

# Towards a Comprehensive Prosecution Service in Ethiopia: Noting the New Developments<sup>1</sup>

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## **ABSTRACT**

Although Ethiopia's public prosecution is a recent development, continuous changes have been made since the first public prosecution department was established. While the prosecution service has been wavering between centralized prosecution department at times and specialized prosecution institutions in another, a new comprehensive prosecution department – the Federal Attorney General has been recently established in the federal government taking almost all prosecution powers to it. This article briefly reviews the historical development of the prosecution department, the ups and downs between centralized and specialized prosecution institutions and the new developments related to the establishment of the Federal Attorney General as a comprehensive prosecution institution.

**Keywords:** *Prosecution Service. Ethiopia. Comprehensive Prosecution Institution.*

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## 1 INTRODUCTION

Ethiopia is a federation with nine regional states, and two city administrations answerable to the federal government.<sup>3</sup> Government power is divided between the federal government and the regional states<sup>4</sup>. Both the federal government and the regional states have their own respective legislative, executive and adjudicative powers.<sup>5</sup> According to the FDRE Constitution, there are powers - including the power of taxation - assigned exclusively to the federal government,<sup>6</sup> exclusively to the regional states<sup>7</sup> and concurrently to both the federal government and regional state.<sup>8</sup> Undesignated powers are given to states<sup>9</sup> except that undesignated taxation powers are to be decided and assigned by the joint session of the House of Peoples Representatives and the House of Federation<sup>10</sup>.

With respect to prosecution, the federal government and the regional governments have their own respective prosecution departments,

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3 The nine regional states are the State of Tigray, the State of Afar, the State of Amhara, the State of Oromia, the State of Somalia, the State of Benishangul/Gumuz, the State of Southern Nations, Nationalities and Peoples, the State of Gambella Peoples and the State of Harari People. See Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995 (21st August 1995) 1st Year, No. 1 Federal Negarit Gazeta (Addis Ababa), Article 47, (hereinafter called, FDRE Constitution). And the two city administrations are the city of Addis Ababa and the city of Dire Dawa. While the FDRE Constitution in article 49 refers Addis Ababa as a Capital City, its administration answerable to the federal government, the city administration charter which is proclaimed by the House of Peoples Representatives provides that its administration is answerable both to the federal government and the residents of the city. See Addis Ababa City Government Revised Charter Proclamation No. 361/2003 (24th July 2003) 9th Year, No. 86 Federal Negarit Gazeta (Addis Ababa), Article 17(1). The City of Dire Dawa is, similarly, administered as a federal city with a charter proclaimed by the House of Peoples Representatives, its administration accountable to the federal government and the residents of the city. See The Dire Dawa Administration Charter Proclamation No. 416/2004 (30th July 2004) 10th Year, No. 60 Federal Negarit Gazeta (Addis Ababa), Article 15(1).

4 FDRE Constitution, Article 50(1).

5 *Id.*, Article 50(2).

6, *Id.*, Article 51, 55 and 96.

7 *Id.*, Article 52(2) and 97.

8 *Id.*, Article 51 and 55 cum 52(2) and 98.

9 *Id.*, Article 52(1).

10 *Id.*, Article 99. The House of Peoples Representatives (also called the lower house) is the legislative council, members of which act as the representatives of the Ethiopian people as a whole. And, the House of Federation (also called the upper house) is a house in which Nations, Nationalities and Peoples are represented at least by one with one additional representative for each additional one million people. See FDRE Constitution, *supra* note 1, Article 54(4), 61(1) and (2).

within their executive branch of government. The prosecution at the level of the federal government was distributed in different institutions with specialized prosecution powers.<sup>11</sup> Some of the regional states also seem to have followed the experience of the federal government and have developed the system of different specialized prosecution institutions.<sup>12</sup> Recently, however, with a view to have a comprehensive prosecution department at the level of the federal government, there is a new law proclaimed to establish the Federal Attorney General,<sup>13</sup> bringing almost all the prosecutorial works in to one government organ. This article reviews the new developments resulting from the enactment of the new law in brief. The discussion in this article is limited to the prosecution department at the level of the federal government for two reasons. First, studying the prosecution services in the regional states requires a separate study of itself for want of time and resources. And second, it is the federal government that has taken the lead in enacting a new law establishing a comprehensive prosecution service and whether the regional states will share and follow this experience is to be seen yet.

This article is arranged in four parts. The first part shortly narrates the historical developments of prosecutorial works in Ethiopia from ancient to recent times. This part highlights from the time where prosecution was left to be the private task of the crime victim or her/his representative to the time where prosecution begun to be a public

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11 As we will see below, the institutions with power of prosecution were the Special Prosecutor's Office which was established during the time of the Transitional Government of Ethiopia (TGE), the Ministry of Justice, the Ethiopian Revenues and Customs Authority, the Ethics and Anti-Corruption Commission and the Trade Practice and Customers Protection Authority.

12 For example, the States of Tigray, Amhara and Oromia has established their respective Revenue Development Authorities with special prosecution power related to tax felonies. See The National Regional State of Tigray Revenue Development Authority Reestablishment and Determination of its Powers and Duties Proclamation No. 210/2011 (2003 E.C.(2011)) 18th Year, No. 26 (Tigray Negarit Gazeta) (Mekelle), Article 6(14) and 7(1)(c); A Proclamation to Provide for the Reestablishment and Arrangement of Powers and Duties of the Amhara National Regional State Revenue's Authority Proclamation No.168/2010 (7th May 2010) 15th Year No. 4 Zikre Hig Of the Council of the Amhara National Regional State in the Federal Democratic Republic of Ethiopia (Bahir Dar), Article 6(2)(g) and 7(1)(c); and Proclamation to Provide for the Establishment of the Oromia National Regional State Revenue Authority Proclamation No. 175/2012 (November 30, 2012) 21st Year, No. 1/2012 Megeleta Oromia (Finfine), Article 7(3) and 8(2).

13 Federal Attorney General Establishment Proclamation No. 943/2016 (2nd May 2016) 22nd Year, No. 62 Federal Negarit Gazeta (Addis Ababa), (hereinafter called, Proc. No. 943/2016).

concern with prosecution department established as a government organ. The second part assesses the continuous changes made to the organization and administration of the prosecution. This part discusses the era of centralized prosecution service, the era of specialized prosecution, and the way towards the establishment of the Federal Attorney General as a new development creating a comprehensive prosecution department – bringing the legacy of centralized prosecution service back. The third part examines the important provisions of the new law with respect to the organization and administration of the prosecution; the role, powers and functions of the prosecution; specialization within the prosecution; decisional independence and accountability of prosecutors; and rights, benefits and protections given to prosecutors. And the fourth part puts concluding remarks. What has to be clear from the outset is that as the study of practices needs time and resources, this article is limited to only the thematic assessment of the legal provisions, this being the main limitation of the study. Practical concerns with respect to prosecutorial works in Ethiopia are untapped areas for those who are interested to undergo their research in relation to prosecution services.

## **2 HISTORICAL OVERVIEW OF PUBLIC PROSECUTION IN ETHIOPIA: ANCIENT TO RECENT**

Although Ethiopia is an ancient country with its own ancient legal system, the development public prosecution is of recent origin in Ethiopia.<sup>14</sup> Founded on the provisions of Feteha Negest - an ancient source of laws in Ethiopia - prosecution was left to be a private task, in which the injured party, his relatives or representatives may compromise with the defendant to either set the defendant free after collecting blood money - i.e. compensation - or inflict the punishment

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<sup>14</sup> For more on ancient legal system and prosecution in Ethiopia, see Andargatchew Tesfaye (2004), *The Crime Problem and its Correction*, Vol. II (Addis Ababa: Addis Ababa University Press), p. 62, (hereinafter called, Andargatchew Tesfaye).

decided by a judge or community elders.<sup>15</sup> The first codified criminal code was enacted in 1930, and prosecution continues to be a private task even after that because the 1930 penal code did not provide for the establishment of public prosecution office.<sup>16</sup>

The first office of public prosecution was established during the reign of Emperor Hailelassie, in 1942 with a proclamation empowering the Ministry of Justice to appoint the Advocate General (head of the prosecution office), Deputy Advocate General (deputy head of the prosecution office) and all other public prosecutors.<sup>17</sup> A change was made in 1952 with Proc. No. 123/1952 and the power to appoint the Advocate General and Deputy Advocate General was overtaken by the Emperor himself.<sup>18</sup>

When Emperor Hailelassie was ousted and state power was taken by the Provisional Military Administrative Council - the Dergue - and after years of shadows, the prosecution office was established in 1987 according to a proclamation - Proc. No. 11/1987 - which establishes the Prosecutorial Office of the People's Democratic Republic of Ethiopia, which replaces the former office of the Attorney General.<sup>19</sup> The Prosecutorial Office was established as an autonomous state organ no more under the control of the Ministry of Justice and it comprised the Office of Prosecutor General, the Office of Military Prosecutor, the Office of Regional Prosecutor and Office of Provincial Prosecutor.<sup>20</sup> The Prosecutor General was elected by the National Shengo - the

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15 *Id.*, p. 63.

16 *Id.*, p. 64. What is interesting here is that private prosecution has continued as one element of the criminal justice system in contemporary Ethiopia. In cases where the public prosecutor decides not to institute a criminal charge, s/he is required to send the copy of his/her decision to the appropriate persons who are empowered to conduct a private prosecution with an authorization to conduct a private prosecution, in cases of crimes punishable upon private complaint. In such like cases which are punishable upon private complaint, "the injured party or his legal representative"; or "the husband or wife on behalf of the spouse"; or "the legal representative of an incapable person"; or "the attorney of a body corporate" can institute a criminal charge and conduct a private prosecution. See Criminal Procedure Code of Ethiopia, Imperial Ethiopian Government Proc. No. 185 of 1961 (2nd Nov. 1961) 32nd Year, extra ordinary issue No. 1 *Negarit Gazeta* (Addis Ababa), Article 42(1)(a)-(d), 43(2), 44(1) and 47(a)-(d) (hereinafter called Criminal Procedure Code).

17 Andargatchew Tesfaye, *supra* note 12, p. 64.

18 *Ibid.*

19 *Id.*, p. 69.

20 *Ibid.*

legislative council - up on the recommendation of the President of the Republic and, was accountable to the National Shengo, when the Shengo was in session and, between sessions the Prosecutor General was accountable to the State Council - the executive council - and the President.<sup>21</sup> The Prosecutorial Office was given extensive powers. It was empowered, *inter alia*, to ensure that laws were correctly and uniformly enforced, to protect the rights and freedoms of citizens and, to follow up the legality of court decisions and even recommend the stay of execution of court decisions where it believed that the enforcement of such decisions or orders would cause irreparable damages.<sup>22</sup>

Most part of the Dergue era was of civil war in Ethiopia and, the Dergue - which led the country with the power of gun and bullet for 17 years - was ousted in May 1991 by coalition of insurgents - the Ethiopian People's Revolutionary Democratic Front (EPRDF). When the EPRDF took state power and after a year and half time of no formal prosecution office, Proc. No. 39 was enacted in January 1993 to establish the Office of the Attorney General which was comprising the Central Office of the Attorney General, Office of the Central Regional Attorney General, the Office of the Central Zonal Attorney and other Offices of the Central Attorney, to be established as in need<sup>23</sup> by the then Transitional Government of Ethiopia.<sup>24</sup> A quick change was made with Proc. No. 73/1993 and the prosecution office was merged again to be within the Ministry of Justice.<sup>25</sup> After the transition period was over and the Federal Democratic Republic of Ethiopia was established, the prosecution continues to be part of the Ministry of Justice and the Ministry of Justice was entrusted with

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21 *Id.*, p. 70.

22 The follow up of legality of court decisions by and stay of execution of court decisions upon the recommendation of the prosecution office might be considered as an empowerment of the prosecution department on the one hand, but this, seen on the other side, undermines the independence of the judiciary.

23 Andargatchew Tesfaye, *supra* note 12, p. 74.

24 The Transitional Government of Ethiopia (TGE) was planned to be for a two years period, but it was extended to cover a four years time from 1991, when the EPRDF took state power having overthrown the Dergue to 1995, when the FDRE Constitution came in to force. This may be due to political realities.

25 Andargatchew Tesfaye, *supra* note 12, p. 77.

the power and duty to “represent the Federal Government in criminal cases falling under the jurisdiction of the Federal Courts.”<sup>26</sup>

What is not to forget at the time of Transitional Government of Ethiopia (TGE) is that there was especially established Special Public Prosecutor’s Office according to Proc. No. 22/1992 - i.e. prior to the establishment of the Office of the Attorney General.<sup>27</sup> The Special Public Prosecutor’s Office was specially and mainly established to deal with the cases of prosecuting the officials of the Dergue regime which were prosecuted for red terror crimes.<sup>28</sup>

### **3 CONTINUOUS CHANGE IN THE PROSECUTION: THE BACKGROUND FOR THE ESTABLISHMENT OF FEDERAL ATTORNEY GENERAL**

#### **3.1 Specialized Prosecution Powers: The Era Before Centralization**

After the time for the Transitional Government of Ethiopia (TGE) was over and the Federal Democratic Republic of Ethiopia was established, the executive organs of the federal government were reorganized and their powers and duties re-determined.<sup>29</sup> The prosecution, as already said above, continues to be part of the Ministry of Justice and the Ministry of Justice was entrusted with the power and duty to

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26 Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 4/1995 (23rd August 1995) 1st Year, No. 4 Federal Negarit Gazeta (Addis Abba), Article 23(2), (hereinafter called Proc. No. 4/1995).

27 Andargatchew Tesfaye, *supra* note 12, p. 77.

28 *Ibid.* The Dergue officials were prosecuted for crimes of genocide, crimes against humanity, war crimes of murder and rape, the abuse of power and various crimes and convicted for violations of various pre-existing provisions of the 1957 Penal Code. The Special Prosecutor’s Office was established specially for this and unlike the regular prosecution which was under (within) the Ministry of Justice, the Special Prosecutor’s Office was answerable to the Prime Minister. See Tiba FK (2011), “The Trial of Mengistu and Other Derg Members for Genocide, Torture and Summary Executions in Ethiopia” in *Prosecuting International Crimes in Africa*, (Pretoria, South Africa: Pretoria University Law Press PULP), pp.163-184; Hannah Tsadik (2007), *Prosecuting the Past: Affecting the Future? A Sida Minor Field Study of the Ethiopian Transitional Justice Trials* (Department of Peace and Conflict Research, Uppsala University, Summer 2007), pp. 16-43.

29 Proc. No. 4/1995, *supra* note 24.

“represent the Federal Government in criminal cases falling under the jurisdiction of the Federal Courts.”<sup>30</sup> The Ministry of Justice retained its prosecutorial powers even after the powers and duties of the executive organs of the federal government were reorganized through the passage of time.<sup>31</sup> However, other government departments with special prosecution powers were established later, taking part of the prosecutorial powers away from the Ministry of Justice.

The Federal Ethics and Anti-Corruption Commission was reestablished in 2005 to be the first of its kind taking the prosecutorial powers on matters related to corruption cases.<sup>32</sup> It was empowered to investigate and prosecute any alleged or suspected corruption committed by public officials or public employees or other persons in Public Offices in the federal government or Public Enterprises, or in the Regional offices relating to subsidies granted by the Federal Government to the Regions.<sup>33</sup> For the accomplishment of its duties, it was provided in the law that the Commission’s prosecution shall be organized and structured in such a way that ensures its professional independence.<sup>34</sup> Reestablishing the commission with the power of prosecution was, at least ideally, necessitated to enable the commission to effectively fight corruption and impropriety through investigation and prosecution as part of the national commitment to combat corruption.<sup>35</sup>

The Ethiopian Revenues and Customs Authority become the second government agency with power of prosecution on crimes against

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30 *Id.*, Article 23(2).

31 Reorganization of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 256/2001 (12th October 2001) *gilt Year*, No. 2 Federal Negarit Gazeta (Addis Ababa), Article 15.

32 Revised Federal Ethics and Anti-Corruption Commission Establishment, Proclamation No. 433/2005 (2nd February 2005) 11th Year, No. 18 Federal Negarti Gazeta (Addis Ababa), (hereinafter called Proc. No. 433/2005) (now repealed) (hereinafter called Proc. No. 433/2005). The Federal Ethics and Anti-Corrupt Andargatchew Tesfaye (2004), *The Crime Problem and its Correction*, Vol. II (Addis Ababa: Addis Ababa University Press) Commission was first established in 2001, but with no prosecution powers. See Federal Ethics and Anti-Corruption Commission Establishment Proclamation No. 235/2001 (24th May 2001) 7th Year, No. 23 (Addis Ababa) (now repealed)

33 Proc. No. 433/2005, *Id.*, Article 7(4) and 23.

34 *Id.*, Article 11.

35 *Id.*, see the third paragraph of the preamble.



government revenues. It was empowered to investigate customs and tax offences, to institute and follow up criminal proceedings in courts and for the discharge of such responsibilities, to organize its own prosecution and investigation units and supervise their performance.<sup>36</sup> The Ethiopian Revenues and Customs Authority was established as a merger of three government offices: the Ministry of Revenues, Ethiopian Customs Authority and Federal Inland Revenues Authority for the similarity of the powers and duties they were entrusted with, and resource utilization and organizational arrangement.<sup>37</sup> The Ethiopian tax system has undergone continuous improvements as modernization campaigns since the 1990s.<sup>38</sup> As continuity for the massive reforms in the tax system, the establishment of the Ethiopian Revenues and Customs Authority (ERCA) with investigation and prosecution powers was considered as adding strength to the tax administration system.<sup>39</sup>

The prosecutorial power of the Ministry of Justice continuing to diminish, the Trade Competition and Customers Protection Authority was established with prosecution power on crimes committed against trade completion and consumer protections.<sup>40</sup> Now, things are changed and the Federal Attorney General has come up with comprehensive prosecution power taking almost all the prosecution powers of all the government organs with special prosecution powers to it.<sup>41</sup>

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36 Ethiopian Revenues and Customs Authority Establishment Proclamation No. 587/2008 (14th July 2008) 14th Year, No 44 Federal Negarit Gazeta (Addis Ababa), Article 6(10) and 16(1)-(2).

37 *Id.*, see the 2nd paragraph of the preamble.

38 For the tax reforms from 1990-2007, see Alemayehu Geda, "Taxes and Tax Reform in Ethiopia (1990-2007)" in Alemayehu Geda (2011), *Readings on the Ethiopian Economy* (Addis Ababa: Addis Ababa University Press), pp. 188-204.

39 For the reforms in tax administration, see Tadesse Lencho (2011), "The Ethiopian Tax System: Cutting through the Labyrinth and Padding the Gaps" 25 J. Eth. L. No.1, pp. 78-83.

40 Trade Competition and Consumers Protection Proclamation No. 813/2013 (21st March 2014) 20th Year, No. 28 Federal Negarit Gazeta (Addis Ababa), Article 37(1)(b). This proclamation provides for market to be competitive and anti-competitive trade practices are prohibited, and that consumers have protections against defects in goods and services they purchase. Violations against these provisions are punishable and the prosecutorial power on these matters was given to the Trade Competition and Consumers Protection Authority, though short lived.

41 Proc. No. 943/2016, *supra* note 11. All the powers and duties of the Ministry of Justice, all the powers, rights duties of and the Special Prosecutor's Office, the prosecutorial powers which were given to Federal Ethics and Anti-Corruption Commission, to the Ethiopian Revenues and Customs Authority and to the Trade Practice and Consumers Protection Authority are now transferred to the Federal Attorney General.

A special prosecution institution still running, not to forget, is the prosecution of military offences by public prosecutors assigned from within the military personnel. In cases of military offences which are to be decided by military courts, it is provided that after due investigation is conducted and if it is found necessary to institute a criminal charge, a public prosecutor is to be assigned to follow the case.<sup>42</sup> The newly established Federal Attorney General did not take the prosecutorial powers in such cases of military offences and this shows that prosecution of military offences continues to be within the military personnel.

### **3.2 Towards a Comprehensive Prosecution: The Need for**

We have seen above that there were government departments with special prosecution power on specific matters but, now the Federal Attorney General has been established with comprehensive prosecutorial power. What justifies doing away with the special prosecution institutions and establishing the Federal Attorney General? One can collect some of the justifications from the preamble of Proc. No. 943/2016,<sup>43</sup> and three basic points can be mentioned.

First, the establishment of the Federal Attorney General was necessary for the purpose of uniformity, effectiveness and efficiency in the prosecution service to protect public interest.<sup>44</sup> It is understood that the goals of uniformity, effectiveness and efficiency are to be achieved if a comprehensive and strong prosecution institution is established.<sup>45</sup> Second, it is understood that the establishment of the Federal Attorney General contributes for the prevalence of the rule of

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See Article 22. What is to be noted here is that since all the powers and duties of the Ministry of Justice and Special Prosecutor's Office have been transferred to the Federal Attorney General, the Ministry of Justice and Special Prosecutor's Office have ceased to exist as government organs.

42 Defence Forces Proclamation No. 27/1996 (15th February 1996) 2nd Year, No. 15 Federal Negarit Gazette (Addis Ababa) (as amended), Article 33(3).

43 Proc. No. 943/2016, *supra* note 11, see preamble.

44 *Id.*, see the first paragraph of the preamble.

45 *Ibid.*

law.<sup>46</sup> The Federal Attorney General is believed to contribute for the rule of law to be sustained by enforcing laws properly and making sure that laws are organized and enforced properly and government works are conducted properly according to the laws.<sup>47</sup> And third, the establishment of the Federal Attorney General is necessitated in order to organize a prosecution institution with professional and institutional independence and public accountability.<sup>48</sup> To this end the Federal Attorney General is expected to work in a transparent and participatory manner.<sup>49</sup>

## **4 THE FEDERAL ATTORNEY GENERAL: ITS ORGANIZATION, ROLES AND FUNCTIONING**

### **4.1 Organization and Administration of the Prosecution and Prosecutors**

The Federal Attorney General is established as an autonomous federal government ministerial office accountable to the Prime Minister and the Council of Ministers, its head office in Addis Ababa - in the federal capital city - and with possibility to establish branch offices throughout the country as it may think fit.<sup>50</sup> It is organized having an Attorney General appointed by the House of Peoples Representatives up on recommendation by the Prime Minister, and Deputy Attorney Generals appointed by the Prime Minister,<sup>51</sup> line divisions<sup>52</sup> necessary for its work, Management Committee,<sup>53</sup> Federal Public Prosecutors Administration Council,<sup>54</sup> public prosecu-

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46 Id., see the second paragraph of the preamble.

47 Ibid.

48 Id., see the third paragraph of the preamble.

49 Ibid.

50 Id., Article 3 and 4.

51 Id., Article 7(1).

52 Id., 7(2).

53 Id., Article 7(3).

54 Id., Article 7(4).

tors appointed by the Attorney General upon the recommendation by the Public Prosecutors Administration Council<sup>55</sup> and necessary staff.<sup>56</sup> The Attorney General is the head of the prosecution and s/he leads professionally and in accordance with law.<sup>57</sup> Specifically, s/he is empowered, *enter alia*, to exercise the powers and duties of the Federal Attorney General;<sup>58</sup> appoint, administer and dismiss public prosecutors in accordance with the regulation issued by the Council of Ministers;<sup>59</sup> revoke, change, modify, suspend or approve the decision of Deputy Attorney Generals or refer the case for re-examination or revision by the one that has given the decision;<sup>60</sup> and represent the Federal Attorney General in its dealings with third parties.<sup>61</sup> Moreover, the Attorney General can delegate part of his/her powers to relevant organs as is found necessary for effectiveness and efficiency in performance.<sup>62</sup> The Federal Attorney General has also Deputy Attorney Generals to assist the Attorney General in his functions and lead the line divisions to which they are assigned.<sup>63</sup> The Attorney General and Deputy Attorney Generals can be removed from their positions by the Prime Minister.<sup>64</sup>

The Federal Attorney General is financed by a budget allocated to it by the Government<sup>65</sup> and it is required to keep complete books of account which are to be audited annually by the Auditor General.<sup>66</sup>

The administration of public prosecutors is to be determined by

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55 *Id.*, Article 7(5).

56 *Id.*, Article 7(6).

57 *Id.*, Article 8(1).

58 *Id.*, Article 8(2)(a).

59 *Id.*, Article 8(2)(d).

60 *Id.*, Article 8(2)(e).

61 *Id.*, Article (2)(j).

62 *Id.*, Article 8(3).

63 *Id.*, Article 9. Currently, there are two Deputy Attorney Generals: the Litigation Affairs Deputy Attorney General who leads litigations of both civil and criminal matters and the Administrative and Legal Affairs Deputy Attorney General who is assigned to lead issues related administrative matters. Mebrihi Brhane, Senior Public Prosecutor in the Federal Attorney General, personal talks, 22 October 2017

64 Proc. No. 943/2016, *supra* note 11, Article 10.

65 *Id.*, Article 14.

66 *Id.*, Article 15 (1) and (2).

regulations to be issued by the Council of Ministers.<sup>67</sup> And, the proclamation has stipulated for basic principles on which the administration of public prosecutors is to base. These guiding principles are related to recruitment and appointment and internal administration of prosecutors. Appointment of public prosecutors is required to be based, *inter alia*, on obedience to and belief in the Constitution, Constitutional order and rule of law;<sup>68</sup> sense of public service;<sup>69</sup> balanced representation of Nations, Nationalities and Peoples of Ethiopia;<sup>70</sup> Ethiopian nationality;<sup>71</sup> having law education and skill necessary for prosecution work;<sup>72</sup> successful completion of pre-service training given for the sector;<sup>73</sup> and impartiality from conditions that may influence decision making of public prosecutors.<sup>74</sup>

In the internal administration of public prosecutors, the superior and subordinate relationship between public prosecutors are required to be based on systems laid down by considering cooperation and support, work legality, ensuring efficiency, knowledge and skill sharing.<sup>75</sup> Promotion, demotion, salary and benefits of public prosecutors are required to be determined based on performance, effectiveness and ethical condition.<sup>76</sup> The internal transfer of public prosecutors are to be decided based on the work, personal conditions, impartiality and choice of the public prosecutors.<sup>77</sup> Moreover, the provision of privileges for education, training and conference participation of public prosecutors are required to be decided based on the closeness to the public prosecutor's position and work, performance, composition of nationality, sex and disability, contribution for the enforcement of

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67 *Id.*, Article 11(1).

68 *Id.*, Article 11(2)(a).

69 *Id.*, Article 11(2)(b).

70 *Id.*, Article 11(2)(c).

71 *Id.*, Article 11(2)(d).

72 *Id.*, Article 11(2)(f).

73 *Id.*, Article 11(2)(g).

74 *Id.*, Article 11(2)(i).

75 *Id.*, Article 11(3)(d).

76 *Id.*, Article 11(3)(e).

77 *Id.*, Article 11(3)(f).

the powers and duties of the Federal Attorney General, contribution for effective and efficient service provision, and knowledge and skill value addition to the trainee.<sup>78</sup> And, termination of service of public prosecutors is to be decided based on a system that is put in place by considering low performance, ethical violation, medical condition, wish and retirement.<sup>79</sup>

The details of the regulations for the administration of public prosecutors are to be issued by the Council of Ministers yet. The duty to prepare a draft regulation that includes public prosecutors appointment, transfer, leave, service period, position, ethics, organization, structure, salary, benefits and similar matters is vested to a body called Federal Public Prosecutors Administration Council, which is established according to the proclamation, accountable to the Attorney General and its members working procedure are to be determined by a regulation to be issued by the Council of Ministers.<sup>80</sup> Before the establishment of the Federal Attorney General, there was a regulation issued by the Council of Ministers for the administration of federal public prosecutors according to prior laws.<sup>81</sup> Although the new proclamation has not made a specific reference to this regulation, it is provided that regulations, directives and manuals issued before the coming in to force of the new proclamation establishing the Federal Attorney General and relevant for the enforcement of the powers and duties of the public prosecution are applicable until replaced with new ones.<sup>82</sup> Therefore, the existing regulation will continue to be in force being its substitution with a new enactment.

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78 *Id.*, Article 11(3)(g).

79 *Id.*, Article 11(3)(i).

80 *Id.*, Article 12(1) and (2).

81 Federal Prosecutor Administration Council of Ministers Regulations No. 44/1997 (20th Nov. 1998) 5th Year, No. 8 Federal Negarit Gazeta (Addis Ababa)

82 Proc. No. 943/2016, *supra* note 11, Article 25(1).

## **4.2 The Role, Powers and Functions of the Prosecution: Prosecution and Beyond**

The Federal Attorney General has general objectives of respecting and enforcing the constitution and the constitutional order;<sup>83</sup> ensuring rule of law;<sup>84</sup> enforcing criminal law;<sup>85</sup> and enforcing civil interest of the Federal Government and the public.<sup>86</sup> To achieve its objectives, it has been entrusted with extensive powers. The Federal Attorney General has the powers and duties to prepare criminal justice policy by coordinating relevant bodies and coordinate, follow up and ensure its implementation when adopted.<sup>87</sup> It works as principal representative and legal advisor of the federal government.<sup>88</sup> Its powers and duties range from issues related to prosecution in criminal matters and beyond. It has powers with respect to criminal matters, civil matters, legal research and drafting, and respect for human rights.

With respect to criminal matters, it has, save the powers of the police regarding criminal investigation, the power to cause the investigation of crimes falling in the criminal jurisdiction of federal courts, to order the discontinuation and restart of discontinued criminal investigation.<sup>89</sup> It also has the powers, *enter alia*, to review complete investigation files and decide “no case” according to the provisions of the criminal procedure code;<sup>90</sup> to determine guilty plea, to conduct plea bargaining and alternative actions to be taken;<sup>91</sup> and to institute criminal charges.<sup>92</sup>

With respect to civil matters, it represents the federal government

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83 *Id.*, Article 5(1).

84 *Id.*, Article 5(2).

85 *Id.*, Article 5(3).

86 *Id.*, Article 5(4).

87 *Id.*, Article 6(1).

88 *Id.*, Article 6(2).

89 *Id.*, Article 6(3)(a).

90 *Id.*, Article 6(3)(c). Public prosecutors can decide “no case” or “close investigation files” according to Article 42 and 43 of the Criminal Procedure Code; see Criminal Procedure Code, *supra* note 14, Article 42 and 43.

91 Proc. No. 943/2016, *supra* note 11, Article 6(3)(d).

92 *Id.*, Article 6(3)(e).

and federal government agencies in civil litigations and gives decision for the settlement of disputes between federal government agencies in court or out of court in alternative dispute settlement mechanisms and follows the enforcement of such decision, and it represents the Ethiopian Government in international judicial and quasi-judicial bodies.<sup>93</sup> An important power and duty of the Federal Attorney General in civil cases is that it has the power and duty to represent citizens who do not have financial capacity to institute civil actions in litigations especially women, children and the disabled, and victims of crimes who do not have financial means in litigations for compensation for damages emanating from such crimes.<sup>94</sup>

With respect to legal drafting the Federal Attorney General prepares drafts of laws to be promulgated by the federal government, undertake legal reform studies and ensures that international agreements to be signed or adopted by Ethiopia are consistent with the Constitution and other laws and are acceptable in view of Ethiopia's national interest.<sup>95</sup> And with respect to legal research and training, it undertakes legal researches for the implementation of its tasks; it establishes a system for the collection, organization, analysis and dissemination of information regarding the criminal justice system; and it provides continuous training and education for its public prosecutors.<sup>96</sup>

For human rights to be respected, the Federal Attorney General is required to design strategy for the provision of free legal aid, prepare national human rights action plan together with the concerned bodies and pay a visit to persons in custody and take measures against those found to have transgressed the law in violation of human rights.<sup>97</sup>

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93 *Id.*, Article 6(4)(a)-(d) and (g).

94 *Id.*, Article 6(4)(e) and (f).

95 *Id.*, Article 6(5)(a)-(c).

96 *Id.*, Article 6(9)(a)-(c).

97 *Id.*, Article 6(8)(a)-(c).



### 4.3 Independence, Impartiality, Protection and Accountability of the Prosecution and Prosecutors

The Federal Attorney General, as already said above, institutionally is accountable to the Prime Minister and Council of Ministers,<sup>98</sup> and the Attorney General and Deputy Attorney General can be removed from their position by the Prime Minister.<sup>99</sup> From this, one cannot safely say that the Federal Attorney General is institutionally sufficiently independent; it rather is within and under the control of the executive.<sup>100</sup> Individual prosecutors, however, are professionally independent. It is provided that public prosecutors are free to decide based on law without interference.<sup>101</sup> The independence of public prosecutors extends to their protection from any direct or indirect harm related to their prosecutorial works.<sup>102</sup> And, the Federal Attorney General institutionally and public prosecutors individually are not liable for damages resulting from their acts in due performance of their duty.<sup>103</sup> However, while these protections and rights given to public prosecutors are promising, there are no provisions for public prosecutors' right to association and expression, and the silence of the law in this respect can be viewed as a limitation on public prosecutors' rights.<sup>104</sup>

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98 Id., Article 3(2).

99 Id., Article 10.

100 There are no international principles to safeguard the institutional independence of the prosecution department; rather the prosecution department is viewed to be with a duty to receive certain orders from the Government. However, states are required to make sure that individual prosecutors conduct their duty in an impartial and objective way. See José Zeitune (2004), *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioners' Guide*, (Geneva: ICJ), pp. 70-71. (hereinafter called José Zeitune)

101 Proc. No. 943/2016, supra note 11, Article 16(1).

102 Id., Article 11(3)(h).

103 Id., Article 16(3).

104 Public prosecutors' right to association is fundamental. See José Zeitune, supra note 98, p. 73. The right to association is generally provided for in the FDRE Constitution (see FDRE Constitution, supra note 1, Article 31). Moreover, the FDRE Constitution has especially provided that Government employees who are entitled to the right to form associations and trade unions including the right to strike are to be specified in a subordinate legislation. (see FDRE Constitution, supra note 1, Article 42(1)(c)). However, though it is more than two decades since the adoption of the FDER Constitution, so far there is no law promulgated to provide for the details of Government employees' right to association. The absence of detailed provisions in subordinate laws has created a misunderstanding that Government employees,

As to accountability, there is a system provided for by which the Federal Attorney General institutionally and the public prosecutors individually are to be held accountable. The Federal Attorney General institutionally is required to ensure that its works ensure public accountability and public participation.<sup>105</sup> To this end it is required to prepare a public forum quarterly in which selected representatives of community organizations, business and charity organizations and associations, law schools of higher education institutions, individuals and other stakeholders participate.<sup>106</sup> Though the criteria for the selection of forum participants are in the fogs, such public forums are expected to discuss plans, strategies and gaps in the performance of the Federal Attorney General to help it rectify its problems.<sup>107</sup>

Similarly, the professional independence of public prosecutors does not mean that public prosecutors are not accountable in their prosecutorial works. Public prosecutors are accountable to their superior and division heads and are also legally accountable for defects in their work performance and ethics.<sup>108</sup> We have said above that internal administration of public prosecutors (issues including recruitment, promotion, education and training and termination of service) is to be determined based on a system set in advance.<sup>109</sup> We understand from this that the law has provided the basics of how are public prosecutors to be held accountable for their work based on a pre-established system of law. This is expected to effectively rectify certain previous problems in the administration of public prosecutors by establishing a systemic balance between independence and accountability of public prosecutors. A big blow against professional

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the case of public prosecutors included, are not entitled to form associations and trade unions. That is why so far there are no professional associations of judges, public prosecutors and other Government employees in Ethiopia. For a deep analysis with respect to Government employees' right to form trade unions, see Desset Abebe Teferi, "Trade Union Rights of Government Employees in Ethiopia: Long Overdue!" in Ethiopian Journal of Human Rights, Vol. I., March 2013, pp. 109-149.

105 Proc. No. 943/2016, supra note 11, Article 13(1).

106 Id., Article 13(2) (a)-(e).

107 Id., Article 13(3) and (4).

108 Id., Article 17(2) and (3).

109 See the discussion about the internal administration of public prosecutors in 3.1 above.

independence and job security of public prosecutors previously was a directive issued by the Ethiopian Revenues and Customs Authority which entitles the Director General to summarily dismiss a public prosecutor whom he suspected of corruption and against whom he loses confidence without following any legal or disciplinary procedures. It was provided in the directive also that any public prosecutor dismissed in summary loses her/his job security and cannot be returned to his/her work by the order of any court.<sup>110</sup>

What can a counter argument be at this juncture is that so long as the regulations, directives and manuals issued prior to the establishment of the Federal Attorney General are applicable pending their substitution with new ones, as we have seen above,<sup>111</sup> the problem of summary dismissal of public prosecutors is not rectified by the establishment of the Federal Attorney General with professional independence of public prosecutors. However, the proclamation has provided for the professional independence of public prosecutors and for disciplinary measures to be taken based on pre-established system, not on summary. It is also provided that any law which contravenes the proclamation is not applicable on matters covered by the new proclamation.<sup>112</sup> Hence the problem of summary dismissal of public prosecutors cannot continue to be a threat against their professional autonomy.

A concern still however against decisional independence of public prosecutors is the prosecution of military offences by prosecutors assigned from within the military personnel. As said above,<sup>113</sup> the prosecution of military offences is given to persons to be assigned from within the military. This may be considered as a compromise

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110 For a discussion about this, see Leake Mekonen Tesfay, "Job Insecurity of Public Prosecutors in the Ethiopian Revenues and Customs Authority in Light of Human Rights Instruments", academic paper <[www.academia.edu/5851592/Job-Insecurity-of-Public-Prosecutors-in-the-Ethiopian-Revenues-and-Customs-Authority-in-Light-of-Human-Rights-Instruments](http://www.academia.edu/5851592/Job-Insecurity-of-Public-Prosecutors-in-the-Ethiopian-Revenues-and-Customs-Authority-in-Light-of-Human-Rights-Instruments)>

111 See the last paragraph of the discussion in 3.1 above.

112 Proc. No. 943/2016, supra note 11, Article 26(2).

113 See the last paragraph of the discussion in 2.1 above.

against objectivity and independence of public prosecutors, and need reconsideration in the future.<sup>114</sup>

#### **4.4 Specialization Within the Prosecution Service**

For the reason that technological developments and sophistication of life have created complex types of crimes, states are advised to create specialized units in the prosecution to concentrate on the investigation and prosecution of certain crimes.<sup>115</sup> “Specialization of prosecution services may also involve concentrating particular types of cases in one prosecution office in order to ensure that prosecutors have physical protection and are free from external pressures.”<sup>116</sup> The Federal Attorney General, having accepted the advantages of specialized public prosecution service, similarly has established specialized prosecution units. We have seen above that there are two Deputy Attorney Generals: the Litigation Affairs Deputy Attorney General and the Administrative and Legal Affairs Deputy Attorney General.<sup>117</sup>

Beneath the Litigation Affairs Deputy Attorney General, there are five directorates led by a director: the Civil Justice Administration Directorate which follows issues related to civil litigation; the Anti-Corruption Directorate which follows issues related to corruption crimes; the Economic Offences Directorate which follows issues related to economic offences such as tax evasion, contraband, customs fraud and the like; the Organized, Cross Boarder and Nationally Harmful Crimes Directorate which follows issues related to terrorism and money laundering; and the Miscellaneous Crimes Directorate

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114 The placement of public prosecutors in military bases and the working of public prosecutors in cooperation with military authorities, and the working of police prosecutors is viewed as a compromise against the objectivity and independence of public prosecutors. See Inter-American Commission of Human Rights, cited in José Zeitune, *supra* note 98, p. 71; and United Nations (2014), *The Status and Role of Prosecutors: A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide*, (New York: United Nations), p. 12, (hereinafter called UNODC and IAP Guide).

115 For a discussion about specialization in prosecutions, see UNODC and IAP Guide, *id.*, pp. 19-21. 116 *Id.*, p. 21.

117 See footnote 61 above.

assigned to follow other crimes not specially categorized such as homicide, bodily injury, traffic offences and the like.<sup>118</sup>

From this it is humanly to expect that the creation of special prosecution units within the prosecution will go parallel with the complexities of how corruption crimes, economic crimes, and cross boarder crimes are committed and will be a base for effectiveness in the combat against these crimes.

#### **4.5 Future Implications With Respect to Prosecution**

For the reason that it is only about a year after the establishment of the Federal Attorney General, it will be too early to judge its achievements and failures. However, the establishment of a comprehensive prosecution service can be viewed as a step forward to having a uniform, independent, strong, effective and efficient prosecution service. Having the Federal Attorney General as a unified prosecution department is expected to create uniformity not only in the enforcement of laws but also uniformity in the administration and treatment of public prosecutors which was not the case before its establishment.

A prior discriminatory entitlement of benefits to public prosecutors explains the case more. While public prosecutors in the Ministry of Justice and the Federal Ethics and Anti-Corruption Commission were entitled to residential house and transport allowances pay role tax free for long, similar benefits were allowed for the public prosecutors in the Ethiopian Revenues and Customs Authority only since March 2015. After the Federal Attorney General was established and the public prosecutors were transferred from the Ethiopian Revenues and Customs Authority to Federal Attorney General, the Ethiopian Revenues and Customs Authority was audited by the Auditor General for the year 2014/2015 the result of which worsens the case more.

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118 Mebrhi Brhane, Senior Public Prosecutor in the Federal Attorney General, personal talks, 22 October 2017.

As a result of such an audit the Auditor General was said to have recommended that the residential house and transport allowances to which the public prosecutors in the Ethiopian Revenues and Customs Authority were entitled were unduly made pay role tax free and so that the public prosecutors shall pay the amount of tax back. To this end, the finance department of the Ethiopian Revenues and Customs Authority wrote for each of former public prosecutors to pay the amount of tax which was claimed not paid since March 2015 – June 2016.<sup>119</sup> Such an anomaly occurs due to the separation of the prosecution service in to various institutions, and the establishment of the Federal Attorney General rectifies such a discriminatory treatment between public prosecutors.

The commitment to have a strong prosecution department is revealed by provisions in the law regarding duty to cooperate and criminal liability. Any person except in cases of beyond his/her capacity is required to cooperate with the works of the Federal Attorney General and public prosecutors.<sup>120</sup> Similarly, members of the police are required to respect and enforce final and legal decisions given by public prosecutors.<sup>121</sup> To enforce these provisions it is provided that any interference against the independent decision making of the Federal Attorney General and its public prosecutors, disobedience to decisions thereof and failure to cooperate are criminally punishable offences.<sup>122</sup> These are meant to respect the independence, powers and functions of the public prosecution. And, these imply that a base has been built for the development of a comprehensive, independent, impartial and strong public prosecution office in the future.

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119 Similarly, I, the writer of this article have been addressed with a letter claiming for the payment of 10,360 (Ten Thousand Three Hundred Sixty) ETB. Ethiopian Revenues and Customs Authority. Letter., Ref. No. EL-4/21/09., 25 March 2017. The residential house and transport allowances were allowed free of income tax by the Prime Minister. Former public prosecutors of the Ethiopian Revenues and Customs Authority have petitioned to the Prime Minister against the claim of payback, and so far no response has been given.

120 Proc. No. 943/2016, *supra* note 11, Article 23(1).

121 *Id.*, Article 23(3).

122 *Id.*, Article 24.

## 5 CONCLUDING REMARKS

Prosecution in Ethiopia was the private task crime victims for long time. And, since the first public prosecution department was established during the reign of Emperor Hailelassie I in 1942, continuous changes have been made with respect to its organization and administration. After times of wavering between a centralized prosecution department at times and between separately specialized prosecution departments in another time, a comprehensive prosecution department – the Federal Attorney General has been established in the federal government in view of having uniform, effective and efficient prosecution service contributing for the sustainment of the rule of law, respect for human rights and public interest. While it is established accountable to the Prime Minister and Council of Ministers and so not safe to say it institutionally is immune of executive control, it is provided that public prosecutors individually are professionally independent to freely decide based on law without interference. The formal powers and duties given to the Federal Attorney General are so extensive. It has powers, *inter alia*, to decide regarding prosecution in criminal matters, to represent the Government and other needy citizens in civil litigations, to prepare draft laws to be promulgated by the federal government and make sure international agreements entered in to by Ethiopia protect the National Interest, and to train and educate its public prosecutors. With respect to accountability, the Federal Attorney General is required to work in a manner ensuring public accountability, and to this end it prepares quarterly public forums. And, while the Federal Attorney General institutionally and public prosecutors individually are immune of liability to damages caused due to their acts in due performance of their responsibility, it is provided that public prosecutors are legally accountable for defects in their work and ethics. Internal administration of public prosecutors - including issues related to recruitment, promotion,

assignment, and disciplinary measures - is to be determined based on predetermined regulations in away balancing independence and accountability. To enforce the independence, powers and functions of the Federal Attorney General and public prosecutors, it is provided that everyone except in cases of beyond capacity is required to cooperate, and interferences against the independence of the prosecution, disobedience to legal decisions thereof and failure to cooperate are punishable offences. While the practicality of these all is to be seen in the future, the establishment of the Federal Attorney General with all its powers can be viewed as a foundation for having a comprehensive, strong and independent prosecution department.

## **RUMO A UM MINISTÉRIO PÚBLICO ABRANGENTE NA ETIÓPIA: ANALISANDO NOVOS DESENVOLVIMENTOS**

### **RESUMO**

*Apesar do ministério público ser recente na Etiópia, mudanças contínuas tem sido feitas desde que a primeira promotoria foi estabelecida. Enquanto o ministério público oscilava entre centralização departamental em um período e instituições especializadas em outro, um novo departamento ministerial de âmbito federal – Procuradoria-Geral – foi recentemente estabelecido no governo federal concentrando quase todo o poder ministerial. Este artigo brevemente revisita o desenvolvimento do Ministério Público, a oscilação entre centralização e especialização de suas instituições e os novos desenvolvimentos relacionados ao estabelecimento da Procuradoria-Geral como uma instituição ministerial abrangente.*

**Palavras-chave:** *Ministério Público. Etiópia. Instituições ministeriais abrangentes.*



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