Rule of Law and Development in Ethiopia: Now and Twenty-Five Years from Now / Tilahun Teshome

Translated by: Yonas Admassu
THIS BULLETIN AND OTHER PUBLICATIONS OF THE EEA ARE SPONSORED BY FREIDRICH EBERT STIFTUNG OF GERMANY (FES), EMBASSIES OF UK, SWEDEN, NORWAY, NETHERLANDS AND THE AFRICAN CAPACITY BUILDING FOUNDATION (ACBF)
Economic Focus

Vision 2020 Ethiopia

Vol. 6 No. 4 / February 2004
Ethiopian Economic Association
Economic Focus

Vol. 6 No. 4 / February 2004

Ethiopian Economic Association

1. Economic Focus

The Ethiopian Economic Association (EEA) is a professional organization established in 1996 to promote economic development in Ethiopia. The EEA is composed of economists, policy makers, and other stakeholders interested in advancing economic knowledge and analysis in the country.

The EEA's main objectives include:

- Promoting economic research and analysis
- Providing a platform for economists to share ideas and insights
- Enhancing policy formulation and implementation
- Building capacity among members through training and development programs

The EEA has a wide range of members, including academic institutions, government agencies, and private sector organizations. It publishes a quarterly journal, the Ethiopian Economic Review, which features articles on various economic topics.

The association is committed to fostering a vibrant and inclusive economic community in Ethiopia, one that is capable of addressing the country's complex economic challenges and opportunities.

*The Ethiopian Economic Association was established in 1996 to promote economic development in Ethiopia.*
"... it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."
Economic Focus

Only if men are allowed to govern themselves, will they begin to think of themselves and for themselves as individuals. Democracy is an educational process in which men will develop interests of their own and in this way extend the horizons of their personalities.”

2. П.7 ПОЛЗВІ

В ЯКИХ УМОВИ КАЛІТОВА-ВИСНОВКІ Якщо самостійно висновати рішення, мені допомагає критичний аналіз, вибір альтернатив, розуміння ними власних інтересів та усвідомлення наступних конфлікторій. Під час підготовки і постанови рішення самостійно висновати рішення, мені допомагає критичний аналіз, вибір альтернатив, розуміння ними власних інтересів та усвідомлення наступних конфлікторій.
3. Economic Focus

Economic Focus

Vol. 6 No. 4 / February 2004

Ethiopian Economic Association

3. Economic Focus

Economic Focus
4. Career

A tolerable administration of justice, along with peace and low taxes, is all that is necessary to carry a state to the highest degree of opulence.

"A tolerable administration of justice, along with peace and low taxes, is all that is necessary to carry a state to the highest degree of opulence."

(Economic Focus)
Art. 2851(1) *(Contractual Foreclosure)*

Any agreement even subsequent to furnishing of the pledge or subsequent to furnishing of the pledge, authorizing the creditor, in the event of non-payment on the due date, to take possession of the pledge or to sell it without complying with the formalities required by the law shall be of no effect.

Any agreement even subsequent to furnishing of the pledge, authorizing the creditor, in the event of non-payment on the due date, to take possession of the pledge or to sell it without complying with the formalities required by the law shall be of no effect.
Due process of Law

1. Due process of Law

2. Due process of Law

3. The helpless of violators

Due process of Law: "Due process of Law" is a legal principle that ensures that individuals are afforded the opportunity to respond to charges against them before a fair and impartial tribunal. It is a fundamental right that is protected by the Constitution of Ethiopia.

Due process of Law: Due process of Law is a legal principle that ensures that individuals are afforded the opportunity to respond to charges against them before a fair and impartial tribunal. It is a fundamental right that is protected by the Constitution of Ethiopia.

Due process of Law: Due process of Law is a legal principle that ensures that individuals are afforded the opportunity to respond to charges against them before a fair and impartial tribunal. It is a fundamental right that is protected by the Constitution of Ethiopia.

Due process of Law: Due process of Law is a legal principle that ensures that individuals are afforded the opportunity to respond to charges against them before a fair and impartial tribunal. It is a fundamental right that is protected by the Constitution of Ethiopia.
The right against self-incrimination

The right against self-incrimination is one of the most fundamental rights guaranteed by the law. It is a right that protects individuals from being compelled to testify against themselves in a criminal trial. This right is enshrined in various international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The right against self-incrimination is a critical safeguard against the abuse of power by the state. It recognizes the principle that a person should not be forced to admit guilt or to incriminate themselves through compulsory testimony. This principle is based on the idea that a person is presumed innocent until proven guilty and that any evidence obtained through compulsory self-incrimination is considered unreliable.

In many legal systems, the right against self-incrimination is a privilege that can be waived by the defendant. However, in some cases, such as when a defendant is incapacitated or when they are otherwise unable to give self-incriminating testimony, the right may be exercised without their consent.

The right against self-incrimination is a fundamental principle that is essential for the protection of individual rights and the rule of law. It ensures that individuals are not forced to incriminate themselves and that their testimonies are reliable and credible. This right is a cornerstone of the democratic and legal order and is essential for the maintenance of a fair and just society.
53. ANALYTIK, TAC AGRE

5.4. 1994 9. 9. ŽAL. ATAK

hTAC pazë. RC. përgjigjet

5.3. ANALYTIK, TAC AGRE

hTAC 1993 9. 9. Žal. TAC

107(2) sallën i 100.000 €

19(6) sallën i 100.000 €
Urban Land Clearance Appeals Commission

5.6. Judicial Review

Judicial Review

The Urban Land Clearance Appeals Commission (ULCC) is an independent body established under the Urban Land Clearance Act No. 3 of 1994. Its main function is to provide a mechanism for reviewing decisions made by the Urban Land Clearance Authority (ULCA) in matters related to urban land clearance.

The Judicial Review process provides a means for parties to challenge decisions made by the ULCA. The process involves filing an application for judicial review with the Commission, followed by a hearing and a decision by the Commission.

The Commission has the power to set aside or vary any decision made by the ULCA if it is found to be unlawful or irrational. The Commission may also make any order it deems just and proper.

The Judicial Review process is an important mechanism for ensuring that the ULCA’s decisions are made in a fair and transparent manner, and that the rights of the parties are protected.

Vol. 6 No. 4 / February 2004
14
Ethiopian Economic Association
6. Economic Focus

Economic Focus

Vol. 6 No. 4 / February 2004
15
Ethiopian Economic Association
God and his reason commanded man to subdue the earth, i.e. improve it for the benefit of life, and therein lay out something that was his own, his labour. He that in obedience to this command of God, subdued, tilled and sowed any part of it, thereby annexed to it something upon it that was his property, which another had not title, nor could with out injury take from him.

/Second Treatise on Civil Government/
Economic Focus

Vol. 6 No. 4 / February 2004 17
Ethiopian Economic Association
INTRODUCTION

It was my childhood friend, Doctor Assefa Admassie, who told me of the invitation extended to me by the Ethiopian Economic Association to speak on this topic. I would first of all like to seek your permission to extend my thanks to the Association and to this friend of mine. Now, before accepting the invitation, I posed myself two questions. The first question was prompted, I think, by the lawyer’s instinct in me. I hope to be spared the question of whether there indeed is such an instinct in the first place! The question was: “Listen, Mister, how certain are you about the existence of any legal security that guarantees your right to speak, and if indeed such guarantee exists, how really certain are you that you are part of a system that recognizes the supremacy of the Law?” When I started feeling the jitters in the face of such a question, my individual self gave me a slight shove of admonition, thus: “Listen now you, you’re going too far! What protective shelter are you seeking? You’re a human being after all, aren’t you? You see, speech, just like hearing and all the other human attributes, is something you brought with you into this world and that would keep you company to your grave, an attribute that nobody gives or denies you. Just go directly to the topic and say what you have to say!” We agreed, me and my-self, as they say! This prompted me into going on to the main subject at hand, with the view to answering the second question.

The second question has to do with all the things that I have to say here tonight, regarding which I didn’t run into that much difficulty. I have much to say, whether whatever it is that I am going to say finds its way into people’s ears or not. In the course of my presentation, I shall occasionally indulge myself in including some quotes that I think are appropriate from legal as well as other scholarly documents. This is as it should be. My shortcoming, I think, lies in my inability to cut things short. It is, therefore, my earnest wish that you will be able to muster all the endurance and patience to listen to my speech that may prove, at some points, rather wearisome.

Having said this, I shall now go into the topic. When seen in a nutshell, my speech tonight mainly focuses on the Rule of Law, the judicial system and its constraints, the question of Federalism and land tenure.

I. WHY RULE OF LAW?

The principle of Rule of the Law is an idea or notion that all of us, as human beings, should zealously protect and foster in order to nurture our very existence and livelihood. Generally speaking, it would make sense if one were to think of the Law as a system of human values and ethical codes, in accordance with which people leading a common life within a social framework agree to guide and govern their social interactions. It is true that not all human values and ethical codes can be subsumed under what we today recognize and call a system of laws. For not all values and ethical codes come with the support of governments behind them.

Nature, too, has its own laws. To begin with humanity itself, we all know that there are laws by which people come into this world, grow up into adolescence and adulthood and, finally, face the inevitability of death. The same goes for other natural phenomena, which come into and go out of being in accordance with the laws of nature. There are numerous natural laws, in accordance with which one creature interacts with another, and winter and summer as well as spring and autumn alternate, each biding its
time. The social life of human beings, too, has, just like natural phenomena, its own laws, in accordance with which it changes through time. There are laws by which a given society, social group, or government each interacts with its respective counterpart elsewhere.

For our purpose here and now, what we refer to as the law constitutes those innumerable social and natural rules and human ethical codes from among which governments select and give recognition to and apply to the governance of society’s interaction. This, therefore, means there is a strong relationship between laws and governments. Although there also are other views with respect to this issue, the views regarding the relationship that creates the bond between governments and laws can be considered under two main categories. One view proposes that, because the Law is an instrument by which governments implement their aims and objectives, it is not something that should serve as a mechanism to restrict their activities. The other view advocates that, although laws are certainly promulgated by governments, because they are put in place as expressions and embodiments of the will of peoples, governments, too, must be subject to those laws once they have been put in place. When we look at the two in combination, we find that the first represents a governance system that emphasizes government’s sovereignty, while the second represents a system of governance based on the sovereignty of the Will of the people. The view that adheres to the principle of the supremacy of the Law falls under this second category. Be that as it may, this Law that is expected to reign supreme has its own system and mechanism according to which it comes into being. According to democratic thinking, the basis for the relationship that exists between peoples and governments is the social contract that the two parties [freely] enter into. For, after all, the existence of societies and the individuals who constitute and found those societies precedes that of the Law and governments. And individuals live with rights from birth until the time of their death. It is individuals who relinquish some of those rights to the bodies they institute as governments, with the mandate to ensure the respect and protection of their rights and take the appropriate steps, as the neutral bodies that they are supposed to be, to settle what misunderstandings may arise among the people. It is those rights relinquished to governments that constitute the power that they wield. The responsibility to promulgate laws and the duty to be governed by those laws constitute part of the power so instituted.

Although laws are promulgated to ensure respect for and protection of rights, the rights that form the basis of those laws have always belonged to the people by their very nature. What laws can do, therefore, is simply accord official recognition to those rights and provide social guarantee for the respect and protection due to those rights. Denial of freedom, violation of rights, political oppression and economic exploitation all ensue in situations where governments, groups or individuals refuse, in various ways, to accept this principle.

As the great advocate of human rights, John Locke, in his Two Treatises of a Civil Government has pointed out in the seventeenth century, that the alfa and omega of a government’s existence is determined by its ability to live up to the social contract it entered into in order to ensure respect and protection to the rights of its citizens. The writer compares this duty of governments with that articulated in the English law of bailment at the time. Just as the relationship between two parties is terminated when one of the parties violates the trust endowed upon it, so also does the relationship between governments and the people who entrusted them with the protection of their rights when the former fail to live up to that trust. Such a relationship gets terminated, depending upon circumstances, either peacefully or, otherwise, by force. It is this principle of John Locke’s that was cited, three centuries later, in the preamble of the United Nation’s 1948 Universal Declaration of Human Rights:

. . . it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

It is, consequently, the wish of every sane person not to see the termination of any such social contract as entered into between governments and peoples face the risk of having to resort to the second recourse, i.e. rebellion. If and when such a recourse is resorted to, the result becomes dangerous and the sacrifice paid gruesome.

A government structure founded on the will of the people and that recognizes and accepts the Rule of Law becomes necessary precisely in order to prevent such “augury” from
becoming a reality. A government that is guided by the principle of the Rule of Law must be one that has the following attributes: it must have stable institutions of governance; it must accept the principle of open dialogue; it must be ready to entertain differences of opinion; it must be one in which timely and fair elections are concretely guaranteed; it must consist of a legislative body comprising of members who know what they are doing and perform their duties with full freedom or independence; it must be led by an executive body actively engaged in promoting and ensuring strong national unity and guided by an economic policy that helps bring about the full development of individuals and social groups.

As I have tried to point out above, the principle of the Rule of Law is something that must be instilled in the minds of all individuals who are zealous about the protection of their freedoms and rights. If, from this perspective, people tend to regard governments with some suspicion, it should be understood and, therefore, appreciated that they do so, on the one hand, as sentinels who make sure their rights are guarded and protected and that governments are respecting the terms of the social contract they entered into with the people, on the other. Such a stance on the part of the people must, therefore, be encouraged, for, as Abraham Lincoln once said, it is power, but particularly the power of governments, that always poses, more than anything else, the greatest threat to people. It follows, then, that any government must submit itself to the Rule of Law to avoid such confrontation and if the feared “augury” mentioned in the citation from Locke must be prevented from becoming a reality. And the Law itself must be so formulated as to ensure that governments have restrictions imposed on them to operate only within the limits of the power necessary for carrying out their duties and responsibilities; such a law must make sure that public officials do not act outside the limits of their mandates; that individuals or groups do not use the public trust bestowed upon them for their own private gains; that the majority shall not willfully trample upon the rights of the minority; that groups shall not squash the rights of individuals; that the powerful and the fortunate shall not perpetrate violence against the weak and the unfortunate. Such a law can only be promulgated by a legislative body that has gained the people’s genuine trust and fully knows what it does. Good governance, economic prosperity and social development, respect for the rights of minorities and other marginalized groups, etc. are all directly or indirectly tied to the ascendancy of the Rule of Law. The political scientist and constitutional scholar Hucker had written on this issue as follows:

**Only if men are allowed to govern themselves will they begin to think of themselves and for themselves as individuals. Democracy is an educational process in which men will develop interests of their own and in this way extend the horizons of their personalities.**

Since I start out, like everybody else, on a note of optimism, I hold onto a vision that we shall approach the threshold of such system of governance about the year 2020 (E.C.). I also hope that the rest of you will share this vision of mine. Since, however, the preparations we make towards that end are undertaken within the context of the present situation, my next task is to address the question of what the present looks like as it relates to these fundamental principles.

When we look into the recent history of our country, we see that Ethiopia has promulgated four Constitutions since 1930. The first two (the Constitution issued in 1930 and the 1955 Revised Constitution) are those considered as granted to the people of Ethiopia through the “Good Will” of Emperor Haile Selassie I. The third is the Constitution of the Peoples Democratic Republic of Ethiopia, which the people are said to have adopted in accordance with a referendum said to have been conducted by the Dergue regime. The fourth is the Constitution of the Ethiopian Federal Democratic Republic now in force as the Supreme Law of the Land.

The first two Constitutions were issued within the framework of a system that openly proclaimed that the foundation of government authority was the disposition of rulers rather than the collective will of the people. Because these two Constitutions are considered as given by the Emperor to “his beloved and loving subjects” under a system that openly expressed such a position and, also, because it seems to me that talking about those Constitutions does not have much relevance to the issue at hand, I shall skip them. Similarly, because the third Constitution, which stood on a single ideological base, was issued at a time when the Dergue regime declared itself as having transformed itself into a people’s government and, also, because it was nipped in the bud, in just a matter of three years, before it had
anything to show for itself, there is little use in talking about it, too, for engaging in the exercise would prove nothing more than beating a dead horse. I shall, therefore, steer my focus in the direction of what we have at present.

II. RULE OF LAW IN THE CONSTITUTION OF FDRE

The supreme law by which this country is governed today was ratified on December 8, 1994 by a Constitutional Assembly said to represent the Nations, Nationalities and Peoples of Ethiopia, and entered into force on August 21, 1995. Among the provisions that articulate the fundamental aims/objectives of the Constitution, the first one [the Preamble] states the following:

We, the Nations, Nationalities and Peoples of Ethiopia:

Strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development . . . .

According to this part of the Preamble, it is her Nations, Nationalities and Peoples that established today’s Ethiopia. Although the identity and difference between the three terms is not clear, these social categories founded the present polity to promote three of their fundamental interests, namely: guaranteeing a democratic order; advancing economic and social development; and ensuring the rule of law.

As is well known, the issues to be articulated in a Constitution are fundamental principles that humanity has developed for centuries regarding the relationship of law. Consequently, it can be said that constitutionalism is a process by which humanity’s vision about its own freedom is articulated and assumes concrete form. But this process can succeed only in a system designed to manage and regulate the sustainable interaction between people, not if it is randomly addressed as a mere matter of paying lip service. It is true that even non-democratic systems issue constitutions. And we very well know this to be the case from our own history. What is also true is that constitutions are issued in such systems tongue-in-cheek or just for the appearance. All constitutional principles that one could think of can be included in such constitutions. But when it comes to their implementation, they lack social and institutional basis as well as political good will. Before such constitutions begin to show any result or are developed through practical experience and gain, in the process, the confidence of the people, they remain a mirage with little use in talking about it, too, for nothing else, we could at least pick out those issues that we can agree upon at this current stage in our history and discuss, with composure, some of the ways in which other issues can be better resolved. For the Constitution itself has embodied the mechanism by which such solutions could be attained.

Taking all this into account, I shall focus, in the remaining parts of my presentation, on the issues of the country’s justice system, federalism and the land question.

III. RULE OF LAW AND THE JUDICIAL SYSTEM

Let me start this section by a citation from the Fitiha Nagast. The document has the following to say about the objectivity of judges (Article 43):

"..."
RULE OF LAW AND DEVELOPMENT IN ETHIOPIA

[Freely rendered in English the citations reads as follows: *that the [judges] may deliver just judgment, they shall not yield to either part at the time of judgment [nor shall] they accept bribes. . . .they shall not make distinction between person and person. . . .they shall not make judgment or make decisions dependent on the [opinions of others], for it will be of no benefit to people. . . .[and people] should not persist in employing them to judge in their favor. . . .they must have intelligence with its knowledge. . . .gifted enough to discern the questions intelligently, far from blindness. . . .subtle enough to solve difficult and obscure cases. . . .] Article 43.

Whatever our social background, I do not think that this Article of the Fitiha Nagast is such as it would invite controversy. Our understanding of the justice system should base itself on our perception of the inviolability of humanity’s freedom. In any system, if the mode of governance fails to see to it that justice has been properly administered, it is an indication that the system is inherently flawed. What people seek from their governments is the assurance, on the part of the latter, that justice prevails. It is only when this has been assured that farmers, workers, merchants, and even mendicants go about their respective business of making their living.

When the justice system is righteous, both the individual and collective rights of citizens will be accorded due protection; economic and social development will be facilitated; national solidarity will be strengthened; and both national and international investors will engage in development enthusiastically. But the task of making sure that justice prevails is difficult. It requires the development of national and popular outlook that goes beyond individual motives and beliefs and the narrow interests of groups or organizations. It is one thing to promulgate laws embellished with beautiful and alluring words. But it is altogether another thing to implement those laws in concrete terms. Much has been said by governments even in our own time about making justice prevail. When it comes to implementing laws, however, it does not appear that we have ever been blessed.

The strengthening of the justice system imposes conditions on the powers of executive bodies. The justice may set free those detained by Government law enforcement organs, rescind indictments brought against citizens, render decisions against the government, and reprimand the wayward. Such moves are desirable and healthy in a democratic order. For the cumulative effect of the process also makes of governments beneficiaries in such orders. That is why it behooves us to be farsighted and try to look beyond the immediate when we think of justice.

Because going into the details of the nature of the Country’s judicial system since the advent of modern government following the Italian invasion of the Country would require much time and great effort, I shall limit myself to touching upon the issue by way of a cursory glance and try to demonstrate what the justice system under the present political system looks like since its establishment in 1991.

The issuance of two Constitutions under the rule of Emperor Haile Selassie I, the establishment throughout the country of regular courts of law operating at different levels in accordance with laws promulgated on the basis of those Constitutions, the promulgation of numerous codes of laws in accordance with a program of modernizing the Country’s legal system, the steps taken to train legal professionals both domestically and abroad, whose number cannot be underestimated, and the establishment of the Law School as part of Addis Ababa University have all contributed greatly to the development of the Country’s legal system. The level of development of the judicial system that prevailed in the mid-1960s [E.C.] cannot be underestimated, given the nature of a system that started out from nil and proceeded with perseverance in the face of strong opposition coming from different directions, but particularly from the different provincial governors and members of the nobility, and attempting to reverse what had been thus far achieved.

However, the development of the judicial system could not proceed as desired and remained as it had been for seventeen years under the military regime that took over in 1974. Although there had been some, including legal professionals, who argued that the Dergue regime had laws matching those in a Constitution, the regime, however, had abrogated the then current Constitution and ruled the country in its own arbitrary way. Yet, because the Dergue had not seen the judicial system then as a source of worry, the system had shown, in a limited way, some development. As a result of the increasing number of graduates from the Law School of
Addis Ababa University as well as the number of professionals trained in Eastern Europe at the time, courts of law had managed to build up their manpower capacity.

In the last four years of the Dergue regime provisions relating to the judicial system had been included in the Constitution, and the Country's Supreme Court had found itself in a much better position than ever before.

When it comes to the present legal system, the first law issued concerning the administration of justice was Proclamation No.24/1992, which proclaimed the independence of the judiciary from any kind of interference. It is, however, true that Regional Governments have been granted the right to establish their own courts of law on the basis of Proclamation No.7/1992, the same Proclamation that formed the basis for the establishment of the various Regional States. The substance of Proclamation No. 24/1992 is similar to those laws pertaining to the legal system that had been promulgated under the regimes of the Emperor and the Dergue, respectively. The fundamental difference the Proclamation has with the previous ones lies in the fact that it clearly spells out the ineligibility of members of the Workers Party of Ethiopia (WPE) and those of the security forces and senior military or police officers to hold positions in the Judiciary. Although the issue of the fairness of this criterion still remains controversial until this day, those judges to whom the criterion did not apply had all been relieved of their responsibilities against their wishes. Since then different laws pertaining to the organizational structure of courts and the powers of judges have been issued.

Article 79(3) of the Federal Constitution stipulates that judges shall exercise their functions in full independence and shall be directed solely by the law. In the Preamble of Proclamation No. 24/1996, which is one of the laws promulgated on the issue, we read the following:

...one, and the major, of the fundamental factors that help realize the constitutionally guaranteed independence of the judiciary is to have judicial administration directed in a way free from the influence of Government organs or officialdom.

The laws promulgated under the previous regimes regarding this issue declare this as their aim. Even the infamous Proclamation No. 7/1975 to Provide for the Establishment of a Military Court states under Article 12: “Judges shall perform their functions in full independence; they shall be guided by no other authority than that of the law.” But when it comes to the reality on the ground, those of us familiar with the situation know it for what it actually was. Consequently, if the present laws reiterate this promise and Government cadres try to plead with us to please take them upon their words; we still need to see more in action before we are ready to echo their vows in toto.

The judiciary is in the main organized in the form of Federal and Regional court structures. Of late, special courts handling cases pertaining to municipal administration and urban land ownership and administration are being established in the major cities. And down the line in the administrative hierarchy, there are social courts operating with limited judicial powers. All of these, regardless of the administrative levels in question, have constraints related to manpower, facilities, court rooms, and budget. They also suffer from several structural problems in terms of their internal functioning. Cases lie around for years before they are given final decision. Although this has been the case in the past as well, it nevertheless appears to have deteriorated from time to time. There were even moments when being a defendant rather than a plaintiff in a suit was much more preferred. Even minisitrels have composed some couplets about this issue, but decorum requires that I leave them unexpressed.

The other issue has to do with manpower. The building of a judicial system is also a question of institution building. The judicial system is one of those institutions that have been left incapacitated by the repeatedly changing climate of the country’s political system. It takes a long process to build such an institution at a national level. Such an institution is built as an institution when one system chips in its share on what its predecessor has already put in place and when one advances the initiatives taken by another by two or three leagues. In this manner judicial culture keeps getting enriched. Those judicial systems that have today attained the highest possible level of development managed to develop and enrich their jurisprudence and helped us draw lessons from their experiences through a relay process by which succeeding systems built upon what the preceding systems had put in place to begin with. But what about us? When are we going to extricate ourselves from the habit of setting up house anew every time things change? Without going back
IV. HOW SHOULD WE FOSTER OUR JUDICIAL SYSTEM

We need to nurture our judicial system in order to ensure the Rule of Law. Rule of Law for its part is an essential instrument for ensuring respect of human rights and bringing about social development. As the famed 17th century economist, Adam Smith put it, in order for a country to develop, what people expect of a government is the ensuring of the ascendancy of a just system. He put it thus:

*An orderly administration of justice, along with peace and low taxes, is all that is necessary to carry a state to the highest degree of opulence.*

Our own contemporary economists, too, agree that an efficient and independent judicial system plays an important role in facilitating economic development. Conversely, there are studies that have confirmed that weaknesses in the judicial system entail serious damages to development. To cite an example, in 1997, World Bank experts had conducted a study on 3600 business enterprises in 69 countries, in which they reported that 70% of those who responded to questionnaires had stated that the main constraint their businesses faced was a result of the flaw within their respective judicial systems.

With regard to easing the workload of judges and focusing on important issues, resorting to such alternatives of conflict resolution as arbitration will be of great benefit both to the judicial system and the society as a whole. Another alternative is to seek resolution to issues that do not require legal action or litigation through administrative institutions or private agencies so permitted by law. Probation of wills, declaration of inheritance titles, petitions for the courts, both at the Federal and State levels. Further, Article 79(1) of the Federal Constitution has stipulated that judicial powers are vested in the Federal court system with the help of funds obtained from donor institutions is one encouraging sign. There are also indications that some Regions are emulating this project. With regard to easing the workload of judges and focusing on important issues, resorting to such alternatives of conflict resolution as arbitration will be of great benefit both to the judicial system and the society as a whole. Another alternative is to seek resolution to issues that do not require legal action or litigation through administrative institutions or private agencies so permitted by law. Probation of wills, declaration of inheritance titles, petitions for name changes may be cited as examples here.

V. TENDENCIES UNDERMINING JUDICIAL BUSINESS

Let me raise, by way of providing examples, some issues related to this problem. Article 79(1) of the Federal Constitution has stipulated that judicial powers are vested in the courts, both at the Federal and State levels. Further, Article 78(4) stipulates:
Special or ad hoc courts which take judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established.

I do not think, however, that these provisions apply only to those special or temporary judicial bodies specifically established under the nomenclature of “courts.” Rather, they also apply to those conflict resolution systems established outside of the regular courts and adjudicating cases without the consent of the people involved in the conflicts.

However, some laws have been issued and are being implemented, especially recently, which undermine this constitutional right of the people to seek justice through the appropriate channels. I shall point out those I consider are the major ones in the following manner.

5.1 Concerning the powers of banks with regard to property mortgaged or pledged with banks

The House of Peoples’ Representatives has, between February 1997 and 2000, issued four proclamations pertaining to this issue. The general thrust of these proclamations is that, when banks decide that the loans they granted have not been paid on time, they can sell the property pledged to them by mortgagors and use the proceeds from such a sale to pay for the loan without being required to take the case to a court of law. This procedure does away with the restrictions imposed on the mortgagee provided for under Articles 2851 and 3060 of the Civil Code. While these two provisions of the Civil Code are respectively concerned with mortgaging movable and immovable property, both of them stipulate, however, that the mortgagor and the mortgagee cannot enter into any prior agreement to the effect that the mortgagee can either sell or transfer the property mortgaged to itself in the event that the mortgagor could not pay his debt on the agreed upon time. This legal provision, which was adapted from a principle of an ancient Roman Law, known as ‘commissaria lex’, stipulates as follows. Article 2851(1):

Any agreement even subsequent to furnishing of the pledge, authorizing the creditor, in the event of non-payment on the due date, to take possession of the pledge or sell it without complying with the formalities required by the law shall have no effect.

This law prohibits any person demanding a right from another person from playing plaintiff, judge and the executor all at once, simply because that person happens to have come across some windfall or godsend. But the four proclamations recently issued nullify the provision cited above and stipulate that the agreement arrived at between the borrower and the bank validate the right of the bank to sell the mortgaged property. Accordingly, then, because people who apply for loans from a bank cannot get any loan unless the stated condition has been met, such persons have no alternative but to accept the terms of the agreement, whether it is to their liking or not. It is true that there are some such conditions in operation in some developed countries. But their situation and ours are at variance with each other. In our case, banks, whether Government or private, operate in accordance with a loan policy centrally issued by the National Bank of Ethiopia, so that, even if lending banks may not find such procedure undesirable, there is nothing else that they can do on their own. In the developed countries, however, because there is an alternative whereby some banks accept this procedure of contractual foreclosure, while others can reject it, borrowers have alternatives.

This is the first of the four proclamations promulgated with regard to this particular issue, and which is known as “Civil Code (Amendment) Proclamation No. 65/1997.” Exactly within a year of the issuance of this Proclamation, Proclamation No. 97/1998, which pertains to property mortgaged or pledged with banks, and Proclamation No. 98/1998, which is about business mortgage, were issued, thereby repealing Proclamation No. 65/1997. These two Proclamations serve to further restrict the rights of mortgagors, while, conversely, extending the rights of banks. Accordingly, agreements made between banks and borrowers to the effect that banks can sell mortgaged property or retain it as their possession is valid as having legal force. This one comes from the first Proclamation. There is yet another amazing provision. According to these Proclamations, whether or not the said type of agreement exists or not, banks can, on serving a 30-day advance notice to debtors, sell by auction any mortgaged moveable or immovable property and transfer the title deed to the buyer or, in the event that there comes no buyer, retain the mortgaged property as provided for under the terms of the agreement and transfer the title deed in their own name. When banks
take such measures, they are considered as legally representing the debtors. Not just that. Even cases that have been brought to a court of law and are under litigation can be suspended and property mortgaged with the banks sold under similar procedures. So has it been promulgated in the said Proclamations.

Sometime later another law addressing other additional issues was promulgated. This is the “Proclamation to Amend Property Mortgaged or Pledged with Banks Proclamations No. 216/2000.” According to a provision of this Amendment Proclamation, the clause in Article 3 of Proclamation No. 97/1998, which reads “...in consideration of its estimated value as specified in the contract of the loan” is deleted and the phrase “...if no buyer appears at the second auction, to acquire the property at the floor price set for the first auction and have the ownership of the property transferred to it” is inserted after the word “buyer” on the eighth line of the Article.” It must be realized that there could be a huge difference between the two clauses. Because the bank happens to be the plaintiff, the judge, and the auctioneer, all in one, it can, if it so wishes, sell or retain for itself the property mortgaged or pledged to it by the borrower at the time of concluding the loan for less than the estimated value of the property, no questions asked. Needless to say, this constitutes a serious harm to the rights of the borrower.

The reason given in the preambles of the Proclamations as having necessitated their promulgation is that “the time it takes to secure the decision of a court allowing the sale of both immovable and movable property pledged with banks as mortgage is very long” and, hence, the need to resort to this alternative. It is, above all, the responsibility of any government to lay down an efficient judicial system. And I do not think the promulgation of such laws by the Government on account of its inability to do so is the desirable way of doing things.

5.2 Proclamations pertaining to the Ethics and Anti-Corruption Commission

In this respect, three Proclamations were issued towards the end of 2001, in which have been incorporated provisions that put into question some fundamental Constitutional rights. These are: Proclamation No. 235/2001, which provides for the establishment of the Federal Ethics and Anti-Corruption Commission; Proclamation No. 236/2002, which provides for Special Procedure and Rules of Evidence on Anti-Corruption; and Proclamation No. 239/2001, issued to amend the Anti-Corruption Special Procedure and Rules of Evidence Proclamation. According to these Proclamations, the Commission has been vested with the powers of the Police and the Prosecutor with regard to matters of corruption. On the basis of these Proclamations, the Commission has the power to conduct investigations, to search residences and other places, to seize property, incarcerate suspects, call on and hear testimonies of witnesses, ask for information/evidence from any person, and release people on bail. This is not much to wonder about, for it constitutes the conventional investigative process.

It is the provisions pertaining to those powers of the Commission beyond the ones indicated that tend to be of interest here. According to those provisions, the Commissioner or the person delegated by the Commissioner has the power to:

1. investigate the bank accounts of any person suspected of having obtained the money through corruption and have the same attached by an order of a court;
2. to register and maintain records of properties and monies of public servants and others that it deems necessary to be looked into;
3. to ask a court of law to issue the relevant orders to have any [prospective?] defendant provide to the Commission all required evidence and to determine the manner and the time limit for providing the required evidence.

All these things are to be carried out before the person suspected of corruption is indicted and has the chance to respond to any allegation. Such procedure goes against the principle that no person shall be deprived of his/her rights and property without due process of law. Although the constitutional principle known as “due process of law” has not been clearly articulated in the Federal Constitution, the other provisions pertaining to rights to property and individual freedom [tacitly] recognize this principle. Accordingly, the constitutionality of the anti-corruption law itself is questionable. Taking inventory of a person’s property violates the following provision of the Federal Constitution, which states:

Everyone has the right to privacy. This right shall include the right not to be subjected to searches of his home, person or property, or the seizure of any property under his personal possession.

The provision forcing an accused person to provide evidence against
himself contradicts the constitutional principle of the “right against self-incrimination.” Article 19(5) of the Federal Constitution, which pertains to this issue stipulates the following:

**Persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible.**

We find this fundamental principle articulated under Article 14(3) (g) of the International Covenant on Civil and Political Rights, which Ethiopia has ratified and incorporated as part of its own laws.

The other critical problem regarding the production of evidence concerns the provisions of Proclamation No. 236/2001, providing for special procedures and rules of evidence on anti-corruption. According to these provisions:

The other critical problem regarding the production of evidence concerns the provisions of Proclamation No. 236/2001, providing for special procedures and rules of evidence on anti-corruption. According to these provisions:

1. If a person accused [of corruption] is in a government or public service and the Anti-Corruption Prosecutor can show that the defendant has lived, or has accumulated wealth beyond his legal means of income, the burden of proof shifts from the persecutor to the accused.
2. Even if the wealth so accumulated by the accused has been transferred to a third party, it shall be deemed to have been owned or possessed by the accused.
3. If the accused prefers to remain silent after the prosecution has made its case, the court is required to consider the silence, or refusal to respond as admission.
4. The court may order the interception of correspondence by telephone, telecommunications and electronic devices as well as by postal letters.

It is an established principle of evidence, especially in criminal cases, that the standard and burden of proof expected of the prosecution is much stronger than those expected of the accused. The Prosecutor must be able to prove the guilt of the accused beyond any shadow of doubt. If the Prosecutor fails in this endeavor, he will be forced to drop the case and the accused shall be set free. Let alone in the absence of evidence, even if there were any evidence against the accused and yet the substance of the evidence is found to be in doubt, the accused benefits from any such doubt. This is a principle set down for the protection of the rights of citizens, taking into consideration the balance of power between the monolithic governmental body and the individual as well as the constitutional right of any person to be presumed innocent until proven guilty and other similar issues. To force a person to admit that he/she is living or has obtained property beyond what his/her income permits and, accordingly asking the accused himself/herself to provide proof that this is so because the Prosecutor can’t prove his allegation is nothing other than asking the person to prove his/her innocence. Such procedure is a challenge to Article 20(3) of the Federal Constitution, which stipulates that accused persons have the right to be presumed innocent until proved guilty according to law. We find similar principles articulated under Article 11(1) of the Universal Declaration of Human Rights and Article 14(2) of the International Covenant on Civil and Political Rights.

The provision stating that the property of a person accused of corruption that has been transferred to a third party prior to the arrest of the accused shall be considered his/her own exposes the fundamental right of people to own property and the society’s guarantee to freedom of transaction. Any person who legally and in good faith acquires and owns the property of another person through purchase or by any other means of exchange has full right to that property. This principle is a fundamental property right that has been in existence and has gained acceptance for centuries in the past. This right has been clearly articulated in the Country’s Civil Code. If this new law goes into force, it means that, before we take into possession any property through gift, exchange, or sale or receive money from another person, we have to first make sure that the person transferring the property is free from corruption. My dear kinsfolk! Do you really believe this is the right path to follow? Would we ever be able to find any computable criterion by which to determine that a person is living beyond his/her means? Would that person be so considered merely for drinking whiskey everyday? For consuming choma (fatty raw meat)? For entertaining friends/relatives at his/her home? For living in a beautiful house? For owning a four-wheel drive?

As for the provision allowing for tapping the telephone and intercepting the electronic and...
postal correspondences of the accused, all I can do is to let you compare this provision with the contents of Article 26(2) of the Constitution and make your own judgment. Sub-Article (2) of Article 26 reads:

*Everyone has the right to the inviolability of his notes and correspondence, including postal letters, and communications made by means of telephone, telecommunications and electronic devices.*

There has also been promulgated another Anti-Corruption Proclamation that completely annuls the right to bail. The previous Proclamation providing for special procedure and rules of evidence on anti-corruption had nothing to say about bail. Those of us who have been following the controversy at the time of the issuing of the Proclamation know how some persons accused of corruption used that loophole to post bail and get out of prison. However, before the law had gone into force even for months, it was said that the Proclamation was amended, with the additional provision that “a person arrested on suspicion of corruption shall have no right to bail.” This provision abrogates the provision under Article 19(6) of the Federal Constitution, which stipulates: “Persons arrested have the right to be released on bail,” though this provision itself has its own conditions.

5.3 The New Income Tax Proclamation

Without prejudice to the issues of crimes committed in relation to tax obligations, tax obligation is nothing more than an obligation under the civil law to be fulfilled by attaching and selling or transferring to a third party by other means the property of the tax payer. Accordingly, a person who has failed in his obligation to pay tax shall be obligated to do so in accordance with the relevant provision of the Civil Procedure Code. The Income Tax Proclamation that had been in place from 1961 until the issuance of the new Income Tax Proclamation in 2002 followed this procedure. The new Law has changed this procedure and transferred the power of determining income tax and the manner of implementing the decision to the Tax Authority.

It is true that, in any system of government, the power to determine the amount of tax and to ensure its collection is vested in the government’s executive body. However, governments exercise such power by taking into consideration the society’s rights and its capacity to pay taxes. Determining the amount of tax is an administrative decision and, as such, the tax payers shall pay what they are asked if they agree with the decision and register their grievances, according to the established procedures, if they don’t agree with the decision. The procedures for registering such grievances have been laid down in both the previous and the new laws, with differences, however, in the procedures of their implementation. Under the previous law, when tax payers receive notices of payment, unless they register their complaints to the relevant authority within thirty days of the issuance of the notices, the decisions made by the revenue collecting authority shall be final and enforceable. The new law, too, has a similar provision.

However, under the previous law, the tax authority implements the decision, just as in the case of any other decree holder under the civil law, through regular courts and on the basis of the provisions embodied in the Civil Procedure Code. By contrast, the present law does not recognize this procedure. So, when it comes to payment of taxes, the plaintiff, the judge and the executor of judgment is the same body empowered to collect taxes. That such a procedure narrows, in many respects, the scope of the right of the person said to be in debt is something well known at least to those of us with the experience in such procedures.

As is well known from experience, there might emerge many issues that could benefit the alleged debtor at times of litigations pertaining to payment of taxes. For instance, if a government employee is asked to pay tax in the amount of Birr 200,000 on account of having allegedly made profits by engaging in some business enterprise, and if the person so accused denies the allegation, the definition of the term “tax payer” as inscribed in the law does not apply to that person’s case. If an execution proceeding is brought to court against such a person, it would be enough for that person to simply deny the allegation in his defense. Under the new law, however, if such a person wants to defend himself against this claim, he has to post half--i.e. Birr 100,000--of what is demanded of him with an appellate tribunal in accordance with the provisions of 107(2) of the Proclamation and start the long process of litigation. The fate of the tax payer who had not made any profit in the year payment is demanded is not any different from that of the person in the above example. Basically, if the person...
from whom payment is demanded says that he has not made profit in the year when the demand was made, the definition of the term “tax payer” as inscribed in the law does not apply to that person, since it is only the person who made profit during the tax year who is liable to the payment of taxes. There are many issues in the Civil Procedure Code that can come to light during the implementation of decisions. What I have tried to explain so far should suffice, as the details are far too many to deal with here.

5.4 The 2002 Lease Proclamation

What I am going to raise here about the Proclamation is limited to the powers the Law has vested in government administrative institutions with regard to deprivation of land holding rights. According to the Law, the relevant authority can deprive a person of urban landholding when the lessee fails to pay his due, when the manner of use of the land is changed by the unilateral decision of the holder of the land, or when the land is required for public use, or when the tenure of the lease expires or is not renewed, or when it is decided by the relevant administrative body that the land has been held illegally. If it has been determined that the holding of the land is illegal, the administrative agency can, without any additional condition, implement the decision to remove the landholder by using law-enforcing police institutions. In such a case, there appears to be no venue where the landholders argument to the contrary can be given a hearing.

The Law has embodied some critical provisions concerning even those lands considered as lawfully held. The relevant authority can decide to clear any person from the land he holds. If the landholder who is asked to clear the land has complaints to register, he can only appeal to the same body that required his removal from the land. Even then, the substance of the complaint cannot dwell on the issue of whether or not the person should have cleared the land; it should rather be limited to the question of demanding compensation or to the inadequacy of the compensation so paid. If the appellant still is not satisfied with the decision, he can, within thirty days of the delivery of the decision, appeal to the Urban Land Clearance Appeals Commission or, depending on particular situations, to bodies established for the purpose within the jurisdiction of City or Regional governments. Appeals may be made against the decisions of these organs either to the appellate division of the respective Municipal Court or the High Court, the rulings of which shall be final. The main thing, however, is that even such courts are denied the right to look into the propriety of the decisions made against the person to clear the land he holds. The courts only looks into questions of whether or not the person cleared from the land should be paid compensation, and if decided that he should be paid, whether or not the compensation so paid is adequate. Such procedure puts into question the relevance of the provisions related to landholding security that have been stipulated in the Constitution and the Lease Proclamation themselves. The question, then, is: Is this how we are going to attract investment?

5.5 The Recent Proclamation to Combat [Notorious] Vagrancy

I have nothing to say in any detail about this issue, since the Proclamation has not yet been published in the Negarit Gazeta. However, whoever has heard the reports broadcast by the media and the Government as well, would not find it difficult to gather that there are many issues that can be debated, at least from the point of view of legality. One such issue is the denial of the right to bail under this Proclamation. The other is the extensiveness of the powers given to the Police.

5.6 Are there special spectacles to enable us to discern the legality of our laws?

I do not think it is open to argument that the different laws that we looked into so far provide good examples of laws that tend to undermine the judicial powers of the Country’s courts. And all this is happening under the same system, with regard to which we have been told from its early days that it has ushered “the Golden Age of Justice.” It has been clearly stipulated that the Constitution is the Supreme Law of the Land, and that, “any law, customary practice or a decision of an organ of state or a public official which contravenes” the Constitution “shall have no effect.” Although there are several other laws whose validity can be tested against this criterion, I do not reckon there would be anyone who would bet with me that the laws that we have looked into above have no problems at all.

The question that should follow is: what platform is available to us for testing these laws? Different legal systems have their own respective ways of resolving such problems as the said laws entail. Some systems consider such issues through a method known as “Judicial
Review.” Through such methods, a given country’s supreme court shall either amend or render null and void the laws promulgated by the legislative body or the decisions made by the executive body. In this manner the supreme court develops and strengthens the country’s constitutional laws and, sometimes, benefits others. This procedure puts into practice Baron de Montesquieu’s principle about power-sharing among government branches and the accompanying checking mechanisms, which states that government power should be distributed with the appropriate balance among the legislative, executive and judiciary branches of the government, and doing so will obtain in guaranteeing the fundamental freedoms of the country’s citizens. The Supreme Court of the United States of America is one such court to be cited as a good example.

Other countries review such cases in Constitutional Courts specially established independently of other courts. While such courts are staffed with judges knowledgeable in Constitutional matters and with many years of experience behind them, they may carry out their functions in one tribunal or different tribunals called into session at different levels. French and German Constitutional Courts, in Europe, and the South African Constitutional Court, in Africa, fall under this category. A third group of countries have such cases reviewed by courts specially assigned for this purpose.

Coming to our own situation at home, the power to review constitutional matters lies with the House of Federation, not with the Courts. Such cases are presented to the House of Federation through the Council of Constitutional Inquiry consisting of 11 members, including the President and Vice-President of the Federal Supreme Court, six legal experts, appointed by the Government, three persons designated by the House of the Federation among its members. The members of the Council execute their responsibilities in addition to the other responsibilities they already carry. Even then, when the Council finds that any issue or complaint involves constitutional dispute, or finds that it needs constitutional interpretation, it has the responsibility of presenting the case to the House of the Federation for final decision.

With regard to this particular issue, except for the fact that the House of the Federation has taken decisions on the issues of identity of some social groups, I have no evidence, for my part, of any question presented to it regarding the verification of the legality of laws. But the question still remains: Is it proper that this body see or review such cases? Would it really ensure proper that this body see or review such cases? Would it really ensure it regarding verification of the legality of laws. But the question still remains: Is it proper that this body see or review such cases? Would it really ensure constitutionality if did so, etc.? I, for my part at least think the issue is something that needs deliberation by all of us citizens that consider the concerns of this Country as our concerns as well.

VI. FEDERAL ADMINISTRATIVE STRUCTURE

One fundamental reason why a Federal system of governance is needed is to keep under one political community different peoples with common historical, economic and cultural links, while at the same time recognizing their differences. Although the peoples have their own identities that make them different from each other, they opt to form one economic and political community, rather than go their separate ways, with the belief and conviction that, by creating a strong central government, their rights and interests would be protected, on the one hand, while, on the other, the distinct differences that make up their identities and serve their particular interests would be respected and, accordingly, reach mutual consensus to establish a federal system of governance serving their common interests.

The peoples’ ethnic identity, their languages, their economic ties, their cultural and psychological unity, similarity of their religions, their common defense and security interests, etc. all can serve as a basis for the establishment of a federal form of administration. Nevertheless, it is difficult to categorically assert that a federal form of administration is the only solution to harmonize and accommodate all peoples’ differences and govern them as one polity. The issue involved differs according to the particular historical and concrete situations in which the different peoples find themselves. While the Germans, who more or less have one racial and psychological identity with a common language are governed by a federal system of government, in South Africa, however, where there are many differences between the Blacks and the Whites, as also among the Blacks themselves and within the White communities, too, it is a unitary form of government, not a federal system, that the people opted for.

When it comes to the situation in our Country, although I am among those who find a federal system preferable, I am not so dogmatic as
to say that it is the only alternative available to us. Maybe, I have not had the opportunity to look into the matter closely, but it is possible that there are other alternatives. If one should insist that the federal alternative is better, I am not of the belief that such a system should base itself on the peoples' languages and ethnic identity alone. The Government itself, it appears to me, has recognized this from the early days of its establishment. One could cite the political circumstances under which the Southern Nations, Nationalities and Peoples’ Regional State came into being as one example. This could be one way to go about it, but, again, it is not the sole alternative available to us. I wouldn’t be too far removed from the truth if I were to venture the idea that, although the Oromo of Selale speak the same Language as the Oromo of Borana, there are many things that tie the Selale Oromo to the Amhara living in Merhabete or the areas adjacent to Goha Tsion in terms of geographical location, culture, religion and economy. I similarly believe there are several factors that link the Tigreans of Shire with the Gonderes living across the Takaze River. So, when one thinks of a federal form of government, one should also take into consideration administrative conveniences and economic ties. What does it benefit the Amhara of Shenkora or Minjar, who live only a stone’s throw from Adama (Nazereth) to traverse a distance of over six-hundred kilometers to go to Bahir Dar?

While, on the other hand, there are several other issues that could serve as a basis for the establishment of a federal structure of governance, because it is a system that attempts to accommodate differences within the framework of a common economic and political community, the important thing is that the system bases itself on the common will of the different peoples. This common will of the peoples is expressed or manifested through: a Constitution that has the consent and endorsement of the peoples; an independent judicial system that serves one and all with equality; a decentralized administrative structure; rights to full regional administrative autonomy; a system of governance in which rights to a people’s identity and culture are guaranteed respect; an economic system that is based on the equitable distribution of wealth; and, finally, a system of centralized governance that ensures the balanced participation of all the peoples.

Thus, how does one view Ethiopia’s present federal system of governance? Article 1 of the Constitution clearly stipulates that the Country’s State structure is Federal and Democratic. According to Article 47 of the same Constitution, it is nine Regional States that constitute the Federation. These Regional States were legally established in the aftermath of the fall of the Dergue’s regime and the subsequent establishment of the Transitional Government of Ethiopia, in accordance with Proclamation No. 7/1992, which provides for the establishment of National/Regional Self-Governments. One can say that this Proclamation was the Law forming the basis of the establishment of the Country’s present Federalist Government structure. Prior to that, the Country’s structural organization was unitary. This had been clearly stipulated in the 1955 Constitution under the Government of Emperor Haile Selassie I and the 1987 Constitution on the basis of which the then Military Government proclaimed itself a People’s Democratic Government. When we look at the manner of establishment of the member Regional States during the Transitional Government, we see that they were not a creation of a long process of political evolution but a result of a declaration into being by the Transitional Government itself. Even at that moment, too, it has been clearly pointed out in the Proclamation that the Regional States were, in every respect, subordinate to the Transitional Government.

But to one who has followed up the process of this formation, the implementation of the Law had not followed the spirit of the Proclamation even until termination of the Transitional Government. Just about a year after the issuance of the Proclamation, the mass media informed us that politicians from forty-five Nations, Nationalities and Peoples had come together and agreed to form the present Southern Regional State.

From the perspective of the formation of federalism, experience has shown us that a federal form of governance can come about in either of two ways. The first is that whereby political units that were previously separate and self contained create a common political community while still maintaining their differences. The second way is that whereby communities that were previously under one unitary State create a federal arrangement out of a once-centralized State structure. The first is known as ‘Integrative’, while the second as ‘Devolutionary’. Since, as we have seen above, the Ethiopian Federalism moved along the line of devolving centralized power down to the Regional level, it falls under
the second model. And when it comes to the sharing or distribution of power, we see that the Constitution enumerates the powers and functions of the Federal Government and relinquishes all residual powers to the Regional States. When we look at the provisions of the Constitution pertaining to this issue, we see that there are many questions that invite debate. Because of time constraint, I shall skip the details and focus on the issues pertaining to the implementation of the principles of federalism.

Federalism proceeds according to the principle of the distribution of sovereign power between the Central Government and those of the Regions and keeping the two in balance, at least in principle. Is the picture that we see today, however, a confirmation of this principle? It is debatable. It is my conviction that Federalism and partisan (party) politics do not go together. If partisan politics infringes upon Federalism the latter will become tainted. Even when we limit ourselves to looking at the situation following the 2000 elections, of those Regional State Presidents who were said to have come to power through election, those of Tigray, Oromiya, Somali, Southern Peoples’, Gambella and Addis Ababa are not in that position at present. But why? Should we simply accept as true what we have been told? Are the paths taken by the Federal and Regional Governments really a bed of roses? Would it be that much of a mystery to us what the Government Cadres behind the key positions are really up to? How much does what is conventionally called “organizational regulations” have to give those individuals by way of latitude? Are all the clashes we witness in the different Regions outcomes of the machinations of anti-peace groups or the Sh'abiy'a? We don’t need to go too far, but look at the bloody clashes that we have been told took place only recently in Sidama, Bench-Maji, Wollega, Gambella, etc. and see it they do not make us sick to our stomachs. Are all Regions treading the tracks of development equally in an equitable manner? Let alone we Ethiopians resenting each other, no one people can begrudge another people for what it has. To speak out for equity in development and economic growth is not jealousy.

Consequently, just as Federalism can be a cure for many problems, to the same extent can it also be one’s death if not applied properly. Let us look at what happened to Marshall Tito’s Yugoslavia. We are seeing some indications here at home, too. Care must be taken from the outset, lest the prophetic warning of the mad woman about “houses going down in blazes unless…” become a reality. And this, if our Ethiopia must take the path of development that we have envisioned for her in the Year 2020 E.C.!

VII. LAND TENURE AND DEVELOPMENT

I hope I would not be boring you if I prefaced this section, too, with a citation from John Locke. Here goes:

*God and his reason commanded man to subdue the earth, i.e. improve it for the benefit of life, and therein lay out something that was his own, his labour. He that, in obedience to this command of God, subdued, tilled and sowed any part of it, thereby annexed to it something upon it that was his property, which another had not title, nor could without injury take from him.*

(Second Treatise on Civil Government)

Issues of land and humanity’s existence are very much linked to one another. Every human effort and vision emanates from the right humanity has and believes it must have over land. It is this right to and close link with land that forms the basis of national identity, the powers of government and for the overall social development of humanity as a whole. To the ordinary people land is a matter of survival and the issue, therefore, is close to their hearts. And to governments, land forms the basis of their powers, and so, they see it with a special regard.

When we take this fact as a launching ground, since this constitutes the germination of the poetry of our visions, whatever it is that we say about the land question now, it is with the belief or vision that the Ethiopian peasantry would, if only partially, cover some distance in its journey to transform itself into a sector of modern farmers that I would like to say a few things on this particular score. Whether we call the users/beneficiaries of the land ‘peasants’ or ‘sons of the soil’, ‘farmer’ or ‘pastoralist’, our land policy and laws can only change the livelihood of the rural populations when the economy follows paths that would lead to the modernization of farming and livestock production. The Ethiopian Constitution now tells us that land is the common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or other means of exchange.
And the Regional State Constitutions, for their part, tell us, somewhat tangentially, that land is the common property of the peoples of the Regions and shall not be subject to sale or any other form of exchange. It is a matter of historical record that land ceased to be anyone’s private property under the Dergue’s Land Tenure Proclamation, which it considered its own version of “Noah’s Dove.” Well, as we have heard it said that one thing leads to another, I took a trip on memory lane to one of the Dergue’s numerous proclamations and recalled the one about this “Dove” as it was read by that articulate announcer and revisited the March 4, 1975 issue of Addis Zemen. I found the very announcement about the “Dove.” The title of the announcement was “The End of the Tears of Suffering,” and the particular words I remember read as follows:

The [Land] Proclamation is Noah’s Dove sent to the Broad Masses of the People from the Provisional Military Government to declare the dawning of the Day, the Elimination of Darkness, the Restoration of Land to the Tiller, the Annulment of Tenancy, the Establishment of a System free from Looting and Plundering.

The Editorial of the Newspaper, which is condemned to echo the Government’s boast in different words wrote, under the title “Removing the Tumor,” that the “Curse that had made a beggar of Ethiopia over the years has now been lifted,” only to repeat for us the Dergue’s “glad tidings”.

Today, too, the current Land Policy follows the same pattern as the Dergue’s “Noah’s Dove.” Because land is characterized by the essentially utilitarian value it has and also because it cannot be distributed to everyone in the desired amount, it has a market value attached to it. It therefore meets the criterion by which the value of property is measured. What renders land not subject to sale or exchange is not any quality that inheres in its nature but the Government. So the question to be addressed is: How much benefit is there in making land not saleable or exchangeable for all eternity to come? We need to look into this question time and time again. It has now been almost three decades since land has been declared unsaleable or nonexchangeable. But has the curse of beggary that the then Addis Zemen declared had been really lifted today? The way I look at it the situation has only deteriorated. So it has now been quite sometime since we have arrived at that point when we should look at the problem squarely in the face. The belief that land should not be private property is only a political slogan not some divine, religious dogma descended from On High.

When it comes to the subsequent, subsidiary laws, the major land use laws promulgated at the level of the Federal Government are Proclamation No. 89/1997, providing for administration of rural land and the Urban Land Lease Proclamation promulgated in 1994, and which was superseded by another Proclamation (No. 272/2002) issued in 2002. According to these Proclamations, while urban land is under the free possession of peasants and pastoralists, land lease is a tenure system applying only to urban areas. According to the Land Use and Administration Proclamation, a person who is not a peasant or a pastoralist has no right to free land tenure. Other than this, people who can use rural land are only those natural or legal persons meeting the criteria of “investor,” as defined by the Proclamation and who, accordingly, rent land from Regional Governments for a specified period of time.

Even when it comes to the peasants and the pastoralists, the Proclamation has not managed to allay their fear of tenure insecurity. Peasants primarily use land for purposes only of agriculture. And when farmers rent out their holdings to others, those renting the land cannot use it for purposes other than agricultural activities. Then, the Proclamation provides that farmers can bequeath their holdings, but with the restriction that only members of their families have the right to inheritance. And, even then, whoever is going to inherit the land should himself/herself be engaged in agricultural activities. The Proclamation further stipulates that a farmer can bequeath his/her land only as long as the tenure lasts, thereby putting into question the holder’s security of tenure. Moreover, the only person that is considered a family member is he who lives as a dependent of the farmer who bequeath. What all this consequently boils down to is that, first of all, a peasant cannot bequeath his land to his offspring who do not happen to be engaged, like him, in farming. Secondly, even if the person to inherit the land happens to be a farmer, he cannot do so unless it is proven that he was a dependent of the one who bequeathed at the time the inheritance is made. Because the core provision of the land redistribution Proclamation empowers Regional Governments to redistribute or reallocate land any time they deem it necessary, this in itself contributes to the undermining of the tenure security of the farmers. Because the Proclamation has no
provision as to whether or not the peasants could secure loans from institutions or individuals with their holdings as collateral, one can say that there are no mechanisms laid down for farmers to get loans either individually or collectively. Consequently, the chances for them to develop their land through the use of modern technology products and inputs are slim.

All in all, if the land tenure system continues the way it is, I think it will only make of the peasant a permanent tiller for ages to come. Not only this. The population of the Country is increasing at an alarming rate. The professionals and experts tell us that the present population will increase two-fold twenty-five years from now. Famine and drought has become a phenomenon occurring every three or four years now. Famine has become a problem to do not only with unbearable hunger but it is also posing a challenge to our national dignity. This is of course, unless you ask me what dignity a hungry person has to boast! Therefore, whether we like it or not, it is time now for us to explore better alternatives. In former times, one system compared itself with another system by boasting of its ability to have created conditions in which its citizens at least had enough to it. Today, however, things seem to have changed altogether. The nature of such a boast today seems to revolve around the “tragic lament” of telling us: ‘We are not them! We have informed the International Community about the famine in due time.’ If our vision of Ethiopia in the Year 2020 E.C. is to be a dream come true, such mode of thinking must be changed before it is too late, which is now!

Regarding urban land, the main tenure system is, as I have already pointed out, lease. The lesser is the Government, while the lessee is the investor. The Proclamation stipulates that land can be given to individuals, outside of the lease system, for purposes of building low cost homes or set aside for purposes of providing social services. Although much can be said about the details of the Proclamation, I will cut it short at this point. Payment for any leasehold is to be determined by Regional Governments. For example, the minimum rate of land lease payment for Addis Ababa, as it appeared in Addis Lissan issue of October 8, 2003 gives a good indication of the direction in which our urban land tenure system is moving. The city of Addis Ababa has been divided into three zones for this purpose:

1. Central Business Zone
   Level One minimum lease-payment rate in square meters Birr 1297;
   Level Five minimum lease-payment rate in square meters Birr 688.
2. Intermediate Zone (?)
   Level One minimum lease-payment rate in square meters Birr 796;
   Level Five minimum lease-payment rate in square meters Birr 427.
3. Expansion Areas
   Level One minimum lease-payment rate in square meters Birr 237;
   Level Five minimum lease-payment rate in square meters Birr 147.

In all three zones, there is another lease-payment rate for land categories between Level One and Level Five, intermediate between the minimum and maximum rates. The above figures indicate only the minimum, not the maximum rates. The same pattern has been witnessed in other Regional cities and towns. Could one really say that this tendency encourages investment? I would rather you yourself answered this question. Incidentally, speaking of investment, how many of us know that seven Investment

Let me pass now on to my conclusion.

VIII. CONCLUSION

We can say a lot more about laws and their legality, about the rule of law and the protection of human rights, about legality and economic development by drawing on the provisions of the Constitution and comparing them with the concrete reality around us. Had it not been for the limited scope of the forum, time constraint and the limitation of my own capability, I think much more than what has been presented here could have been said about, to mention but a few examples, free political activities, election laws and their implementation, the press and the right to freedom of expression, the contents of the Investment Proclamations, free business enterprise, etc. I could only hope, at this point, that others would pick up where I left and chip in their share of ideas and opinions.

Thanks are due to the Ethiopian Economic Association for its effort in organizing this Vision 2020 Forum and providing us all with the opportunity to say whatever it is that we had to say. I wouldn’t hence consider myself a coward. For I have put something in the pot. Thanks are also due to you, distinguished guests, for hearing me out with the patience of Job.

Let me be allowed to wind up my vision of Ethiopia with a couplet from a certain songstress, which I have always found touching:

Ethiopia shall rise once again
A pinnacle of nationhood
High as the mountains we behold!!

Vol. 6 No. 4 / February 2004

35
Vol. 6 No. 4 / February 2004  
Ethiopian Economic Association
3. The process of law (due process of law) involved in the settlement of the property dispute. The parties agreed to the settlement agreement in writing. The agreement included the following terms:

- Compensation: The claimant was compensated for the loss of property. The amount of compensation was agreed upon by both parties and was reflected in the settlement agreement.
- Dispute Resolution: Any future disputes related to the settlement agreement would be resolved through mediation or arbitration. The parties agreed to settle any disputes through a mutually agreed upon mechanism.
- Confidentiality: The terms of the settlement agreement were confidential and were not to be disclosed to any third party without the written consent of both parties.

The settlement agreement was signed by both parties and was recorded in a public registry to ensure its enforceability.

4. The settlement agreement was recorded in the public registry and became enforceable. The parties were required to adhere to the terms of the agreement. Any violations of the agreement were subject to legal action.

The settlement agreement was a significant step in resolving the property dispute and provided a path for future dispute resolution.

V. Conclusion

The settlement agreement was a successful outcome for both parties. The resolution of the property dispute through the settlement agreement prevented further legal proceedings and provided a framework for future dispute resolution.
اقتصادی فوکوس

جلد 6 شماره 4 / فوریه 2004

المنوفیک نقد کتاب


eqnmYm¥Xm\$ gëT HÎnmE hYì\$ë

Vol. 6 No. 4 / February 2004 39 Ethiopian Economic Association
Economic Focus

Vol. 6 No. 4 / February 2004
Ethiopian Economic Association

Vol. 6 No. 4 / February 2004
Ethiopian Economic Association

Rules of Human conduct (Social contract) እግር

Ethiopian Economic Association

Vol. 6 No. 4 / February 2004
Ethiopian Economic Association
Judge & jury in one's own case

Ethiopian Economic Association

Vol. 6 No. 4 / February 2004
እወን ለማወቅ ለማስናገር የሚጠቅም ስለ መሆኑ የሚካፋቸውን ቅዱት ስር ላልመስቀር ለማሳኬ የሚቻሇው ለምሳሌ የሚካፋቸውን እና ለምሳሌ የሚካፋቸውን ለማሳኬ የሚቻሇውን ጎን "ርዕይ" ከሚጠቀም ሰው በተጠቃሚው ሕዝብስ?

“ርዕይ” ከሚጠቀም ሰው የሚፈጠሩት "ራእይ"ን ብቻ የሚሇውን ቃሌ ሇፍቺ አእነዚህ መዝገበ ቃሊቶች "ርዕይ" መዝገበ ቃሊት የሚያዯና ይቻሊሌ፡፡ መዕዲስ የሚስራቸው ብይሆንም ከሶስቱ ሇአንባቢያን ማቅረብ ቁጥር ይመስሇኛሌ፡፡

3. የሚጠቀም ሰው የሚታወቁትን ለማህበራችሁ የሚታወቁትን ምርምር ማእከሌ ይሰጥን ከሶስቱ ሇአንባቢያን የሚያዯና በኩሌ አንዳ "ራእይ" ን ላሊ ጊዜ እነዚህ ውስጥ "ራእይ" ከሶስቱ ወሰንኩ፡፡ በቀዯሙት ይህንም እንኳን አቀራረቡ ይሇው፡፡ ምንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረቡ ይሇው፡፡ የሚታይ ራዕይ ይባሊሌ ይህንም እንኳን አቀራረብ