right to administration action. There is a tendency towards codification in large parts of German administrative law being codified. In a wider sense, administrative procedure can be understood as any activity of an administrative authority that is directed to the preparation of any kind of administrative action.<sup>47</sup>

The concept of administrative procedure only embraces those activities that have an external effect and are directed to the examination of the requirements, the preparation and the adoption of an administrative act or to the conclusion of an administrative contract. The historical background: German administrative law was already developed in some German states in the 18<sup>th</sup> century.<sup>48</sup> German administrative procedure law must be understood in the context of German federalism. The Germans were not the first to have a codified administrative procedure law. Austria and U.S. had it already in 1925 and 1946 respectively. The idea of codification became stronger in the fifties in Germany. A joint commission of the Federation and the Lander presented a draft for a model act in 1964. In 1976 the Federal Administrative Procedure Act was passed.<sup>49</sup>

Cristina Fraenkel-Haeberle, reminded that General Administrative Procedure Act of 1976 is quite detailed and envisages very precise regulation of administrative activity.<sup>50</sup>

According to Thomas Schmitz, theoretically, there could be a different procedure law in the Federation and each lander. Formerly, each lander has its own Administrative Procedure Act, but in substance, they are largely similar because they either just refer to the federal act or repeat its contents with minor modification.

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<sup>47</sup> Prof. Thomas Schmitz, The administrative procedure in Germany administrative law, p2, German Law Center

<sup>48</sup> Id, at 2

<sup>49</sup> Id, at 3

<sup>50</sup> Prof. Cristina Fraenkel-Haeberle, 'Fully Digitalized Administrative Procedures in the German Legal System' at the University of Speyer

German administrative procedure law must be understood in the context of German federalism. With few exceptions, the Lander does not only execute their own but also the federal laws. Therefore, in general they are competent to regulate the administrative procedure, even for most cases of executing federal law. As Schmitz, German administrative procedure law has proved in practice that it is possible to conciliate the needs of efficient administration with the rule of law and the respect for the citizen's rights.<sup>51</sup> however a modern administrative procedure act should not be limited to the regulation of administrative acts (decisions). It should also include some rules on physical administrative action and official warnings (in particular about dangerous products or food) because they can harm the rights of citizen in a similar way and must be brought in line with the rule of law too. Significant issues of administrative rulemaking in Germany are regulated directly by the Constitution<sup>52</sup>. Ziamou on his side, the German Administrative Procedure contains provisions regarding only individual administrative acts and procedures and makes no mention of administrative rules or rulemaking.<sup>53</sup>

According to UweKischel, in Germany delegated legislation is a firmly established principle.<sup>54</sup> accordingly, not only is the administrative state is thus reflected in the constitution but delegation is even expressly dealt by the basic law. As the contrasting of Georg Nolte, Procedural rights and protection have traditionally played less important role in German comparing in the United Kingdom.<sup>55</sup> Similarly as of England, German law, as a general rule, does not make public participation as a mandatory requirement. Ethiopian law prohibits this since it is deemed required; a detailed explanation of this will be provided in the next chapter.

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<sup>51</sup> Prof. Thomas Schmitz, supra note 49, at 8 & 9

<sup>52</sup> Art 80 of the Grundgesetz, Basic Law

<sup>53</sup> Theodora Ziamou, supra note 32, at 45

<sup>54</sup> UweKischel, Delegation of legislative power to agencies: 'A comparative analysis of United States and German law', extracted from administrative law review 46(1994) from p213-256

<sup>55</sup> Georg Nolte, *General principles of German and European Administrative law- A Comparison in Historical Perspective*, The Modern Law Review, Vol. 57, (March 1994) p 203

## Chapter Four

### The Law and the P of Administrative Rulemaking in Ethiopia

#### 4.1. Administrative Rule-Making pre-2020: An Overview

The history of administrative law in Ethiopia is very harsh, and discussing it before 2020 is difficult. Administrative law remains underdeveloped and is distinguished by a dearth of legislative reform prior to the aforementioned period. Additionally, there hasn't been enough research and publication done on the topic. Notwithstanding, it is indisputable that there exist certain particular laws sporadically existing before 2020. A lengthy period of time had passed since they needed a method and legal framework to control their daily operations. This endeavor advanced with significant speed under Emperor Haile Selassie I. It even went so far as to create a draft, but for various reasons, it didn't work out. Similar intentions and attempts were undertaken during the military rule, according to historical records. Even after the adoption of a federal constitution in Ethiopia, since the Constitution, under Article 12, provides that governmental actions should follow the principle of transparency and accountability.<sup>56</sup> A working group tasked with drafting an administrative procedure law was established in 2018<sup>57</sup>, despite the fact studies show that numerous attempts were made to prepare draft laws and that these drafts were sent to the Council of Ministers for discussion. All these attempts, however, have remained at the trial.

##### 4.1.1. During Emperor Haile Selassie (1930-1974)

1930-1974 was the reign of Emperor Haile Selassie. The preservation of Emperor Menelik II<sup>S</sup> legacy was the main priority throughout this time.<sup>58</sup> The Emperor continued the administrative modernization started by Menelik II. In Ethiopia, the history of government is largely characterized by arbitrariness & lack of effective legislative, judicial & institutional control.

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<sup>56</sup> Article 12 of the FDRE constitution

<sup>57</sup> Dr. Mehari R. and his colleagues, 'Explanatory Note for the Provisions of Federal Administrative Procedure Law at the background sect, p1

<sup>58</sup> Laszlo Vertesy and Teketel Bekalo, "Public Administration Developments in Ethiopia under Three Different Regimes" p 406

It is difficult to document the historical evaluation of administrative law because of this. The 1931 and 1955 constitutions did not include any significant or workable restrictions on the authority of the government until 1987. Ethiopia's first Japanese-style constitution was adopted by Haile Selassie in 1931.<sup>59</sup> This constitution served only as a vehicle for the Emperor's power to be centralized. Among other modern institutions, the Emperor promulgated a constitution that enshrined his prerogative to delegate authority to an appointed and indirectly elected bicameral parliament. However, democratic principles and values did not incorporate in the constitution drafting process. i.e., it was not participative due to the monarchial administrative system.<sup>60</sup> Moreover, according to Art 54 of the 1931 constitution, special courts shall judge all matters relating to administrative affairs, which are withdrawn from the jurisdiction of other courts. This establishment of independent court parallel with the ordinary court is one of the indicators for the existence of administrative law to some extent at the time.

As it attempted to define and distribute governmental powers, the 1955 revised constitution showed little progress in this area. Provisions of fundamental rights and freedoms also included, but it failed to do away with the accumulation of power in the hands of the Emperor. The Emperor still retained law-making power sharing it with parliament, and judicial powers, which were ill defined in the constitution as the power to maintain justice and the essential executive powers were vested directly to him. It was theoretically the case that the constitution governed everyone in the country, including the Emperor.<sup>61</sup> Moreover, it contemplated an independent ministerial government responsible for the monarch and the parliament, and an elected chamber and independent judiciary.<sup>62</sup> Limiting the power of the emperor to a certain extent and a relatively better recognition of rights and freedoms, but all these liberal provisions were overshadowed by the executive prerogative reserved to Emperor.<sup>63</sup>

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<sup>59</sup> Id, at 407, see also Bahiru Zewede, *A history of modern Ethiopia: 1985-1991* (2<sup>nd</sup> ed. 2001)

<sup>60</sup> Id, at 407

<sup>61</sup> Art 122 of the 1955 Revised Constitution

<sup>62</sup> Id, art 110

<sup>63</sup> Id, art 26-36

Parliament was granted no power to control over the ministers' rule making. It remained responsible to the Emperor and law approved by both house could not override the position of the Emperor, let alone to control the rules made by the Emperor.<sup>64</sup> The first time unsuccessful attempt was made to introduce an Administrative Procedure Act that governs the decision making process of the administrative agencies during that time.

#### **4.1.2. During the Derg Regime**

In February 1974, massive protests resulted in months of strikes, anti-government demonstrations, and a gradual military takeover complete power control. Following months of strikes and anti-government demonstrations in February 1974, the military gradually took over total power control. Hence, one should not expect administrative law to deviate from the prevailing constitutional structure and develop as an instrument of checking the executive. After the promulgation of the 1987 constitution, National Shengo (parliament) was elected. Even though the Shengo was formally the highest legislative body, in practice it seats once a year.<sup>65</sup> Due to this, the role of the Shengo was undertaken by the state council which is the visible administrative, executive, and legislative organ.<sup>66</sup>

The council of the state is an organ had the power, inter alia, to interpret the constitution and other law, revoke regulation and directives issued by state organs accountable to the National shengo. The president of the republic has some powers <sup>67</sup> to issue decree and special decree. Despite these powers, there is no any means by which these powers could be checked and controlled. Rather, the administration has taken many measures even with-out legal basis let alone to expect the existence of procedure for lawfully established actions and as a result this makes the practice as time of the emperor era.

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<sup>64</sup> Id, art 88

<sup>65</sup> Art 67 of the 1987 constitution

<sup>66</sup> Id, art 82

<sup>67</sup> Id

Generally, during the era of those above constitutions, there were no brought that much significant contribution for the development of administrative procedure to flourish as a means of control of government power in general and administrative rule-making in particular. There were no any limitation and delegation standards with regard to extent the legislature was able to delegated to administrative agencies, there is no procedure administrative agencies expected to follow, as well as there is no viable administrative rule making control mechanisms.

#### **4.1.3 Administrative Rule making During the Federal Democratic Republic of Ethiopia (1995-2019)**

The absence of general administrative rulemaking procedures in Ethiopia is indeed a striking scenario in the Ethiopian executive working environment.<sup>68</sup>

The constitutional foundation for the growth of administrative law was established by the current Federal Democratic Republic of Ethiopia in 1995. It includes important governmental administration tenets including public involvement, accountability, and transparency. The constitution is a milestone that redesigned and restructured the country into a federal republic based on democratic principles, including extensive and progressive individual and group rights<sup>69</sup>. No act of executive, legislative judicial or quasi-judicial of any administrative agency can stand if contrary to the constitution.<sup>70</sup>

Furthermore, there are constitutional precepts that have a direct bearing on administrative law. Examples of such values include democracy, the rule of law, accountability, and transparency. It may be unfair to say that Ethiopia does not have administrative law. Because there is no codified administrative law, its administrative law is dispersed throughout. So, since the necessity of administrative law is to administer fairly to keep the interest of the people. This fairness can exist if the works of any government contains the principles of transparency, accountability, rule of law and the existence of democracy to participate in the affairs of government.

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<sup>68</sup>Aron Degol & Abdulatif Kedir, 'Administrative Rulemaking in Ethiopia:' Normative & Constitutional Framework

<sup>69</sup>The FDRE Constitution, art 13-17

<sup>70</sup>Id, art 9 (1)

However, it is also true that nobody can claim with confidence that our administrative law system is well-developed. There is no delegated legislation or administrative procedure guiding administrative decisions at the Federal or state levels as of 2019. There are only few administrative courts poorly organized, highly subject to executive control and ineffective due to lack of expert administrative judges and absence of clear guidelines regarding their qualification, procedure of appointment and dismissal.<sup>71</sup> Control of administrative action through judicial review is almost non-existent. As have said earlier administrative law generally regulates administrative actions. In democracies it will promote public participation in agency rule making by facilitating representation of stakeholders and other interested parties, as well as promote transparency, accountability, fundamental fairness and other democratic values like principle of legality. Thus, the administrative procedure act of many countries usually establishes procedures that agencies must follow in adopting rules.

The 1995 current Federal Democratic Republic constitution of Ethiopia has laid down the framework for the development of the administrative procedure. The principles of government administration such as accountability, transparency, legality, rule of law and public participation in the affairs of government is included in the constitution.<sup>72</sup>

The principle of transparency is one of the constitutional principles applied when any government organs including administrative agencies are discharging their duties.<sup>73</sup> It is the principle emanated from the idea that the public's right to know the activities of the government as in democratic system of government.

Public participation is the other principle of the constitution that related with the principle of transparency. From the beginning sovereignty resides on the nation, nationality and peoples of Ethiopia<sup>74</sup>

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<sup>71</sup> FDRE constitution, art 47-48

<sup>72</sup> Id and the preamble of the FDRE Con, art 8 & 12

<sup>73</sup> Id, art 12 (1)

<sup>74</sup> Id, art 8 (1)

Their sovereignty shall be expressed through their representatives elected in accordance with the constitution and through their direct democratic participation<sup>75</sup> so, it is clear by which they indirectly participate through their elected representatives. But one of the instances they directly participate could be among others in time regulations and directives have been made by a government bodies.

The principle of accountability is another principle of the FDRE constitution. The principle of accountability requires that there must be existed forums in which decision makers may be called to account to justify their actions. Since administrative procedure is the formal path which an administrative action should follow there by, in case of faller to follow it, exposing an administrative authority to these accountability. In addition to the constitutional principles, freedom of the mass media and access to information proclamation sets the openness of the government for the development of administrative rule making procedure. According to the Media Proclamation No. 1238/2021, citizens have the right to access, receive, and impart information held by public officials with an exception of justifiable limits.<sup>76</sup>

In the context of Ethiopia between 1995 and 2019, administrative procedure encompasses all of the aforementioned principles of government administration, including transparency, accountability, public participation, and the like in the affairs of government under the FDRE constitution, as well as freedom of information and mass media proclamation. Before 2020, Ethiopia will not have any precedents or particular legal justifications for regulating notice, discussion, or public engagement in administrative rule-making processes.

#### **4.2. Ethiopian Administrative Rule-Making since 2020**

Rule-Making has been defined as the process executive agencies use to create or promulgate regulations. Make directives, rules, orders, schemes, bye-laws, licenses, and warrants---etc. as the legislature thinks fit.<sup>77</sup>

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<sup>75</sup> Id, art 8 (3)

<sup>76</sup> Media proclamation 1238/2021, the preamble

<sup>77</sup> See <https://haregoviews.wordpress.com/2020/05/20/administrative-procedure-law-in-Ethiopia/>

Since 2020, Ethiopia's Federal Administrative Procedure Law has provided the legal framework for administrative authorities to create rules based on formal procedures. Therefore, the Federal Administrative Procedure Proclamation No.1183/2020 was established to close a long-standing gap in the corpus of Ethiopian legislation. As a result, for the first time in Ethiopia history, Administrative Procedure Law has been incorporated into the country's legal framework.<sup>78</sup>

Generally, the rule making procedure is designed to ensure that: the public is informed of proposed rules before they take effect, the public has the chance to comment on the proposed rule and provide additional input to the agency, those who are interested to participate in the rule making process are provided an opportunity to participate and protect rights and interests.

#### **4.2.1. Comparability between the Rulemaking Practice and the Law**

Owing to the notable distinctions between agency rulemaking process and the law, these differences will be examined in detail below as we compare the procedures with the requirements of the law. As a result, this chapter will go through each provision and attempts to provide a side-by-side comparison of the laws and practices. Let me remind you that all interviewees and respondents from all agencies are lawyers, and that the directives used in the thesis are samples because it is not possible to cover them all.

#### **4.2.2. Issuance of Directives**

Issuing directives is the process by which government agencies develop and implement rules and regulations to carry out and enforce laws passed by the legislative branch. Notice, Public Comment Period, Analysis and Revision and Final Rule are key steps involved in administrative rulemaking.

According to Article 2 (2) of the FAPP directive means a legislative document that is issued by an administrative agency based on delegation of power bestowed upon it by the legislator, which affects people's rights and interests. The term also includes the amendment or repeal of an already existing directive; in the Ethiopian hierarchy of norms, directives are third –level regulatory instruments next to proclamation and regulation.

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<sup>78</sup>Dr. Mehari R. and his colleagues, *supra* note 59, at 1

Article 4 (1)<sup>79</sup> of the Proclamation states that every administrative agency may enact rules or directives based on the authority granted to it. Thus, it is evident from this that an administrative agency needs authority to issue rules or directives based on its mother law. So, such granted powers to agencies through either a proclamation or a regulation. Therefore, administrative agencies lack the inherent authority to enact directives<sup>80</sup>

This is the reason that the principle of separation of powers as enshrined in the Constitution allocated legislative power to the legislative organ.<sup>81</sup> This Ethiopian system of the delegated power to administrative agencies are applicable to the Administrative Procedure Act and the Statutory Instruments Act in the United States and England, respectively. Only the processes outlined in the Proclamation can be used by administrative agencies in Ethiopia to establish rules, Article 4 (2). As was previously stated in the beginning of this chapter, the principles of accountability and transparency should guide government actions. As a result, agencies can prevent the arbitrary issuance of rules by basing their rule-making procedure only on the legal provisions found in the Proclamation, which also helps to make the rules more accessible.

The practice demonstrates how agencies issued directives based on the law, albeit insufficiently and they do not give due respect to the Proclamation. Thus, of the nine Ministry of Revenue answers, roughly five believe in that issuance should be done so in accordance with the law, while the other four agree but not very much. Comparably of the nine individuals surveyed by the Customs Commission, two strongly agree, roughly four agree, and one disagrees in the issuance accordingly with the law. The Ministry of Finance and the National Bank of Ethiopia both reached the same outcome; yet, certain agencies overlooked crucial steps in the process, and each of them will be examined as follows.

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<sup>79</sup>Art 4 (1) of the FAPP

<sup>80</sup>Dr. Mehari R. and his colleagues, supra note 59 at 10

<sup>81</sup>Ibid

### 4.2.3 Period for Issuance of Directives

Any administrative agency may issue administrative directives or rules based on mother law as of the Proclamation's Article 5<sup>82</sup>. Such that, in the event that it is required, it must be ratified within three months; in the event that it is not, it must be ratified within a reasonable amount of time. As a result, if the parent law of that specific directive or rule makes reference to its provision as mandatory, those agencies must issue it within the time frame given above; if not, an agency must issue it without delay. The fact that an implementation directive must be issued within three months of the parent law's publication is the rationale behind designating the three-month period as trainable.<sup>83</sup>

Or, it may basis on House of Peoples' Representatives of the Federal Democratic Republic of Ethiopia Rules of Procedures and Members Code of Conduct Regulation Number 6/2016. This Rule has a three-month deadline for implementation. Many other nations, such as the United States Administrative Procedure Act and the United Kingdom Statutory Instruments Act, do not have this kind of time restriction. Because agencies may adopt arbitrary administrative rules until this time limitation is met, our law is, in fact, preferable in this regard. Additionally, this time limitation serves to protect ultra vires which protects agencies not exceeding the power limit delegated to them. Although the Proclamation requires more clarification and doesn't quite define what constitutes a fair time limit, it does encourage agencies to act quickly. In spite of this, agencies rarely issue directives within the allotted time limit. If we take the Ministry of Finance's Investment Incentives Directive No. 941/2023<sup>84</sup>, for example, it was issued in January 2023, six months after the parent law of the Investment Incentives Regulation No. 517/2022<sup>85</sup> was promulgated. Since it is optional under the parent law, it may already have been enacted without delay and within a reasonable time frame.

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<sup>82</sup> Art 5 of FAPP

<sup>83</sup> Dr. Mehari R. and his colleagues, supra note 59 at 1

<sup>84</sup> See Investment incentives directive no. 941/2023 issued by Ministry of Finance on January 2023

<sup>85</sup> See Investment incentives regulation no 517/2022 issued by Ministry of Council on July 2022

However, in another instance, the Federal Tax Administration Proclamation No. 983/2016<sup>86</sup> is not being implemented as soon as planned due to a directive issued by the Ministry of Revenues. This directive is cited as the Tax Clearance Certificate Issuance Directive Number 180/2023<sup>87</sup>.

Therefore, even though it is an acceptable time restriction, it does not maintain the legal basis. The mother law for this directive was already established a long time ago, and it is unfair in a reasonable mind to issue this Clearance Certificate issuance Directive after a delay of about almost three years.

Regarding the prompt adoption of the directive, the two respondents in the Ministry of Finance contradict one another. As a result, the law department team leader answers as the agency issued, following the procedures as required by law, while the remaining respondent answers in a manner that differs from what the team leader stated.

Despite the fact that the majority of respondents stated that the National Bank of Ethiopia maintains prompt implementation of directives, in practice, this means that the law's time restriction is not maintained and respected. Thus, it is possible to confirm this by referring to the Microfinance Institutions Directive No MFI/36/2023<sup>88</sup>, which was issued in January 2023 to implement Micro Financing Business Proclamation No. 626/2009<sup>89</sup> (as amended by Proclamation no. 1164/2019). Three years had passed since the Proclamation was issued. As a result, it might not be enacted in a timely manner and could be delayed.

Article 30 (1) of the Public Servant's Pension Proclamation No.1267/2022 mandates the issuance of a directive regarding occupational diseases and levels of disability, the Public Service Social Security Fund does not issue the directive even though it is required by its parent legislation to do so.

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<sup>86</sup> See Federal Tax Administration Proclamation no. 983/2016, art 61 (2)

<sup>87</sup> See Tax Clearance Certificate Issuance Directive Number 180/2023 issued by Ministry of Revenues

<sup>88</sup> See Minimum Paid-up Capital and Capital Adequacy Requirement of Microfinance Institutions Directive No. MFI/36/2023 issued on January 2023 by National Bank of Ethiopia

<sup>89</sup> Micro Financing Business Proclamation no. 626/2009 (as amended by Proclamation no. 1164/2019)

The Ministry of Justice's oversight and follow-up team blamed and reminded the agency to issue it. Alemu Tedla, Vice Assistance General Attorney 2 at the Ministry of Justice, attests to this reality of the case of Public Service Social Security Fund.

Generally, the Proclamation requires timely issuance of directives whenever required by law.<sup>90</sup> Of course agencies do not have any complain against on this time limit and other requirements. But the reason for the disrespecting of the procedure in the law is lack of giving due attention. Thus, none of them- the Ministries of Finance, Revenues and/or Customs Commission and National Bank of Ethiopia-were not able to adhere to the legal deadline for timely adoption because they didn't understand it, the three-month mandatory directive period wasn't followed, and the agencies didn't pay enough attention to what the law required of them in the first place, so there was no justification for their lack of diligence.

#### **4.2.4. Keeping an Agency record about the upcoming Directives**

When issuing directives, one necessity is to keep an agency file on the impending directives.<sup>91</sup> Even though, Administrative Procedure Proclamation on its article 7 (1) expects that agencies to keep a record/file containing the subject matter of the directive being considered and time limit of major steps, keeping an information regarding the status of the draft directive in the process of adoption, notices published in relation to the adoption of the draft directive, a period of time with in which the public may comment on the draft and comments received in accordance with Article 8 and 9 of the Proclamation and positions taken regarding the comments at the time of adopting a directive. For nearly all of those agencies, this is considered a luxury, and none of them are keeping it up. However, as per the Ministry of Justice official mentioned earlier, the Commercial Road Freight Transport Operator Organizational and Competency Assurance Licensing Directive No. 968/2023 is a directive that the Ministry of Transport and Logistics maintains record of.

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<sup>90</sup> Aman Assefa & Associates, supra note 4, at 3

<sup>91</sup> See the Federal Administrative Procedure Proclamation No. 1183/2020, supra note 3, art 7 (1)

In addition, Article 7 (2)<sup>92</sup> provides any person may inspect or get a copy the records organized in accordance with Sub Article 1 of this Article, against payment of expenses. This is especially beneficial to those who lack intrinsic access for a variety of reasons, such as those who are unable to utilize technology or who are unable to locate the necessary gadget.

However, no one can obtain a copy of the directives because the agency is not maintaining a record of them. But this registry has the purposes to be attained that both the agency and persons who are interested in the directive to be adopted can easily find information about the process and its content in an organized manner. Even in the context of a high turnover of officials, it allows for the maintenance of institutional memory so that the institutions can operate smoothly without being adversely impacted by the change of personalities. In this way, both the institution and the concerned parties will be able to be competently prepared for the implementation of the directive subsequent to its approval.<sup>93</sup>

Generally, approximately two thirds of the respondents, who are all agencies, agree to preserve an agency record about directives, while the remaining respondents disagree. But the truth differs greatly from what two thirds of respondents claim to have said. The truth finding is fixed with those of one third of the respondents said.

#### **4.2.5. Noticing about the Issuance**

One of the most crucial preparatory steps before issuing administrative directives is informing. In the context of rulemaking, noticing or informing refers to the initial step of recognizing a problem or issue that requires the creation of a new rule or directive. This awareness drives the process of identifying and defining the problem, gathering information and feedback, and ultimately drafting and implementing a new rule. Without noticing, the rulemaking process would not be able to progress effectively or efficiently. According to Article 8 (1-4) an agency shall publish a notice on a newspaper with wide circulation, its website and other media, prior to the adoption of a directive containing the legal basis for to draft the law and the subject matters to be covered by the draft; Indicating that persons may get a copy of the draft and where they may access it;

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<sup>92</sup>Id, art 7 (2)

<sup>93</sup>Dr. Mehari R. and his colleagues, supra note 59, at12

Where, when and how persons may give comments on the draft; where, when and how persons may get access to the records kept in accordance with Article 7 of this Proclamation

As per Dr. Mehari and his colleagues, a primary objective of Federal Administrative Procedure Proclamation is to guarantee public involvement, transparency, and predictability in the creation and execution of directives. A quick survey of rulemaking practice in many federal agencies demonstrated that the system is secretive and does not exhibit a measure of meaningful stakeholder participation.<sup>94</sup> Notice is the first and one of the most important principles of administrative rulemaking.<sup>95</sup>

From the point of view of citizens affected, the primary safeguard to ensure the proper exercise of powers of administrative rules/delegated legislations lies in the development of adequate procedures to be followed by the administrative process in the formulation of rules and procedures as a means of obtaining participation in the process of administrative rule making, and one of these means is notice.

Coming to the practice, 100% respondents from all agencies are totally agreed that noticing only to the stakeholders and not notifying to the general public. However, since a given directive will have an impact on people's rights generally, the law's objective is not confined to informing only stakeholders rather than the entire public. Consequently, all of the agencies' respondents listed above are ensured solely informing the stakeholders by sending a specific letter.

Here, at least two gaps in the actions of the aforementioned agencies are apparent regarding notice. Initially, despite the notice procedure requiring an agency to publish a notice to the public at large comprising the elements found in Art 8 (1-4)<sup>96</sup>, however agencies failed making it because they are notifying only to stakeholders with a written letter by sending to them.

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<sup>94</sup>Id, at 13

<sup>95</sup> Aron Degol & Abdulatif Kedir, *supra* note, 70 at 9

<sup>96</sup> See the Federal Administrative Procedure Proclamation No. 1183/2020, *supra* note 3, art 8 (1-4) agencies mandate of draft notification with a newspaper having wide circulation and uploading on website and other media prior to the adoption of a directive

Secondly, the notification letter itself does not include any specific details about the upcoming draft directive provides in Art 8 (1-4).

Thus, the requirement of notice whenever an administrative agency prepares a directive is designed to enable citizens to participate in a meaningful way that to develop the directive with qualitative input from a variety of sources. One of the reasons for making public notice mandatory is to enable anyone who is interested to participate in the consultation process both through written submissions and/or oral hearings rather than limiting the consultation within the narrow circle of formally invited guests.<sup>97</sup> Thus, in order to prepare and execute the directive, the administrative agencies must provide sufficient warning to participate. Similar experiences with publishing notices are shared by the US and the UK. In the US, notices are published in the Federal Register, a publication with a large readership. In the UK, draft rules are made public along with some administrative rules that should be kept confidential.

Commercial Road Freight Transport Operators' Organizational and Competency Assurance Licensing draft Directive No. 968/2023 is a Federal Democratic Republic of Ethiopia Ministry of Transport and Logistics directive that is published in the Addis Zemen Newspaper. It might be the First in history following the Federal Administrative Procedure Proclamation and a trailblazer for further agencies. In addition, it was also well-discussed with interested parties.

All other agencies, however, have not practically published a notice about draft directive in a newspaper, save from this one instance. The exceptional circumstances that exempt agencies from noticing directives and maintaining an agency record in cases where there are emergencies and time does not allow going through the requirements; where the issuance of advance notice may be contrary to public interest and where the issuance of notice may undermine the implementation of the directive. For example, the National Bank is not duty bound to implement obligations provided under Article 7-10 of those procedures found in the Proclamation when it enacts directives concerning exchange rate, interest rate of the country and other similar secret issues.<sup>98</sup>

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<sup>97</sup> Dr. Mehari R. and his colleagues, *supra* note 59, at 13

<sup>98</sup> See the Federal Administrative Procedure Proclamation No. 1183/2020, *supra* note 3, art 3 (3)

Generally, administrative agencies have not been seen providing complaint against the requirement of noticing. However they are failed to respect this one of the very important prior procedures to notify to the public in a newspaper, as a result notifying only to stakeholders with written letter.

#### **4.2.6. Sending on the Draft for Feedback**

According to Article 9 of the Federal Administrative Procedure Proclamation, an administrative agency shall solicit comments from relevant administrative agencies and other stakeholders by sending the draft it publicized in accordance with Article 8 of the Proclamation.<sup>99</sup> According to subsection 2 of the same Article, agencies and other interested parties who have feedback on the draft should send it in writing within the time frame that the agency specifies.<sup>100</sup> An administrative agency must, to the greatest extent feasible, directly request the opinions of pertinent administrative agencies and other significant stakeholders when issuing a directive in addition to the public notice.<sup>101</sup>

Although most agencies have good experience of asking the Ministry of Justice and other stakeholders for feedback, requesting views on the draft remains a significant issue for them. Senior public prosecutor of the Ministry of Justice Habtamu Getahun has solidified this, he testifies that agencies sending to them (MoJ) for evaluation.

Before directives are ratified, the draft directive is sent to stakeholders in order to improve the fair consideration of remarks as input. For instance, the Ministry of Labor and Social Affairs must provide labor unions with a copy of a directive defining the minimum pay requirement for employees in order to obtain their input. Besides, the notice to the public issued in compliance with in Article 8. The written comments submitted in compliance with this Article 9 (2) shall be taken into consideration when the agency adopts a directive, provided that the deadline is at least fifteen (15) days in advance.

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<sup>99</sup> Id, art 9 (1)

<sup>100</sup> Id, art 9 (2)

<sup>101</sup> Dr. Mehari R. and his colleagues, supra note 59, at 14

Further, also before ratification, the administrative agency is required to send a draft of the directive to the Ministry of Justice to get its opinion. The administrative agency may then amend the draft accordingly or provide a justification for rejecting comments. In outlining these procedural requirements, the Proclamation provides an important safeguard as it forbids administrative agencies from adopting directives which are substantially different from their drafts publicized through notice.<sup>102</sup>

Of 100% respondents who represent all agencies, only approximately 20% do not guarantee that their agencies are not sending requests for comments, while the other 80% assure that their agencies are sending to the MoJ. Similarly, during their interview, Ministry of Justice Public Prosecutors Selam Amha, Cherenet Tegenu and Hamelmal Bekele made sure that agencies had better experiences providing it. However, they acknowledged that it is challenging for them to resend the final commented draft to agencies in a 15-day window. This difficulty stems from the fact that initially agencies prepare their directives as the form of manual rather than a directive, which meant that they were bulky and took a long time to examine. Second, officials carry out this specific activity as an additional task besides their main responsibilities, and as a result, it takes a long time to review and return it in accordance with the Proclamation's requirements. Actually, if Ministry of Justice allots enough personnel to this specific assignment, it can be completed in 15 days and can be respected this time limit requirement.

#### **4.2.7 Setting up an Oral Hearing**

An important scheme of check and control in the exercise of the power of delegated legislation/administrative rules is consultation through which entities that are likely to be affected may participate in the rulemaking process.<sup>103</sup> This system makes administrative rulemaking a democratic process and therefore increases its acceptability and validity. Such public participation in the rulemaking process is a valuable safeguard as it enables the interests affected to make their views known to the rulemaking authority.

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<sup>102</sup>Aman Assefa & Associates', *supra* note 4, at 3

<sup>103</sup>Aron Degol & Abdulatif Kedir, *Supra* note 70, at 11.

As per the Proclamation administrative agencies' Article 10<sup>104</sup>, prepare oral hearing or forum after the expiry of the date of receiving written comments that open for all interested persons for gathering inputs. Preparing this oral hearing is primarily done to collect information from interested parties that will be utilized as input for the future draft directive. When it comes to the agencies' preparation for this oral hearing, the respondents have, in practice, given varying answers.

For example, nine Ministry of Revenue respondents provided varying answers to the question. Consequently, only two of them agreed that their agency holds oral hearings; the other two agreed, but only in a moderate way; the other two disagreed; the other two refused to comment; and the final one firmly agreed. Comparably, of the nine respondents to the Customs Commission survey, five or more are in favor of holding an oral hearing, two are against it, and the other two are in the middle of the agreement spectrum.

Among the Five respondents from the National Bank of Ethiopia, three expressed a moderate level of agreement with holding discussion, one expressed agreement, and the remaining one disagreed with the idea of holding an oral hearing. Of the two MoF respondents, two of them acknowledged that their agency was getting ready for an oral hearing. However, with regard to their present oral hearing procedure, every agency responder concurred on one point: agencies lack good experience consulting all interested parties; instead, they consult just stakeholders. Oral hearing gives good opportunity to interested persons who have not had the chance submitting written comments accordance with Article 9, may submit it now and the agency shall allotted sufficient time for it.

I compared the information provided by the aforementioned agencies to the Ministry of Justice's to determine whether it is accurate or not. As confirmed on February 8, 2024 (Tir 30/2016 E.C.) after speaking with the five senior public prosecutors in question, it has been confirmed that no agency is preparing an oral hearing for every interested party; instead, they are only inviting stakeholders, and agencies have never been discussed with every interested party.

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<sup>104</sup>The Federal Administrative Procedure Proclamation, art 10

Therefore, unless they organize an oral hearing or public forum for discussion, the legitimacy of the adopted directives and its transparency will be called into question, and affect people rights and interests at time of implement the newly enacted directives.

Procedures for oral hearings may vary from nation to nation. Ethiopian procedures differ from those in the United States regular procedure. As a whole, there are two types of rulemaking procedures in U.S, such as Regular and Irregular Procedures. Oral Hearing in the Regular one is included formal court litigation and able to produce evidences to reboot any contrary positions. In the Irregular one the minimum criteria for rulemaking is noticing, comment and publication.

Ethiopian procedure prohibits court litigation on draft directives. It is positive thing that court litigation is avoided in the Ethiopian administrative rule-making method. Since court litigation is complex and takes a long time, making it difficult to make administrative decisions quickly. In the U.K. and Germany, consultation is permitted during the rule-making process, but it is not required. Agencies comply with own initiative in both U.K. and Germany.

#### **4.2.8. Preparing an Explanatory Statement**

Any agency at the time of adopting a directive, shall prepare a directive explanatory note containing the objective and legal basis for adoption of the directive;<sup>105</sup> not only objective and legal basis where there are differences of content from the draft circulated through notice and the directive adopted, a note explaining the changes and the rational thereof<sup>106</sup> and as well as a summary of comments on the draft and measures taken in accordance.<sup>107</sup> This is anticipated to aid in fully comprehending the procedure that the directive went through.<sup>108</sup> It also help the information to be clear or understand to everyone, even not just professionals in law.<sup>109</sup>

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<sup>105</sup> The FAPP, supra note 3, art 14 (1)

<sup>106</sup> Id, art 14 (2)

<sup>107</sup> Id, art 14 (3)

<sup>108</sup> Dr. Mehari R. and his colleagues, supra note 59, at 19

<sup>109</sup> Ibid

Nonetheless, it would be a crucial document if agencies prepared it and whenever further changes to the directive were necessary.<sup>110</sup> Furthermore, this is useful to present as proof when the relevant supervisory authority visits to verify that they followed the correct process in issuing the directive. In contrast to what the law states, the practice is quite different.

Therefore, even though over half of the agency respondents said that they would prepare an explanatory statement when issuing directive, this is not how things actually work in the practice. When Tax Clearance Certificate Issuance Directive No. 180/2023 is issued, the Ministry of Revenues could, of course, prepare an explanation of the statement. Other agencies do not possess such an experience.

#### **4.2.9 The Structure and Content of Directives**

Directives adopted by administrative agencies are required to be prepared in a clear and precise manner and be issued both in English and Amharic language.<sup>111</sup> First of all, bilingual publications in Amharic and English have been a distinctive characteristics of Ethiopia's legal system ever since the country began adopting and enforcing modern laws.<sup>112</sup> Proclamation No 3/1995 that re-established the Federal Negarit Gazette also provides that "all laws to be published on it shall be in Amharic and English". However, there is still a deficit in this area in the agencies' practices. The National Bank of Ethiopia mostly does not draft its directives in Amharic, instead issuing them only in English. For example, directives like the National Bank of Ethiopia's Minimum Paid-up Capital and Capital Adequacy Requirement of Microfinance Institutions Directive No. MFI/36/2023 was issued on January 2023, Fee on Reinsurance Company Directive No. SRB/3/2022 was issued in 2022 and Motor Insurance Minimum Premium Rate Directive No. SIB/60/2023 are all prepared in English, with the exception of one that was issued on May 8, 2023, which was intended to determine the cost of purchasing gold.

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<sup>110</sup> Ibid

<sup>111</sup> See FAPP, supra note 3, art 15 (1&2)

<sup>112</sup> See Dr. Mehari R. and his colleagues, supra note 59, at 20, see also Proclamation No. 3/1995 that re-established the Federal Negarit Gazett also provides that "all laws to be published on it shall be in Amharic and English".

However, the opposing Ministry of Finance is currently drafting its directives, the majority of which are in Amharic. Examples of these directives include Directive No. 223/2021, which controls how producers use inputs; Investment Incentives Directive No. 941/2023; and Directive No. 230/2021, which permits the importation of tax-free vehicles for the private use of disabled people, among other things.

Similar directives have been issued by the Ministry of Revenues, with only Amharic versions available. Two such directives as an example are Directive No. 179/2023, which extends the tax payment date, and Directive No. 180/2023, which issues tax Clearance Certificates. However, the significance of issuing directives in both languages goes beyond simply complying with legal requirements, as foreign investors also use the issued directives. If agencies were to issue directives solely in Amharic, it would be challenging for investors to access the documents in an easily understood language.

The absence of consistency in both form and content which adopting directives is one of their main flaws.<sup>113</sup> It has been determined that in order to maintain consistency in style, directives must have a certain amount of material and a certain format.<sup>114</sup> Thus, every directive shall contain serial number, a reference to a specific law on the basis of which the directive is adopted, a short title of the directive, definition, scope of application, main provisions and a rule referring to directives amended repealed, transitory provisions or suspended if any.<sup>115</sup>

Additionally, if an agency has the authority to address these issues, it may do so by including references to all or part of directives or codes of behavior that have been established by another body in its rules.<sup>116</sup> For instance, the Ethiopian Customs Commission may be required to adopt the customs' code adopted by the member states of the Union<sup>117</sup>, and even it should be registered.

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<sup>113</sup> Ibid

<sup>114</sup> Ibid

<sup>115</sup> The FAPP: Supra note 3, art 15 (1) (a-e)

<sup>116</sup> Dr. Mehari R. and his colleagues, supra note 59, at 20, see also art, 15 (3) of FAPP

<sup>117</sup> Ibid

With the exception of the transitory elements that are missing for necessary directives, agencies, in my opinion, practically created directives in a manner that related to their substance and form as provided in Article 15 (1) (a-f) of the Proclamation. Directives from the Ministry of Transportation and Logistics, known as the Commercial Road Freight Transport Operators' Organizational and Competency Assurance Licensing Directive No. 968/2023<sup>118</sup>, and the Ministry of Finance, known as the Investment Incentives Directives No. 941/2023<sup>119</sup>, both show the absence of these transitory provisions. This is the reason a directive should include transitory provisions since a transaction already exists. The majority of the time directives contain all content such as serial number, a reference to a specific law on the basis of which the directive is adopted, a short title of the directive, definition, scope of application, main provisions and extra.

However, the absence of this transitory provision will have a detrimental effect because it is necessary to determine the outcome of the previous transaction or issue at hand. Actually, most directives included transitory provisions like directives such as Tax Clearance Certificate Issuance Directive Number 180/2023<sup>120</sup>. Extension of Tax Payment Date directives No. 179/2023 issued by Ministry of Revenues<sup>121</sup>, and extra contains all contents and form.

About 96% of respondents from all agencies stated that they had responded to directives that included transitory provisions, although, other respondents claimed that this was not the case because certain directives did not contain such provision. Although it is generally accepted, as previously mentioned, that transitory provisions serve to determine the outcome of cases in progress or cases at hand, and Article 15 (1) (e) of the Proclamation stipulates that any directive adopted by an agency must contain transitory provisions, agencies are still missing one of the most crucial components of bilingual and transitory provisions for certain mandatory directives. Since not every directive needs transitory provisions, I stated here that they are mandatory.

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<sup>118</sup> TPT Operators' Organizational and Competency Assurance Licensing Directive No.968/2023

<sup>119</sup> See Investment incentives directive no. 941/2023, supra note 86

<sup>120</sup> See Federal Tax Administration Proclamation no. 983/2016, supra note 88

<sup>121</sup> Extension of Date of Tax Payment directives No. 179/2023 issued by Ministry of Revenues to check included whether included all the contents & form including transitional provisions

#### 4.2.10 Registration of Directives

The other one of the most important steps when issuing administrative directives is recording. In addition, agencies should provide directives to the Ministry of Justice for registration in order to be transparent. As a result, the FDRE constitution Article 12 (1)<sup>122</sup> on transparency provides that government operations must be conducted in an open manner. Since government agencies must function transparently, they should demonstrate this by submitting their directives to the Ministry of Justice for registration. Before implementing the directives, an agency must deliver the copies of the Proclamation and any supporting documents to the Ministry of Justice, according to Article 16 (1)<sup>123</sup> of the Proclamation. Therefore, ensuring that all administrative agency actions are carried out transparently and in accordance with the legality principle is one of the Proclamation's primary goals.<sup>124</sup>

In practice, agencies are well-versed in sending and registering adopted directives to the Ministry of Justice; this is why they proceed with it; absent such action, the directive will not acquire validity; if it does, its consequences will be rescinded (revoke) in accordance with Article 48.<sup>125</sup>

For the purpose of registration, the majority of respondents from all agencies stated that their agency have good experience transmitting information to the Ministry of Justice. This was also confirmed on January 8, 2024 by the relevant Ministry of Justice Public Prosecutors. In addition, it is accessible through the agencies directives that have been uploaded to the Ministry of Justice website. But there is a significant gap when it comes to forwarding and registering earlier directives that were approved before the Proclamation took effect. However, agencies are compelled by Article 16 (4)<sup>126</sup> of the Proclamation to register the previous directives within ninety days.

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<sup>122</sup>Art 12 (1) of the FDRE constitution

<sup>123</sup>The FAPP, supra note 3, art 16 (1)

<sup>124</sup>Dr. Mehari R. and his colleagues, supra note 59, at 20

<sup>125</sup>Art 48 (1) of FAPP to see the right of any interested person to file petition for revocation

<sup>126</sup>Art 16 (4) of FAPP to check deliver time limit for the preceding directives to MoJ within 90 days for registration

#### **4.2.11 Accessibility of Directives**

Making adopted directives available to relevant government agencies, interested parties, and stakeholders is one of the last steps in the rule-making process. Therefore, simply issuing a directive is insufficient; instead, it needs to be easily available. The applicability of the directives and the transparency of the agencies involved are called into question unless they are not accessible to the relevant government entities, stakeholders, and any interested party. Consequently, the Ministry of Justice shall, in line with Article 17 (1) <sup>127</sup> of the Proclamation, post directives that it has filed in compliance with Article 16 of this Proclamation on its website. Additionally, any agency may issue directives under the same Article of Sub 2 and print them out, distribute them to relevant government agencies and other stakeholders, and post them on its website. One of the main issues with Ethiopia's effective governance for a long time has been the availability of directives. <sup>128</sup>

The lack of a legally required method to do so was the cause of this. In actually, the Administrative Procedure Proclamation still does not require agencies to publish their adopted directives on Negarit Gazette; instead, it requires them to upload the directives to their official website and submit them to the Ministry of Justice for registration in order to address the issues of openness and good governance under Article 16 (1). Generally, accessing information in this manner is therefore very beneficial for maintaining good governance, being transparent, and offering the public foursome services.

#### **4.2.12 Implementation of Directives**

Specifying the means of implementation is one of the final, most important phases in issuing a directive. Therefore, it cannot be concluded that agencies are following the correct procedures to issue directives unless otherwise registered by MoJ and uploaded on their official website. The methods used in Ethiopia to enforce proclamations and regulations are not the same as the methods used to implement directives. Proclamations and regulations are upheld in Ethiopia as of the date of publication in Negarit Gazette.

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<sup>127</sup> Art 17 (1-3) of FAPP

<sup>128</sup> Dr. Mehari R. and his colleagues, *supra* note 59, at 22

According to Article 16 (1) and 17 (2) (b) of the Proclamation, respectively, the Proclamation merely requires registration by Ministry of Justice and uploaded on the agencies website in order to be enforced. Publication of directives on the Negarit Gazette is not necessary. Ethiopia's experience differs from those of other nations in this respect. For instance, in the US, Federal Register is required to be published on official newspaper for its enforcement. The draft must be approved by both houses of Parliament in the UK before it can be implemented. If not, wait until this approval is granted before obtaining a serial number.

Nevertheless, obtaining the necessary clearance from Parliament doesn't seem like a good experience because, in the first place, it takes time, and in the second place, Parliament is unable to address every agency's mandate for discussion and approval, making the work more difficult and requiring bureaucracy. However, in our nation, submitting on the agency website and registering with the MoJ suffices to enforce it. In addition, it needs to be published on the Federal Register for 30 days in order to take effect in the United States; however, Ethiopia does not require publication in order for it to be enforced.

Article 18 (1)<sup>129</sup> of the Proclamation states that a directive cannot be enforced if it has not been filed in accordance with Article 16 or posted on the agency's website in accordance with Article 17 (2) (b) Consequently, a directive must be registered by MoJ and posted on agency websites in order to be enforced.

Basically, agencies upload directives to their website and register them with the MoJ to have them enforced. Selam Amha<sup>130</sup>, a public prosecutor from the MoJ, further supported this by stating that "agencies with such greater experience. But, there is a lag in regarding the previous directives that they need to send to the MoJ and upload to their website to have them enforced".

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<sup>129</sup> FAPP, art 18 (1)

<sup>130</sup> Interview with Selam Amha's attestation of the agencies experience delivering directives to the MoJ on 8 January 2024

## Chapter Five

### Conclusion and Recommendations

#### 5.1. Conclusion

For the first time in Ethiopian history, the Government has incorporated the Administrative Procedure Law into the legal system by demonstrating a strong political commitment. It can be applied to all federal administrative agencies, including the municipal administrations of Addis Ababa and Dira-Dawa, with the exception of the police and prosecutor when they carry out tasks mandated by military and security establishments, as well as the criminal procedure law. As a result, the Proclamation closed a long-standing gap in the historical record of Ethiopian laws, and it is a significant step in defending the individual's constitutional rights and interests.

Once the government adopted the administrative procedure law, agencies are duty-bound to respect during administrative rule making. Despite administrative agencies at the Federal level have begun to issue directives based on the recently issued the Federal Administrative Procedure Proclamation No. 1183/2020, but practically they do not respect or adhere to the Proclamation. Practically speaking, nevertheless, there are a few notable procedural gaps and agencies do not adhere or obey to the Proclamation in a complete manner that arise when issue administrative rules. Consequently, agencies fail to issue directives within the legal timeframe stipulated by the Proclamation under Article 5, which mandates that they do so within three months for required directives and within a reasonable timeframe for non-mandatory directives. Agencies have also a gap that maintaining an agency record of directives, while being required to do so by the Proclamation's Article 7 (1) (a-b). They also created a gap in preparing explanatory note with the exception of solely example of MoR during the making of Clearance Certificate Issuance Directive Number 180/2023.

Additionally, with the exception of notifying to stakeholders, in practice, they do not warn or notify the public about the draft directives before they are released, despite the unique instance of the Federal Ministry of Transportation posting about it on a news publication that was stated in the previous chapter.

Following the deadline for written submissions, the agency solely holds discussions with stakeholders and do not provide a public session open to all interested parties to solicit input. Failure to create explanatory statements for directives was another major lacuna of agencies throughout the rulemaking process.

Agencies do not incorporate transitory provisions for certain required directives. In addition, most of the time, they fail to issue directives in both Amharic and English as required by law, which causes them to fail to meet the language requirement. Failure to send prior directives within 90 days to MoJ is one of the gaps of agencies.

Overall, compared to our previous legal history, there seems significant change during the current Ethiopia with regard to the development of administrative law in general and as a result the FAPP No. 1183/2020 was promulgated by the Federal Government with strong political commitment to address the long-standing legal framework of administrative procedure law in Ethiopia. Administrative agencies subsequently started issuing directives in accordance with the law, and they generally are trying to comply with it during the rulemaking process, despite occasionally disobeying certain of the issued directives' legal requirements. Despite this, one thing would remember that administrative agencies do not offer any complaints about relevant provisions of rulemaking. Instead, they are all in favor of or appreciate the Proclamation; the only issue is that they brought about the difficulty by disregarding the Proclamation. Having identified the major practical gaps faced during the rulemaking in Ethiopia, some recommendations will provide.

## **5.2 Recommendations**

- 1.** Failure to maintain the period of releasing a directive is the first and most common issue facing agencies during rulemaking. Here, notwithstanding the Proclamation's requirement that agencies produce directives within three months for mandatory directives and within a reasonable time frame for optional directives, in practice, the agencies disregard the Proclamation's legal deadlines. When a particular proclamation or regulation cannot be implemented on its own, this time restriction is crucial. When agencies neglect to issue directives within in the legally stipulated timeframe, it will cause inconvenience for the clients of that agency because clients may not get appropriate and foursome services due to the delayance of a

given administrative rule. In the end, it will lead to poor governance and have a detrimental effect on both the national economy and the economies of interested parties. As a result, agencies must respect or adhere to the Proclamation by following the prescribed timeline for developing rules.

**2.** Despite the Proclamation's requirement that agencies publish notice of any upcoming directives in a widely circulated publication, in practice, notice was limited to a written letter to stakeholders. Ensuring public participation, transparency, and predictability in the creation and execution of directives is one of the Proclamation's goals. Consequently, the notification requirement that applies when an administrative agency drafts a directive is intended to allow citizens to meaningfully engage and guarantee that the directive is formulated with qualitative input from a range of sources. Therefore, in order to ensure that a wider audience is reached, a public notice that allows anybody interested to participate in the consultation process through written submission and/or oral hearings must be published in a newspaper with a larger readership. Otherwise, two things will happen: first, the government's transparency, predictability and public participation will be called into question; and second, agencies will lose out on better input for planned directives or rules. Therefore, agencies should promptly notify through a widely distributed publication.

**3.** Agencies do not give due respect to the Proclamation in regard to keeping an agency record about directives. Nevertheless under Article 7 (1) the Proclamation forced agencies to keep it. However, no one can obtain a copy of the directives because the agency is not maintaining a record of them. But this registry has the purposes to be attained that both the agency and persons who are interested in the directive to be adopted can easily find information about the process and its content in an organized manner. Even in the context of a high turnover of officials, it can operate smoothly without being adversely impacted by the change of personalities. As a result, agencies will be required to do it for its easily accessible.

**4.** Oral hearing is always rotate on stakeholders only. Therefore, unless agencies organize an oral hearing open for all interested person, in the first place the legitimacy of the adopted directives and its transparency will be called into question, and second it affects people rights and interests at time of implement the newly enacted directives because it may be difficult to implement. Since the directives are issuing to facilitate services to the societies, agencies should discuss with

them, unless a directive prepared in a manner without participating all interested persons, finally it will not be problem solving because since it doesn't consult to address the societies problem at time of issuing. Therefore, oral hearing is one of the very important procedures of rulemaking agencies should give due respect and attention to the law.

5. Unable to prepare the directives both in English and Amharic is one of their problems. However, the importance of issuing directives in both languages goes beyond simply complying with legal requirements, as foreign investors also use the issued directives. If agencies were to issue directives solely in Amharic, it would be challenging for investors to access the documents in an easily understood language. Therefore, agencies should prepare both the draft and final directives with helping experts having better English language ability in addition to the Amharic language.

6. Very rarely missing of transitory provisions is one of agencies slight gap. Actually, most directives included transitory provision. However they missed for some mandatory directives as mentioned in the above last chapter. However, the absence of this transitory provision will have a detrimental effect because it is necessary to determine the outcome of the previous transaction or issue at hand. This missing of transitory provision was one of the gaps should be solved.

7. Unless otherwise administrative agencies take the initiative and implement the process in a way that respects the Proclamation by themselves; the best way to solve the problem is revoking by court as sits on article 48 (1) of the Proclamation. Because the Proclamation by itself permits judicial review of directives when it is proved to have failed to comply with the procedural rules; it is ultravires; or it is contrary to other laws placed higher in the Hierarchy of Laws.

## **Bibliography**

### **I. Books**

1. Dr.D. Umamasheswari, administrative law, Labor & Administrative Law Department of School of Excellence in Law in the Tamil Nadu Dr. Ambedkar Law University, Chennai.
2. William F.Fox, 'Understandindg Administrative Law',(4<sup>th</sup> ed.2000)
3. David Herling and Ann Lyon, a Brief Case on constitutional and administrative law, Cavendish publishing limited-London,
4. Dr.J.J.R. Upadhayaya, Administrative Law (6<sup>th</sup> ed. 2006)
5. David Stott and Alexander Felix, principles of administrative law (1<sup>st</sup> ed. 1997) Clarendon Cavendish Publishing Limited, Sydney London
6. AberehamYohanes, Introduction to Administrative Law, Amharic Version

### **II. Articles and Journals**

1. Lindseth, Peter, 'Agents without principals? Delegation in an Age of Diffuse and Fragmented Governance,' provides at [http://Isr.nellco.org/uconn\\_wps/18](http://Isr.nellco.org/uconn_wps/18) (accessed on December, 2014)
2. David H Rosenbloom, 'Administrative Law' Department of Public Administration and Policy, American University
3. Lindseth Peter, 'the Paradox of Parliamentary Supremacy: Delegation, Democracy and Dictatorship in German and France'. 1920s-1950s (2004) University of Connecticut Schools of Law Articles and working Papers. Paper 49, it also provides at [http://Isr.nellco.org/uconn\\_wps/49](http://Isr.nellco.org/uconn_wps/49) (accessed on December 2014)
4. Emil Balan, General Principles of the administrative procedure: The Romanian perspective
5. Administrative procedures in EU member states, document prepared for conference on public administration reform and European integration held in Budva, Montenegro 26-27 March 2009
6. Instructor: Reed Hepler, 'What is Administrative Law in the UK?'
7. Bernard Schwartz and H.W.R. Wade, legal control of Government (1972) Clarendon press, Oxford

8. Richard B. Stewart, 'Administrative Law in the Twenty-First Century,' New York University
9. Available at <http://en.m.wikipedia.org>wiki> to see date of enactment of Administrative Procedure Act, its purpose and other detail information about it
10. Laszlo Vertesy and Teketel Bekalo, "Public Administration Developments in Ethiopia Under Three Different Regimes"
11. Bahiru Zewede, A history of modern Ethiopia: 1985-1991(2<sup>nd</sup> ed. 2001)
12. Getahun Kassa, Mechanisms of constitutional control
13. Aron Degol & Abdulatif Kedir, 'Administrative Rulemaking in Ethiopia:' Normative & Constitutional Framework

### **III. Explanatory and Brief Notes**

1. Dr. Mehari and his colleagues Explanatory Note for the Provisions of Federal Administrative Procedure Law
2. Aman Assefa and Associates, Brief Note on the recent Administrative Procedure Proclamation 1183/2020

### **IV. National Laws: Constitutions, Proclamations, Regulations and Directives**

1. The 1995 FDRE Constitution
2. The 1987 Constitution of the People's Democratic Republic of Ethiopia
3. The 1955 Revised Constitution of Ethiopia
4. The 1931 Ethiopian Constitution
5. The Federal Administrative Procedure Proclamation No. 1183/2020
6. Media proclamation 1238/2021
7. Federal Tax Administration Proclamation no. 983/2016, art 61 (2)
8. Micro financing Business Proclamation no. 626/2009 (as amended by Proclamation no. 1164/2019)
9. Proclamation no. 3/1995
10. Investment incentives regulation no 517/2022 issued by Ministry of Council on July 2022
11. Investment incentives directive no. 941/2023 issued by Ministry of Finance
12. Investment incentives regulation no 517/2022 issued by Ministry of Council on July 2022

**13.** Tax Clearance Certificate Issuance Directive Number 180/2023 issued by Ministry of Revenues on January 2023

**14.** Minimum Paid-up Capital and Capital Adequacy Requirement of Microfinance Institutions Directive No. MFI/36/2023 issued on January 2023 by National Bank of Ethiopia

## **V. List of Interviewees**

**1.** Interview with Mr. Habtamu Getahun, Senior Public Prosecutor at MoJ, on 8 January 2024

**2.** Interview with Mr. Alemu Tedela Vice Assistant G. Attorney at MoJ, on 8 January 2024

**3.** Interview with Ms. Selam Amha, Senior Public Prosecutor at MoJ, on 8 January 2024

**4.** Interview with Mr. Cherenet Tegenu, Senior Public Prosecutor at MoJ, on 8 January 2024

**5.** Interview with Ms. Hamlemal Bekele, Senior Public Prosecutor at MoJ, on 8 January 2024

## **Annexs**

### **I. Questioners to MoF, NBE and MoR and/or Customs Commission**

1. Do you think that the Proclamation made throughout the rulemaking process is being respected by your agency?

2. Does your agency use a widely distributed newspaper to announce the next directives?

3. Is your agency getting ready for an oral hearing to provide directives?

4. Does your agency prepare an explanation for every new directive it issues?

5. Do you think that, in accordance with the Proclamation, your agency is providing rules in both Amharic and English?

6. Do you think that the directives are uploaded by your agency onto its official website?

7. Is your Agency submitting directives to the Ministry of justice to complete the registration process?

8. Are serial numbers included in the directives that have been issued?

9. Are the issued directives referencing any particular laws that serve as the foundation for their adoption?

10. Are there any brief titles in the implemented directives?

11. Do the adopted directives contain the definition, scope of application and main provisions?
12. Do the enacted directives have included a rule referring to directives amended repealed, transitory or suspended if any?
13. Do the enacted directives have included effective date?
14. How the enacted directives accessible to the stakeholders and the general public?
15. How your Agency noticing the draft directives to rulemaking process?
16. Does your agency honor the issuance period?
17. When issuing directives, what are the actual gaps in your agency's operations?
18. What remedies ought to be offered to close the loopholes in the rulemaking process?

## **II. Sample Questions for MoJ Practitioners during interviews**

1. Do you think that the Proclamation made throughout the rulemaking process is being respected by agencies?
2. When issuing directives, what are the actual gaps in agencies' operations
3. What remedies ought to be offered to close the loopholes in the rulemaking process?
4. What obstacles exist in assessing proposed directives and associated documents?
5. What steps are taken if agencies don't follow the law and issue directives?
6. Do agencies have any past experience publishing notices about the proposed directives in newspaper

