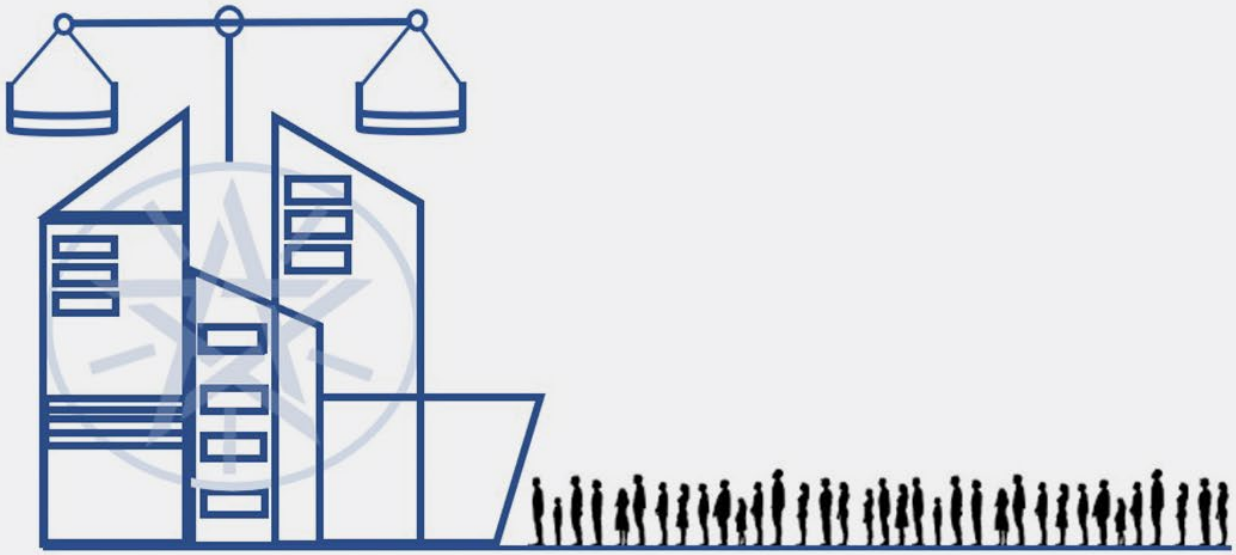


Explanatory Note for the Provisions of Federal Administrative Procedure Law

በኢፌዲሪ ጠቅላይ ኢቃቤ ሕግ
የሕግና ፍትህ ጉዳዮች አማካሪ ጉባኤ

Legal and Justice Affairs Advisory Council
Federal Attorney General

Published by

The Legal and Justice Affairs Advisory Council of The Federal Democratic Republic of Ethiopia Attorney General.

Address

The Head Quarters of the F.D.R.E Attorney General
Jomo Kenyatta St,
Addis Ababa, Ethiopia

www.eag.gov.et

Phone Number: +251-11-554-18-68

Fax: 0115517775

Addis Ababa, Ethiopia
June 2021

Preface

This text is intended to provide an explanatory note of the legal provisions contained under the Federal Administrative Procedure Law. This law is the first of its kind to the Ethiopian legal system, and for this reason, the legal system lacks a well-developed practical base in this regard. As a result, there is no question as to the relevance of this kind of foundational document. This document is prepared based on this very objective and purpose. The explanatory note is prepared in a bilingual fashion (i.e. Amharic and English) with a view to broadening access to a wide range of readership. Admittedly, it can be said that the power of interpretation and to determine the scope of law is given to the judiciary. Nevertheless, making available an explanatory note prepared by experts who participated in drafting of law serves as a reliable institutional memory. Thus, it is a useful handbook for citizens, judges and other implementing personnel, which in turn creates a uniform understanding of the law and paves the way towards its uniform implementation.

This document is the result of an effort made by the core team of legal experts who participated in the preparation of the Law and whose name is indicated below. They were assisted by experts whose name appears below in the explanatory note preparation process. Members of the law-making working group whose names are indicated as an annex to this document have also contributed to shaping the form and content of this explanatory memorandum. However, we would like to underline that the core team of legal experts undertake full responsibility for any shortcomings and deficiencies manifested in the document.

At this time in point, we would like to indicate that, where appropriate, this document has made use of cases and examples to further elucidate the explanations provided. These examples are merely hypothetical cases and do not represent real incidents.

The core team of legal experts in the preparation of the expose de motif consists of Mehari Redae (PhD), Solomon Abay (PhD), Wondemagegnehu G/Selassie (Mr.), Abdulatif Edris (Mr.) while research assistants are Minilik Assefa (Mr.), Solomon Getachew (Mr.), Galane G. Kumssa (Ms.), Getaneh Habtamu (Mr.) and Liya Tekle (Ms.).

Mehari Redae (PhD)
Law Making Process and Administrative Law Working Group,
Coordinator

Acknowledgments

This document is intended to provide an explanation of the Federal Administrative Procedure Law. The development of this document was financially supported by the German Federal Ministry for Economic Cooperation and Development, and implemented by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH. We really appreciate their support and duly acknowledge their commitment.

Moreover, we would like to thank Dr Birgit Grundmann (State Secretary of the Federal Ministry of Justice (ret.), Attorney at Law) and Friedrich-Joachim Mehmel (President of High Administrative Court and Constitutional Court of the Free and Hanseatic City of Hamburg (ret.), Chairman of Rechtsstandort Hamburg e.V., Partner of lawcom. institute) for their time and expertise in providing their expert view in further enriching the contents of this document.

We would also like to acknowledge the indispensable contributions made by the members of Law Making Process and Administrative Law Working Group, served this working group on a voluntary basis and by dedicating their^ time and energy without hesitation.

Finally, we appreciate the efforts dedicated to secure funding for this project generally by the Secretariat of the Legal and Justice Affairs Advisory Council and particularly by Dr Abadir M. Ibrahim, who is the Head of the Secretariat.

Contents

Chapter One: Introduction

1.1 Background

Ever since Ethiopia established modern administrative agencies, there was a longstanding belief that there had been a need for a legal framework and procedure in place that governs their day-to-day activities. This effort moved with noticeable magnitude during the reign of Emperor Haile Selassie I. It even progressed to the extent of preparing a draft, which failed to materialize due to various reasons.

Historical records showed that similar plans and attempts were made during the military regime. Even after the adoption of a federal constitution in Ethiopia, since the Constitution, under Article 12, provides that governmental actions should follow the principle of transparency and accountability, studies indicate that multiple efforts were made to prepare draft laws, and such drafts were sent to the Council of Ministers for deliberation.

All of these attempts have remained at trial stages, failed to materialize and translated into result until now. It is well known that making the administrative working system transparent and predictable militates against arbitrary measures of the executive. For those executives who would like to have unfettered power, such a law is not happily received. Therefore, the initiation and adoption of such a law requires a strong political will and commitment. In fact, it may be argued that it could be due to mainly lack of serious political commitment that the earlier attempts for the adoption of the law miserably failed.

Recently, however, in 2018, a "Working Group" which was tasked with drafting an administrative procedure law was established. As the task was of utmost urgency, the Working Group managed to complete its task, and currently, Administrative Procedure Law has become an integral part of the Ethiopian legal system for the first time in Ethiopian history.

1.1.1 The Need for Administrative Procedure Law

As stated above, the Constitution stipulates that the conduct of State affairs shall be transparent. One of the branches of the State that constitutes the executive organ consists of the administrative agencies. As such, the working procedures of administrative agencies is also expected to follow the principle of transparency and accountability. Furthermore, the Constitution stipulates that human and democratic rights of citizens and peoples be respected (Article 10(2). Organs of the State and their officials have the duty to ensure observance of the Constitution and to obey it as well (Article 9 (2)). It has been further stipulated that everyone has the right to access to justice (Article 37).

Moreover, beyond the Constitutional principles, it is evident that in a democratic system, the interaction the Government has with its citizens regarding their rights and obligations is to be determined by a predictable set of rules and decision-making procedures. These all require full-fledged procedural rules for their implementation.

The current administration and the ruling party have publicly acknowledged that the government has been tainted with a deep-rooted lack of good governance in their governmental service delivery; and have tendered a public apology and promised to rectify this. A few manifestations of the lack of good governance are unfair decision-making process by administrative agencies, lack of transparency, unpredictable decision-making procedures, bribery and other corrupt practices. The hope is that this proclamation would play a significant role in resolving and reducing the adverse impact of these malpractices.

In addition to the traditional functions of the government, which are ensuring law and order, standard setting, and quality control and monitoring have been among the responsibilities of modern governments. Since the latter responsibilities have the effect of interfering in the economic affairs of

citizens, there arises a need to have a clear legal framework regulating them. It is thus imperative to formulate a recipient centered mode of governmental service delivery. This law tries to address the roles of the executive and the judiciary in this regard within the context of the principle of separation of powers. Furthermore, it stipulates the sanctions associated with non-compliance to the dictates of the law as well. Hence, the importance of this law is indisputable.

1.1.2 Establishment of a Drafting Working Group

Legally, the Federal Attorney General Office works as principal advisor and representative of the federal government regarding law (proclamation No. 943/2016; Art.6 (2). In addition to this general mandate, it has been entrusted with the power to lead the legal and justice reform efforts of the country since mid-2018. In order to effectively discharge its legal reform agenda, the Office established what it designated as "Legal and Justice Affairs Advisory Council." This Council was established through a directive and is composed of 13 Ethiopian legal professionals with a higher educational background and longstanding experience in the field of Ethiopian law.

The Advisory Council is mainly leading the legal reform agenda. It has organized 10 Working Groups under its supervision, which are assigned to focus on different subject matters of the law reform. The Working Group entrusted drafting this Administrative Procedure law is the working group designated as "Law Making Process and Administrative Affairs Working Group". This Working Group, for its part, is composed of 10 members with ample years of service in the legal field ranging from 10 to 40 years. In addition, the members of the Group consists of professionals working in higher education institutions, government agencies, and private legal practice. (Their list is annexed herewith)

The Working Group members undertook the task of drafting this legislation as an additional load to their regular jobs, during their private time, on a voluntary basis, free of charge and more importantly, as a national duty. The task commenced in September 2018, and the Law came into effect as of 07 April 2020.

The Working Group began its task by collecting and reviewing documents necessary for the drafting process. Documents include, but are not limited to, a study undertaken by the Work Bank in cooperation with the Office of the Prime Minister. Draft legislation prepared by the Attorney General and the Office of Ombudsperson and a research document prepared on the subject by the Justice and Legal System Research Institute.

Constitutional provisions, national policies and other laws relevant to the subject at hand were also taken into account in the process of preparing and drafting this law. Constitutional principles such as transparency and accountability, equality, access to justice and others were given due consideration. Once all the necessary preparations were made, legal issues that challenged the Working Group and created a wide range of issues for discussions emerged. At this point, it became clear that the Working Group could not progress to the drafting phase without resolving these outstanding issues. These were –

A. What type of law to draft? Administrative Law or Administrative Procedure Law?
B. Is the scope of application of the law limited to federal administrative agencies? Or does it extend to regional administrative agencies as well?
C. Would there be administrative agencies that do not fall within the ambit of this law? Or is it applicable to all administrative agencies?
D. It is well-known that administrative agencies conduct activities that have legal implications. A few examples include entering in to contract for the purchase of products or services, providing governmental services through its employees, government-owned buildings or vehicles may cause harm the rights and interests of others, issuing directives and handing administrative decisions.

Do all of these activities fall under this law? Or which of the activities are to be governed under this law?

The Working Group proceeded to the drafting process after conducting lengthy and detailed discussions on these issues and reached a consensus. It will be helpful to see how the Working Group resolved these issues.

Administrative Law or Administrative Procedure Law?

Firstly, it is important to elaborate as to what we mean by an administrative law or administrative procedure law. The Working Group viewed administrative law as a branch of law that prescribes the roles, responsibilities, organization and accountability of administrative institutions, while administrative procedure law is understood as a law that deals with the manner how and the time when these roles and responsibilities of administrative agencies are to be carried out.

As stated above, the Working Group considered administrative law as a piece of legislation in the form of a proclamation or a regulation establishing a given administrative agency. It stipulates its role, responsibility, organization and to whom the institution is accountable. Thus the piece of legislation is handed down at the time of forming the agency. As such, the existence and nonexistence of administrative agencies of as well as their respective roles and responsibilities is contingent on the restructuring and dissolution of administrative agencies.

Thus, it is important to note that the legal gap that existed and that still exists in our legal system is not of administrative law. Rather, the gap relates to administrative procedure law. Because the limitation is not the question of what roles and responsibilities administrative agencies have; instead, the problem lies in the manner and timeline these roles and responsibilities are to be carried out. Consequently, the Working Group concluded that the legislation that should be drafted is not an administrative law rather an administrative procedure law.

Is the scope of application of the law limited to Federal Administrative Agencies? Or does it extend to Regional Agencies as well?

The answer to this question is to be obtained by referring and consulting the Constitution. Pursuant to the Constitution, both the regional and federal governments have legislative, executive and judicial powers based on Article 50(2). The fact that the Federal and the Regional states have their distinct branches of government implies that they will been having their respective administrative laws and procedures.

In fact, Article 52(2) (a) of the Constitution provides that Regional states are authorized to establish a state administration that best advances self-government. This means such regional states are expected to determine by law the manner and the time in which regional administrations carry out their respective roles and responsibilities. Furthermore, based on the division of power stipulated by the Constitution, both the federal and regional governments are to enact administrative procedure laws to federal administration and regional administrations, respectively.

However, Regional States are not precluded from using this law as a model and adopt their own administrative procedure law, which fits their context. It is important to note, however, that this law is also applicable to the city administrations of Addis Ababa, Dire Dawa, which don't have the power to enact laws except on matters related to municipal issues as they are directly accountable to the Federal Government. [1]

Among Federal Administrative Agencies, are there any that fall outside of the ambit of this law?

It is important to explore the characteristics of administrative agencies to decide whether they fall under this law's ambit. It is known that the characteristics of some of the administrative agencies rely much on confidential information and require vigorous measures. On the contrary, this law requires a transparent working system, a detailed consultation process and employs slow and time-consuming working procedures. Therefore, this law is incompatible with institutions whose mandate requires secrecy and urgency.

1 Although Addis Ababa is constitutionally recognized to have a full measure of self-government, its power to self-government is to be determined by the Federal legislature (Article 49(2) of the Constitution). Consequently, the Federal Parliament has issued a Charter (proclamation No.361/2003) based on which the level of its self-government is to be established. Close reading of the provisions of the Charter does not seem to grant power on regulating the manner of governmental service delivery to the City as the power accorded to the city is more of municipal affairs than administrative justice. Particularly, the jurisdiction of the City Courts does not extend to power of judicial review. It must be noted that unlike the Regional States, the Administration of Addis Ababa is accountable to the Federal Government (Article 49(3). In fact, the self-governing status of Dire Dawa is much more controversial as it has no constitutional recognition to that effect. Thus, the Working Group held that this law applies to both cities as well.

For instance, even if they are parts of the executive branch of the government, the military, the national security and the police require confidentiality due to national security and public interest concerns. Moreover, most of their tasks are expected to be carried out in an urgent manner. For these reasons, governing these institutions by this law would have a negative impact on their effectiveness. Therefore, it is believed that excluding these (and other similar institutions) from the realm of this law is found necessary in the public interest.

However, with respect to the activities of these agencies that do not require secrecy or urgency, this law would be applicable. In a sense, their exclusion from the ambit of this law is not general but rather dictated by specific tasks and type of activities. We will further elaborate on this issue in detail later on.

Which of the activities of an Administrative Agency are to be governed by this Law?

Another topic raised at the Working Group deliberation is concerning which activities of administrative agencies are to be governed by this law. An administrative agency may, as a contracting party, enter into a contractual relationship to purchase goods and services or, in the form of a contract, supply these goods and services to enable the institution to carry out its duties and responsibilities in an efficient manner.

The issue of whether this contractual relationship is to be governed by this law was raised and discussed. The Working Group held that the government's position in entering into contractual agreements and purchasing goods and services is not a task undertaken because of being a "government" but rather a task the government undertakes like any other person with a legal personality. In addition to this, it is important to note that these types of contracts; and the manner in which these contracts should be entered into are already governed by Administrative Contract Law or Government Procurement Law. Hence they are not subjected to administrative procedure law.

On another note, government agencies hire employees on a (permanent or temporary) basis and provide governmental services through their personnel. The issue that may arise here is regarding the employer and employee relationship between the government agencies and their employees; and whether this relationship is to be governed by this law.

In this regard, it is held that there is the Federal Civil Servants' Proclamation that governs the employment condition of permanent government employees. However, there is also a legal regime that regulates government employees hired on a temporary basis as well. These legislations deal with procedural matters such as hiring, promotion and firing of employees. For this reason, the employer-employee relationship is not going to be covered under this law.

In circumstances where government employees cause harm on the rights and interests of persons in the process of carrying out their respective duties; or government vehicle may cause harm in the process of discharging government services or government-owned building may collapse and cause harm and ultimately result in responsibility. Whether these issues are to be governed by this proclamation was also discussed.

Pursuant to the Civil Code, even administrative agencies are considered legal persons. All the scenarios indicated above are to be governed by the Law of Extra-Contractual Liability under the Civil Code. As such, these matters are not going to be covered under this law.

To sum up, the duties and responsibilities indicated above have their own respective legal frameworks and do not fall under this legislation. Therefore, what is to be governed by this proclamation is mainly in relation to "administrative actions" undertaken by the government solely for the reason of being organs of public power.

For the purpose of this law, "administrative actions" consist of issuance of directives, rendition of administrative decisions and conducting administrative monitoring and supervision activities. This proclamation stipulates procedures that administrative agencies should not only adhere to carrying out these measures but also set legal consequences for failing to adhere to these procedures.

In relation to this issue, even though it is not entrusted to all administrative agencies, some administrative agencies have been accorded with the power, by law, to establish judicial tribunals

in order to carry out semi-judicial tasks. Although the administrative agencies and not the House of People's Representatives appoint these judges, they, nevertheless, play a judicial role. For instance, under the Labor and Social Affairs, there is the Labor Relations Affairs Board; under the Ministry of Revenue, there is the Tax Appeal Commission; under the Ministry of Trade and Industry, there is the Trade Competition and Consumer Protection Appellate Tribunal. These tribunals discharge more or less a judicial function except that these tasks are undertaken not by ordinary judges. The Working Group deliberated in detail whether the working procedures of these tribunals is to be governed by this law or not.

The working procedures of these tribunals, mainly in relation to their jurisdiction; procedure of entertaining cases; appeal procedures; matters in relation to appeal and whether to entertain questions of law, questions of fact or both; are all spelt out in the respective proclamations that established these tribunals. As a result, these tribunals are to be governed by their respective establishing proclamations and not by this proclamation.

1.1.3 Process of Legislative Preparation

After resolving the outstanding issues in the manner stated above, the Working Group proceeded to the next phase, which is formulating draft law. It did have the opportunity to closely examine and assess the draft prepared by the Attorney General. At the end of the examination, the Working Group concluded that this draft possesses major deficiencies in organizational structure, content and use of language. As a result, the Working Group decided to prepare its own draft. Nonetheless, the Working Group did not totally abandon the draft legislation prepared by the Attorney General. In fact, certain provisions were drawn from it and injected in to the new draft legislation.

As soon as the Working Group completed its first draft, it was presented to the Advisory Council orally and in writing for its consideration. The Advisory Council deliberated extensively and gave feedback on how to improve the draft.

Taking into account the feedback made by members of the Advisory Council, the Working Group had revised the draft and made the necessary improvements accordingly. Following such amendments, a half-day consultative meeting was conducted, and necessary input was also gathered from heads of legal departments from different administrative agencies. As a result, an improved draft was prepared based on the inputs gathered, following which another half-day consultative meeting was organized with representatives from civil societies, media professionals and representatives of opposition political parties. The input then gathered was also used to improve the draft further.

The draft legislation was then submitted to the Federal Attorney General with the appropriate improvements from the inputs gathered, which in return made its own improvements and submitted same to the Council of Ministers. The Council of Ministers deliberated on the contents of the draft and submitted it to the House of People's Representatives to be promulgated in the form of proclamation.

The House of People's Representatives sent the draft to the appropriate Standing Committee for further review; the Committee also raised more questions and made comments to which members of the Working Group were able to address these questions and comments accordingly. Finally, based on the recommendation made by the Standing Committee to pass the legislation, the House passed the legislation and brought it into effect on April 07, 2020.

1.1.4 Organization and Structure of the Law

Generally, the Proclamation is organized under three fundamental pillars. These are:

a. Directive issuance procedures;
b. Administrative decision-making procedures; and
c. Judicial review procedures

When we examine the structure of the proclamation, we find five sections and sixty-two provisions together with sub-articles under them. Here in below, we will elaborate on each of the provisions and contents of the proclamation.

1.2 General Provisions

1.2.1 Short Title

Article 1

This Proclamation may be cited as "Federal Administrative Procedure Proclamation No. 1183/2020."

As indicated above, administrative law is a branch of law that defines the organization of administrative agencies, lists powers and responsibilities thereto, hierarchy and accountability and other similar arrangements. As elaborated under the preceding part of this document, the nomenclature of this legislation is to be known as "Administrative Procedure Law". This means the proclamation is intended to provide for procedures that need to be followed by administrative agencies in their effort to enforce the powers and responsibilities bestowed upon them, such as issuing directives and rendering administrative decisions.

On another note, due to the constitutionally apportioned legislative division of powers between the federal and regional governments, it is held that the federal government can only pass an administrative procedure law that applies at the federal level. Thus, the title of the law, which includes the word "federal", is self-explanatory with regard to its scope of application.

1.2.2 Definitions

Under this heading, the Law defines words and phrases employed in the proclamation with a view to enabling the clear and effective implementation of the proclamation. Among others, one can find the words and phrases such as "Administrative Agency", "Directive", and "Administrative Decision" being defined. In fact, defining "Administrative Agency" came first since it is a key concept, as the proclamation is to be applicable exclusively to administrative agencies.

Article 2(1)

"Administrative Agency" means an Executive Organ of the Federal Democratic Republic of Ethiopia duly established by law and includes the Executive Organs of City Administrations accountable to the Federal Government;

We can think of two organs to be included in the definition stated above. First of all, it is to be noted that government ministries are permanent members of the Council of Ministers. They are thus recognized as the primary executive organs of the Federal Democratic Republic of Ethiopia. Secondly, there are those government bodies, which do not have the status of ministries but established by law (i.e. by proclamation or regulation), which comprises Agencies, Commissions or Authorities, and other organs with similar status.

Although legislative councils and judicial organs possess an irreplaceable role in justice delivery, they will not however be treated as administrative agencies for the purpose of this proclamation. Thus, this proclamation does not apply on them. Since legislative and judicial institutions have their respective detailed procedural framework, the fact that they are not covered by this proclamation does not pose a serious regulatory gap.

Nevertheless, when we look at the legislative organ, there are executives who are directly accountable to it and that issue directives and hand down administrative decisions. These are organs such as the Electoral Board, Federal Auditor General, Office of Ombudsperson, Human Rights Commission and Housing and Population Census Commission. In addition to these executives, organs as such the Ethiopian Broadcast Agency and the Federal Anti-Corruption Commission are, as well, accountable to the legislative body.

Admittedly, these organs are structurally outside of the Executive branch, but functionally, their responsibilities require them to issue directives and render administrative decisions. For instance, the Federal Auditor General is empowered to draw up professional standards with respect to audit services; and based on the standards, issue professional licenses and grant work permits. Similar regulatory power has been granted to the Electoral Board as well. The same holds good to the Ethiopian Broadcast Agency.

Therefore, though these institutions are not structurally organized under the Executive branch, for purposes of this proclamation, their regulatory and decision-making functions place them as subjects

of this proclamation. Hence, while discharging tasks, they will be required to comply with the stipulations of this law.

Finally, the government bodies included under the coverage of this proclamation are the city administrations of Addis Ababa and Dire Dawa, which are accountable to the federal government. Although these city administrations possesses legislative and judicial organs in addition to their executive organs; based on the similar logic to what we stated for the federal government above, this proclamation only applies to the executive branch of the city administrations.

Article 2(2)

"Directive" means a legislative document that is issued by an administrative agency based on delegation of Power bestowed upon it by the Legislator, which affects people's [persons] rights and interests. The term also includes the amendment or repeal of an already existing directive;

In the Ethiopian hierarchy of norms, directives are third-level regulatory instruments. proclamation is an instrument of the legislative organ and hence a primary legislation. Below it is found Regulation which is to be issued by the Council of Ministers (Executive Organ in its collectivity) upon the delegation of the legislature (Article 77(13) of the Constitution) and thus subsidiary legislation. Since a directive is to be issued by a single executive office, its status falls under Regulations, thereby making it third in hierarchy.

Be that as it may, based on this definition, regardless of the name given to any instrument issued by an administrative agency, if that particular instrument has the effect of impacting rights and duties of governmental service recipients, for purposes of this proclamation, it will be designated as a "Directive". It should therefore be made clear that documents designated by administrative agencies as "manuals", "guidelines", "polices", "frameworks", "circulars" and other documents with equivalent effect are to be considered as directives and regulated by this proclamation as long as they affect individuals' right and duties.

Another important point this definition tried to stress is administrative agencies cannot issue directives at their pleasure unless they are delegated to do so by the legislature. The reason for so holding is that since issuing a directive is exercising legislative power and based on the principle of separations of power, legislative power is tasked to the legislature, and hence the latter should give authorization to undertake such activity. Even though some contend that the power to issue directives is an inherent or implied power of administrative agencies, this proclamation does not subscribe to this view on the belief that such a position erodes the principle of separation of powers.

Article 2(3)

"Administrative Decision" means decision issued by an administrative agency relating to persons rights or interest in its day-to-day function, excluding issuance of Directives;

Excluding the making of a Directive

According to this article, an administrative decision is an inherent day to day activity of an administrative agency which affects the rights and interests of persons, excluding the making of a directive. Although it may be argued that issuance of a directive may be a result of an administrative decision since directive has already been defined above, it was found proper to exclude directive from the definition of an administrative decision.

Inherent in day-to-day Activity

Administrative agencies are entrusted with powers and functions by their establishing laws and related substantive laws. The agencies make decisions every day when they exercise these powers and functions. This decision making authority is their inherent power. Section Three of the proclamation applies to this.

Affecting the Rights and Interests of Persons

The powers and functions of administrative agencies may or may not relate to the rights and interests of persons. The agencies may be entrusted with powers and functions to propose laws and policies to the government, to execute enacted laws and policies, to execute development plans, to license and regulate activities, to give public service, to employ and administer employees, to sign and execute contracts, to own and administer property, and so on.

They make decisions every day when they exercise these powers and functions.

The administrative procedure proclamation is not intended to be applicable to all these but on the decisions which directly or indirectly affect the rights and interests of clients of the agencies and are not covered by other laws. Accordingly, the law and policy proposing; the law, policy and plan executing; and the employment, contract and property administration functions and decisions of the agencies which are covered by other laws are not governed by the administrative procedure proclamation.

The right or interest affected by the administrative decision may be monetary or non-monetary. The person whose right or interest is affected may also be a natural or legal person as defined by the proclamation. It must be underlined, however, that the major day-to-day activity of an administrative agency is rendering administrative decisions. In fact, decision making, unlike the issuance of a directive, is an inherent power of administrative agencies. This attribute makes it different from issuance of directive that requires delegated authority to undertake. Administrative decisions have positive or negative impacts on service recipients with respect to their rights and interests. Thus, it is considered appropriate that such governmental actions should be regulated by law. As a result, this proclamation spelt out principles that should be complied with by decision makers during handing down of administrative decisions. Chapter III of this document will elaborate them.

1.2.3 Scope of Application

Article 3(1)

This Proclamation is applicable on all Administrative Agencies except Prosecutor and Police when they perform duties administered by the Criminal Procedure Law and Military and Security Institutions.

Article 3(2)

Notwithstanding the provisions of sub-article (1) of this Article, issuance of directives and decisions making relating to regulatory and service provision functions of these Institutions shall be subject to the requirements of this Proclamation.

Article 3(3)

Without prejudice to Article 11 of this Proclamation, National Bank is not duty bound to implement obligations provided under Article 7-10 of this Proclamation when it enacts directives concerning exchange rate, interest rate of the country and other similar secret [confidential] issues.

In principle, this proclamation is applicable on all federal administrative agencies. However, tasks of the Attorney General and the Police, which are extensively regulated by the Criminal Procedure Code, are outside of this coverage as the Criminal Procedure Law governs them. Similarly, tasks of defense forces and security service are excluded as well.

This kind of exclusion has been in practice in other countries as well. Most of the tasks undertaken by these institutions require confidentiality and urgency. In addition to this, these institutions have their own laws and procedures regulating their powers and responsibilities and the manner of exercising them. For instance, in relation to criminal justice administration, the Criminal Procedure Code regulates the Attorney General and the Police in detail; the same is true for the others. On the day-to-day activities of the National Bank, foreign exchange and interest rate as well as other similar issues, which require confidentiality, it is believed that these activities require special procedures in place. The scope of application of this proclamation is designed by taking these factual situations into account.

On a related note, there is a point that needs to be stressed here. The agencies, which are indicated above, are not excluded from the realm of this proclamation in their entirety. Rather the exclusion is limited to their major responsibilities only. Other activities which these institutions undertake as subsidiary activities are to be governed by this proclamation. Admittedly, it may be difficult to distinguish between major and subsidiary activities. Nonetheless, offering examples may assist in understanding the issue at hand.

For instance, the major responsibility of the Federal Police is to prevent and investigate any threat and acts of crime against the Constitution and the Constitutional order, security of the Government and the State and human rights (Article 6(1) of proclamation No.720/2011). The implementation procedure of this responsibility has been stipulated mainly under the Criminal Procedure Code. But its establishing proclamation stipulates additional responsibilities as well. Accordingly, the Federal Police is empowered to issue a certificate to individuals with no criminal records (Article 6(14); and to issue certificates of competence to private institutions wishing to engage in providing security services (Article 6(28). There is no procedure of implementation for these additional responsibilities. Thus, they will be a subject matter of the present law.

Similarly, the Attorney General's main responsibility is related to causing criminal investigation to be started on cases falling under the jurisdiction of federal courts, follow up report to be submitted on an ongoing criminal investigation(Article 6 (3) (a) of proclamation No.946/2016). Moreover, it entrusted with instituting criminal charges by representing the Federal Government (Article 6(3) (e). These tasks are being regulated by the Criminal Procedure Code. However, supervising and administering advocates, practicing at federal level and services provided by them; and based on the law, license the same and renew, suspend or revoke the license granted to them (Article 3(11). For these latter tasks this procedural law shall be applied as there is no other procedural modality of implementation. A similar analysis could be considered in relation to the National Intelligence and Security Service and the military.

Chapter Two: Directive Making and Implementation Procedure

2.1 Issuance of Directives

In the previous sections, we have determined the meaning of a "Directive" for the purpose of this proclamation. Based on this, we have indicated that it is any document issued by an administrative agency that has an impact on a person's rights, duties and interests positively or negatively. In trying to understand the purposes of the provisions under this chapter, we should keep this definition at the back of our minds. Therefore, here in below, a provision-by-provision explanation will follow.

Article 4(1)

Any administrative agency can adopt directive on the basis of Power Delegated to it by Law.

This provision's major emphasis is to underline the fact that it is only through a duly granted delegation that an administrative agency can issue a directive. To this effect, it lays down the principle that a rule can only be issued if the Agency had been granted with such powers through either a proclamation or a regulation. Therefore, an administrative agency needs to be granted an explicit power of issuing directives through its establishing law or any subsequent law. Out of this, administrative agencies do not have an inherent power of legislating. This, as indicated in the previous chapter, is for the simple reason that the principle of separation of powers as enshrined in the Constitution allocated legislative power to the legislative organ.

Article 4(2)

An administrative agency may issue directives only through the procedures provided by this Proclamation.

As has been discussed in chapter one, one of the main objectives of this proclamation is to rectify the existing lack of transparency, accessibility, predictability and other deficiencies rampant from the drafting stage all the way to adoption and implementation of directives. The importance of this objective cannot be overemphasized given the status of directives as a material source of law next to proclamations and Regulations in the Ethiopian legal system.

Accordingly, unless there are exceptional circumstances justifying derogation from the rules, upon the coming into force of this proclamation, any administrative agency should strictly follow the procedures stipulated under the proclamation when issuing directives or other instruments conforming to the definition of directives as provided under this proclamation.

The purpose that this sub-article aims to establish is, the fact that an administrative agency has been granted with the power to issue directives does not imply that it can determine the timing and manner of issuing such proclamation of its own will. Instead, it should follow the procedures laid down under this proclamation.

Article 4(3)

Regarding matters affecting his right or interest, any person has the right to request an administrative decision even though an administrative agency has not adopted a directive.

Article 4(4)

Failure on the part of an administrative agency to issue Directives legally empowered to adopt shall not be a reason to deny services or rendering an Administrative Decision.

More often than not, it is normal to find situations where rights and duties are enshrined in proclamations or regulations, but the modalities for their implementation are left for detailed legislations through directives to be adopted in future. It is also

not uncommon to encounter situations where the administrative agencies empowered to issue such directives withholding services, citing the delay in the issuance of such directives. However, given the fact that the initial drafting of most primary legislations, such as proclamations at the federal level, are led by the respective ministries or other administrative agencies responsible for its implementation, this reason for denying service should not be considered plausible. If the failure to issue directives is taken as valid defense to deny governmental service, it would enable administrative agencies to deny service to citizens due to their own omission.

Accordingly, the purpose of these two sub-articles and the subsequent two provisions is to compel administrative agencies to issue directives in a timely manner where they have been entrusted with the power to issue directives for the implementation of laws, whether or not they were the ones who prepared the parent law. This is designed to ensure that citizens are not denied the rights they are entitled to for the mere lack of implementing laws.

2.2 Period for Issuance

Article 5

Any administrative agency shall issue a directive, which is on the basis of the mother [parent] law, if a directive is mandatory it shall be ratified [adopted] within three month, if it is not mandatory it shall ratify [adopt] within a reasonable period of time.

Conventionally, the legislature uses a variety of methods when delegating responsibilities to administrative agencies. Sometimes the delegation is specific and clear; at other times, delegation is formulated in a more general manner. To illustrate this, let us consider the following two examples.

Suppose there are the following provisions in an investment proclamation. Article 7 (1) provides that *"Investment activities in less developed regions will be accorded with incentives. The details shall be determined by a directive to be issued by the Commission."* Moreover, Under Article 44 (2) of the same proclamation, it states that *"The Commission may issue directives for the proper implementation of this Proclamation."* These two provisions place two different responsibilities on the Investment Commission.

The first provision requires that the directive be issued in order for the incentive to take effect. The second provision, however, gives the discretion to the Commission regarding if and when a directive is to be issued. Hence, the first one imposes a specific obligation to issue a directive while the second one provides general discretionary power to the Commission.

Therefore, according to this proclamation, if an administrative agency is required by law to issue a specific directive, it must issue such a directive within three months. The reason for choosing the three-month period as reasonable is the fact that the House of Peoples' Representatives has determined in its working system that implementation directive should be issued within three months from the promulgation of the parent law. At this juncture, it is important to stress the assumption that in the context where a given proclamation or regulation cannot be enforced on its own, the relevant agencies will be working on the preparation of directives necessary for the implementation of these parent legislations alongside with the process of preparing such laws through the rigorous legislative process.

On the other hand, if, as discussed above, the delegated power of issuing directive comes in the form of a general delegation, the relevant administrative agency should issue a directive within a reasonable period. At this juncture, the obvious question is how can one determine a "reasonable period". First of all, the need for issuance of a directive in a given context is to be determined on a case by case basis and based on practical needs that may arise in the process of implementation.

Secondly, once the determination for the need to issue a directive is made, the scope and depth of further research needed to develop the directive, the scope of the subject matter and the need for specialized expertise required, the time required to adequately obtain and incorporate stakeholder feedback on the subject matter, the number of other administrative agencies that may be involved in implementing the directive, etc. are factors that can be considered.

2.3 Petition for Adoption of Directive

Article 6(1)

Any person may ask the agency through written application to adopt a directive, when an administrative agency failed to adopt a directive it was mandated within a reasonable period of time.

Article 6(2)

An agency which receives a petition for adoption of a Directive shall commence the process of adopting [the Directive] a rule within 30 days or deny the petition, stating its reasons.

Rather than leaving the decision on whether or not to issue a directive solely to administrative agencies, this article provides an opportunity for citizens to initiate the process when they are of the view that the administrative agency has failed to issue a directive in a timely manner. If we consider the above example here, it is expected that investors who have invested in less developed regions and who believe that they deserve the incentives under the proclamation may promote or even petition for the issuance of such a directive.

However, where the administrative agency considers that the proclamation in question may be self-executed, or existing legal frameworks sufficiently address the concerns raised by the petitioner or if there are other adequate justifications, can deny such a petition by citing its reason. Upon so doing, the agency is held to have made an administrative decision. Such a decision falls under the rubric of Chapter Three of this document and will be dealt therein.

If not, the administrative agency shall begin the process of issuing the directive within thirty working days in accordance with the procedure set out in the proclamation. This does not mean that the directive must be issued within thirty working days. Rather, it should be noted that the process should begin within 30 working days, as the actual issuance may take longer. Because, as we will see below, the notification, the written and oral consultation process required by the Law is likely to take longer duration.

2.4 Maintenance of Registry

Article 7 (1)

At the time of adopting a directive, an administrative agency shall keep a record/file containing the following:

a) The subject matter of the directive being considered and time line of major steps;

b) An information regarding the status of the draft directive in the process of adoption;

c) Notices published in relation to the adoption of the draft directive;

d) A period of time within which the public may comment on the draft;

e) Comments received in accordance with Articles 8 and 9 of this Proclamation and positions taken regarding the comments.

Article 7 (2)

Any person may inspect or get a copy of the records organized in accordance with Sub Article (1) of this Article, against payment of expenses.

There are two basic purposes to be attained by setting up a registry. The first is that both the agency and persons who are interested in the directive to be adopted can easily find information about the process and its content in an organized manner. Even in the context of a high turnover of officials, it allows for the maintenance of institutional memory so that the institutions can operate smoothly without being adversely impacted by the change of personalities. In this way, both the institution and the concerned parties will be able to be competently prepared for the implementation of the directive subsequent to its approval. Second, as stipulated in the judicial review part of the proclamation, in the event where the directive's validity is challenged on account of procedural irregularity, such a registry can serve a reconstituted proof for all parties concerned. The details of what such a registry should contain are outlined under sub-article one of this provision.

2.5 Issuance of Notice

Article 8

An agency shall publish a notice containing the following information on a newspaper with wide circulation, its website and other media, prior to the adoption of a directive:

1) ***The legal basis to draft the law and the subject matters to be covered by the draft;***

2) ***Indicating that persons may get a copy of the draft and where they may access it;***

3) ***Where, when and how persons may give comments on the draft;***

4) ***Where, when and how persons may get access to the records kept in accordance with Article 7 of this Proclamation.***

As noted in the introduction part of this document, one of the main purposes of this proclamation is to ensure public participation, transparency and predictability in the formulation and implementation of directives. A quick survey of rulemaking practices in many federal agencies demonstrated that the system is secretive and does not exhibit a measure of meaningful stakeholder participation. This state of affairs needed a fundamental change.

Thus, the requirement of notice whenever an administrative agency prepares a directive is designed to enable citizens to participate in a meaningful way, in a way that affords an opportunity to have a meaningful impact and to ensure that the directive is developed with qualitative input from a variety of sources. Therefore, the administrative agency is required to give adequate notice in advance of the plan to draw up and implement the directive.

One of the reasons for making public notice mandatory is to enable anyone who is interested to participate in the consultation process both through written submissions and/or oral hearings rather than limiting the consultation within the narrow circle of formally invited guests. Such public notice must be published in a newspaper of wider circulation in order to ensure its wider reach. The phrase newspaper *with wider circulation* should not be understood to mean government-owned newspaper. Rather, it should be determined taking not only the number of newspapers published into consideration but also the geographic coverage of the country as much as possible. While newspaper publishing is a major means of advertising, given that internet coverage and accessibility will increase in the future, it is expected that every administrative agency will publish the draft directive it intends to issue on its website. It is also believed that advertising through the radio and television will increase access.

Regarding the minimum content of the notice, it is not always necessary to publish a full copy of the draft directive. However, in situations where the administrative agency is engaged in the process to amend a few provisions, it is assumed that all of these provisions may be included in the notice.

Here in below, one may find a template as to how a typical public notice should look like.

Ethiopian Telecommunication Authority
Notice Issued to Solicit Public Opinion on the Draft SIM Card Registration Directive

Pursuant to the power granted to it by Proclamation No. 1148/2011, Articles 54 (2) and 51 (4) the Ethiopian Telecommunication Authority has prepared a draft directive regarding the implementation of SIM card registration.

The draft directive contains provisions on the establishment of a national customers' database, information to be included on a SIM card customer registration, conditions for SIM card deactivation, grievance handling and redress procedures, penalties, conflict resolution, customers' data security and confidentiality.

Anyone interested in obtaining a copy of the draft directive can download it for free from the official website using the link below:

https://eca.et/2020/08/24/stakeholders-consultation-on-directives-lawful-tariffs-competition-and-sim-card-registration/

Persons wishing to get a hard copy of the draft directive and other relevant information may obtain it by appearing in person at the authority headquarter, Office No..... against payment of Birr.....

Any person who wishes to submit comments on the draft directive in writing may send his/her comments until date..... month..... Year..... through the authority's email address..... or by appearing in person at the authority headquarter.

Anyone wishing to comment orally may take part in a consultation meeting to be held at the Authority's headquarters on..... Day..... Month..... Year. Starting 8.00 A.M.

Ethiopian Telecommunication Authority

2.6 Circulating Draft Directive for Feedback

Article 9(1)

An administrative agency shall solicit comments from relevant administrative agencies and other stakeholders by sending the draft it publicized in accordance with Article 8 of this Proclamation.

Article 9(2)

Agencies and stakeholders who may have comments on the draft should submit such comments in writing within a time prescribed by the Agency. The period for comments to be prescribed by the Agency shall not be less than 15 working days.

One of the problems that has come up repeatedly in the studies used as inputs in the preparation of the draft proclamation as well as during consultations with stakeholders on the draft is the lack of coherence and even a prevalence of contradiction among directives issued by different administrative agencies.

To help reduce this problem, it is stipulated that in the process of issuing a directive, in addition to the public notice under Article 8, an administrative agency is required to directly solicit the opinion of relevant administrative agencies and other key stakeholders as much as possible. This implies that, beyond government institutions, efforts should be made to identify other institutions and civil society organizations as the case may be. For example, if

the Ministry of Education prepares a draft guideline governing teachers' qualification standard, it will be obliged to send the draft to teachers' association for feedback, in addition to the public notice in accordance with Article 8.

For comments submitted in accordance with this Article to be considered in the adoption of a directive, they should be submitted in a written form within the time limit set by the Agency. To ensure that such a solicitation of views is meaningful, it is stipulated that the Agency that prepared the draft should give sufficient time to stakeholders through such a procedure, which should not be less than 15 working days. While the 15 working days is taken as the absolute minimum, the size of the draft directive, the technical complexity, and other considerations should be taken into account in determining the amount of time it takes to adequately understand and offer feedback.

2.7 Public deliberation on the Draft

Article 10(1)

After the expiry of the date for receiving written comments, the Agency shall organize a public forum open for all interested persons and gather inputs.

Article 10(2)

Persons who have not had the [opportunity] chance to given comments in accordance with Article 9, may submit written comments at the hearing.

Article 10(3)

The Agency shall ensure enough time is allotted for different views to be aired.

A cursory comparative look into the practice of other legal systems, as well as the various drafts that have been prepared in Ethiopia in the past, reveals that public hearing on draft legislation is an exception rather than a procedure that has to be fulfilled in every process to adopt a directive. On the contrary, providing the opportunity to give oral comment on drafts has been the discretion of the Agency or upon demand by a given number of stakeholders to do so.

In this proclamation, however, taking into account the fact that the majority of our communities' lack of technical capacity and experience to engage in written form, and the near absence of strong and independently organized civil society organizations such as consumer associations and other organized community groups, public hearing on draft directives is established as a mandatory procedure that has to be met in every single instance of adopting a directive.

In public hearing forums to be organized pursuant to this provision, depending on the number of participants and the scope of the topics covered in the draft directive, sufficient time needs to be accorded in order to enable meaningful engagement. Failure to do so will make the procedure just a nominal participation, and as such, unacceptable. Occasionally, it is normal to encounter situations where presenters monopolize the time allotted and do not provide an opportunity for participants to comment. This proclamation, however, stipulates that such merely nominal participation is unacceptable.

2.8 Exemption from Consultative Process

Article 11 (1)

An Agency may be exempted from the requirement provided under Articles 7 to 10 of this Proclamation where conditions listed hereunder are fulfilled:

a) Where there are emergencies and time does not allow to go through the requirements;

b) Where the issuance of advance notice may be contrary to Public Interest;

c) Where the issuance of notice may undermine the implementation of the directive;

Article 11 (2)

An Agency issuing directives relying on Sub Article (1) of this Article shall keep a record explaining the reasons justifying the exemption.

This provision sets out the specific conditions under which the procedural obligations such as keeping records, publishing notice, and collecting

feedback through various means may be waived. The first of these is the urgency of the matter in a context where it is not appropriate to take time to fulfil these procedures.

For example, Article 27 (7) of proclamation No. 1097/2011, provides that the Ministry of Health is given the authority and responsibility to "take measures to prevent conditions that may harm the health of the community and when emergency situations occur, it shall provide solution by coordinating with other bodies" Accordingly, if an outbreak (for example, the recent outbreak of COVID 19) occurs in one place, it may be necessary to restrict the movement of people in order to control the spread of the virus, or to issue directives that require special precautions to be taken. In this case, time does not allow to comply with procedures such as sending the draft for comment, setting up a forum for public hearing and others. Thus, the Ministry would be justified to adopt a directive immediately upon finalization of the draft and proceed towards immediate implementation. This is what Article 11(1)(a) is trying to address. One can also think of many other similar situations.

Incidentally, it should be noted that the phrase "in case of emergency" in this provision is meant to indicate the urgency of the situation and does not imply the requirement of a formal declaration of "State of Emergency" as enshrined under Article 93 of the Constitution.

The second exception is situations where *"prior notice may be contrary to public interest"*. The obvious question this expression begs is, how can transparency harm the public interest? But it can happen occasionally. For instance, for various policy objectives, the Ministry of Trade and Industry may decide the sale of certain basic commodities at prices determined by the Government. Should the Ministry go through the procedures outlined under Articles 7 to 10, regarding consultation, in promulgating the directive outlining the prices, it is highly likely that before the final decision is made, market distortion will be created. As a result, uncertainty may affect the supply of these essential commodities, thereby harming public interest. Accordingly, preparing and adopting these kinds of directives should preferably be exempted from such procedures and be undertaken in a confidential and non-consultative process.

The third and final exception is a context where *"prior notice will undermine the implementation of the directive."* To illustrate: considering that the Government Housing Agency is preparing to issue a directive to sanction those who are illegally sub-letting rental housing to third parties, if one of the measures to be introduced by the Directive is a possibility for lessees of the agency's tenants to enter into a lease agreement directly with the Agency, the disclosure of this planned measure through the consultation process will give the rule-breakers an opportunity to evict their tenants in advance of the adoption of the directive, thereby frustrating its implementation. In such circumstances, agencies should be exempt from the above-mentioned open and public consultation procedures.

Nevertheless, here is one thing to bear in mind. A cardinal rule of legal interpretation stipulates that exceptions should be interpreted narrowly. Exemption from public consultation is an exception to the general rules, and hence these exceptions should be applied in a strict fashion. With this mindset, the proclamation stipulates that an agency invoking such exceptions should document a detailed description of the reasons for the exemption (Article 11 (2)). This is to ensure that institutions do not deviate from the procedural obligation by a mere invocation, but rather they should provide detailed justification as to why the specific exemption they are invoking is in line with the objectives for which they are meant.

Finally, if an agency adopts a directive by invoking the exceptions while the circumstances to preclude the procedures are not met, it may be instructed to initiate the process afresh, or the directive may be nullified in its entirety, pursuant to the provisions of the proclamation relating to judicial review. In the event that the validity of a directive is challenged on any of these grounds, it is assumed that the documentation of a detailed explanatory statement will help in the trial process by serving as pre-constituted proof.

2.9 Time and Condition of Adopting Process of a Directive

Article 12(1)

An Agency may not adopt a Directive before the period for oral [public] hearings and written submissions prescribed under Articles 9 and 10 expires.

Article 12(2)

An Agency shall consider comments submitted on the draft before ratifying [adopting] a Directive.

Article 12(3)

In fulfilling the obligation to consider indicated under Sub Article (2) of this Article, the agency may amend the draft in line with the comments or prepare a written justification for rejecting the comments.

Article 12(4)

Prior to ratification of a directive, the Agency shall send the draft to the Federal Attorney General for its opinion.

Article 12(5)

The Attorney General shall submit its opinion within 15 working days. Where the Attorney General fails to submit its opinion within the time prescribed here, it shall be considered as though it does not have opinion on the draft and the agency may proceed to ratification [adoption].

Both the administrative agencies and persons to be affected by a draft directive need sufficient time to prepare in order to either be able to comply with new obligations or benefit from new rights that may be introduced by such a directive. The reasons for prohibiting to adopt a directive before the time for receiving comments and conducting stakeholder consultation expires are making sure rulemaking procedures are complied with and the assumption that sufficient preparation on the part of the institutions and individuals may enhance the successful implementation of the directive.

As has been repeatedly stated in the sections above, the participation of persons and potential stakeholders should not be merely symbolic. With a view to attaining this, it is stipulated that administrative organs must consider all comments submitted before approving draft directives. This does not mean, however, that all stakeholders' suggestions must be accepted. The relevant question at this stage, therefore, is what does the obligation to consider mean? Or how can one ensure that an administrative agency has fulfilled this obligation? Instead of leaving this ambiguous statement for a discretionary interpretation by the agency, the proclamation has opted to provide its own guidance under sub-article (3) of Article 12 by stating: *"the Agency may amend the draft in line with the comments or prepare a written justification for rejecting the comments."* It does not mean that the justification should directly respond to each and every one of the comments. It would be sufficient to provide a general explanation of why it decided not to incorporate the major comments.

Another step that must be taken before a directive is approved is to seek the opinion of the Attorney General and incorporate such comments in a manner it sees fit. It is important to note that the opinion of Attorney General should mostly relate to whether or not the draft directive is in compliance with basic legal principles, does not contradict with basic constitutional provisions, whether or not the administrative organ has the authority to issue such a directive, and whether or not the agency has complied with the substantive and form as well as the procedural requirements stipulated under the proclamation. This is dictated by the assumption that the Office of the Attorney General, being the primary legal adviser to the executive organ, is staffed mainly with experts in law and not with other disciplines.

On the contrary, concerning the main policy consideration and implementation strategies that may be included in a given directive, the administrative organ that prepares the draft is considered to have a more relevant technical and professional expertise. As a result, the opinion of Attorney General should be limited to legality indicators mentioned above unless the subject matter is of a particular concern arising out of its mandate.

Pursuant to Article 12(5), where the Attorney General fails to submit its feedback within 15 working days, the Agency may proceed with the adoption process of the draft. By so doing, the proclamation tries to balance two interests. On the one hand, it aims to introduce a verification and clearance pro-

cess to ensure that draft directives comply with legality standards in both form and content; while on the other hand, failure of the Attorney General to act in due time should not cripple the activities of the Agency by delaying the adoption of the Directive according to plan.

2.10 Effect of "Substantial Difference" between draft and final version of a directive

Article 13(1)

An Agency may not ratify a directive that is substantially different from the draft publicized through notice. However, the Agency may not be barred from terminating the process at hand and commence a new one, where an agency intends to adopt a directive with a substantial difference.

Article 13(2)

A final draft directive shall be considered to be substantially different from the one publicized where:

a) The scope of application of the draft directive has markedly changed; or

b) The draft directive introduces new obligations.

When an administrative agency modifies a draft directive it has disseminated for comments, the options it will have subsequently will be determined depending on the breadth and depth of the modification.

If the final draft is *"substantially different"* from the prior draft communicated to the public, the process of adopting the directive cannot proceed. Unless the agency decides to abandon its plan of adopting the directive altogether, it will be required to start the consultation process afresh.

The proclamation sets out two criteria for what constitutes *"substantial difference"*. The first of these is "If the scope of application of the draft has markedly changed". The scope of application of a directive is considered to be changed if the scenarios under which obligations or rights are created change or the type and number of people to be affected significantly increase under the directive.

For example, let us assume the Ministry of Transport has initiated a draft directive requiring all cross-country public transport commercial vehicles to introduce speed control appliances to help reduce the number of traffic accidents that were increasing from time to time. After preparation of this draft, in consultation with stakeholders, it was decided that the appliances should be applied not only to cross-country public transport commercial vehicles but also to all vehicles including private ones. Accordingly, if the final draft is to be revised in this way, the Ministry will be required to re-start the process of issuing the directive, primarily for the purpose of stakeholder consultation both written and oral. This is because we can say that the scope of implementation of the directive has changed dramatically because the final draft expanded the intended number of addressees to be affected by it. The objective of the new consultation is to provide an opportunity for those who might have been less interested in participating in the earlier consultative process with the assumption that the directive does not concern them.

The second criterion to indicate substantial difference set out in the proclamation is "where a final draft directive includes new obligations". To illustrate this, we can modify the above example.

Let us assume that in the process of consultation that many emphasized that in addition to the prevention of accidents, the directive should aim to reduce the number of injuries and fatalities when accidents happen. For this purpose, a clause compelling all cross-country public transportation vehicles to be equipped with seat belts for all passengers was included in the final draft. Alternatively, some argued that the major problem is associated with vehicle roadworthiness, and therefore, instead of the current annual vehicle inspection, a bi-annual inspection is assumed to be needed, and the final draft was modified accordingly. In both of the above situations, one can say that there is a substantial difference. This is because the final draft contains new obligations that were not in the original draft, and as such, the consultation process needs to be recommenced.

2.11 Preparation of Explanatory Note

Article 14

At the time of adopting a directive, an agency shall prepare a directive explanatory note containing the following:

1) ***The objective and legal basis for adoption of the directive;***

2) ***Where there are differences of content from the draft circulated through notice and the directive adopted, a note explaining the changes and the rationale thereof;***

3) ***A summary of comments on the draft and measures taken in accordance [with it].***

To facilitate compliance by the public and to ensure that any ambiguous or vague clause in the directive is interpreted appropriately, any agency adopting a directive is required to prepare an explanatory note outlining the purpose of the directive and the legal basis for the directive. This does not only mean a simple reference to the parent law but a detailed exposition of the objective the directive and its parent law aim to achieve.

Furthermore, the explanatory note should be prepared in a manner that allows verification of whether or not the agency took its obligation to consider comments given pursuant Article 12 seriously as well as assess the existence of significant differences in Article 13 above. For this purpose, the explanatory note should outline any discrepancies in the content of a draft directive published for comments and the final one to be adopted, along with a summary of comments and justification for the changes, if any. This is expected to help properly understand the process by which the directive has passed through. It also allows the content to be understood not only by a professional lawyer but also by any literate person, and whenever future amendment is warranted to the directive, it would serve as an essential document.

2.12 Form and Content of Directives

Article 15 (1)

In addition to the substantive body, a Directive adopted by an Agency shall be prepared in English and Amharic language and contain:

a) ***Serial Number of the Directive ;***

b) ***A reference to a specific law on the basis of which the Directive is adopted;***

c) ***A short title of the Directive ;***

d) ***Definition, scope of application, main Provisions;***

e) ***A rule referring to directives amended repealed, transitory provisions or suspended if any;***

f) ***Notwithstanding the date specified in Article 18 of this proclamation the effective date of the Directive.***

Article 15 (2)

Directives must be written in a precise and clear language.

Article 15 (3)

An agency may incorporate, by reference in its rules, all or part of directives or Code of conduct that has been adopted by another agency/body where these matters fall within its scope of power.

Article 15 (4)

The Agency shall publicize rules it has incorporated pursuant to sub Article (3) of this Article and submit copies to the Federal Attorney General to be registered in accordance with Article 16 of this Proclamation.

One of the major shortcomings in the adoption of directives is the lack of uniformity in substance and form. To begin with, ever since the modern laws started being adopted and promulgated in Ethiopia, the bilingual publication (English and Amharic) has been a defining feature of the legal system. Proclamation No 3/1995 that re-established the Federal Negarit Gazette also provides that *"all laws to be published on it shall be in Amharic and English"*. Nevertheless, when we consider directives, owing to the absence of a specific law requiring them to be publish in the Negarit Gazette, it is seldom that they get prepared and issued in both languages. In this proclamation however, considering the critical role they play as sources of law, it has been decided that directives be prepared and published in both Amharic and English.

The requirement for bilingual publication is not limited to the final published version alone, but rather it also includes the draft to be circulated for comments. Considering the fact that where draft directives are prepared with the help of foreign experts, or where drafts are prepared based on a model foreign law, the first drat will be in English, the Agency in question should have an Amharic version prepared before commencing the procedure for public and stakeholder consultation.

To ensure uniformity of style, providing for the minimum content and format of directives has been found necessary. Thus, it has been stipulated that every directive shall at least contain, Serial Number, A reference to the law on the basis of which the directive is adopted, a short title of the directive, definition, scope of application, main provisions, a rule referring to directives amended, repealed, transitory provisions or suspended if any.

Some directives that provide for procedural processes or code of conduct may be applicable to more than one agency. In this situation, an administrative agency may directly accede to such directives where it deems relevant, without the need to go through the full-fledged process of adopting a directive, by making a reference to the directive adopted by another agency. Furthermore, as a result of relations with international organizations or relations with counterparts in other countries, there are situations where common codes of conduct are adopted. For example, the Ethiopian Customs Commission may be required to adopt the customs' code adopted by the member states of the Union.

Even though such a code of conduct is not required to go through the procedures outlined for adopting directives under this proclamation, it should be registered and published to ensure its accessibility to clients. We can safely assume that agencies in the health or environmental sector will have many such international instruments, which need to be registered.

2.13 Registration of a Directive

Article 16 (1)

Upon adoption, an agency shall before put on the directives it has sending the copies and accompanying explanatory note to the Attorney General.

Article 16 (2)

The Federal Attorney General shall provide a serial identification number and record Directives submitted to it in accordance with sub-Article (1) of this Article. It shall also immediately notify the agency about the status of registration.

Article 16 (3)

The Attorney General shall publicize to the pubic a filed directive with its explanatory note since the date of notifying its registration.

Article 16 (4)

All Agencies shall file directives they have adopted prior to the coming in to force of this Proclamation within 90 days after the coming in to force of this Proclamation by sending copies to the Federal Attorney General.

One of the main objectives of the proclamation is to ensure that all acts of administrative agencies are done in a transparent manner and respecting the principle of legality. Studies consulted during the drafting phase of the proclamation have shown that there are agencies that are not able to specify how many active directives they have; and are not capable to state whether or not they have directives governing a certain subject matter within their competence. One of the ways to rectify this drawback is thought to be a requirement that all

directives be under the custody of a central database. This will facilitate the achievement of a level of clarity about the directives of a given agency in a centralized fashion.

The fact that all directives of a given agency are registered and deposited at a central database will allow easy determination of which directives are still active, which are amended or repealed. Moreover, it will be easy to identify which directives are adopted in keeping with the legal requirements from those that are not. That the directives will be registered along with the corresponding explanatory notes is assumed to facilitate accessibility of information for anyone who may have suspicion about the process of their adoption or who many want to simply get a better understanding of the contents of the directives.

Agencies should send the directives they intend to implement before the intended date of coming into force. The Attorney General, on its part, has the obligation to assign a serial number and register the directives sent to it as well as promptly confirm the registration to the Agency concerned. This will have a bearing on the date of effectiveness for the directive pursuant to Article 18. Moreover, the Office of the Attorney General has the obligation to publicize and ensure public access to the directives and explanatory notes it compiles. One of the reasons for establishing a central registry is to facilitate easy access to these documents by users.

It is apparent that this proclamation only aims to govern the issuance of directives subsequent to its coming into force. However, leaving the rampant mal-administration that existed prior to it, as it then existed, would be extremely unfair and may even jeopardize the reforms that this proclamation aims to achieve. On the contrary, if all directives issued prior to the coming into force of this law were to be required to conform to the procedural requirements of this proclamation, the overwhelming administrative burden it would create is not to be understated. Hence, a middle-ground approach is chosen.

Accordingly, all directives that existed prior to the coming into force of this proclamation will only be required to be registered and publicized. This means they are not required to be reissued in accordance with the procedure stipulated by this proclamation. Hence agencies are expected to send to the Attorney General all existing directives for purposes of registration and dissemination within 90 days from the coming in to effect of this law under the pain of loss of validity.[2] A joint reading of this rule in conjunction with the stipulations under Article 18 implies that directives that are not duly registered shall become invalid upon the expiry of this period. Should this scenario occur, and a directive becomes invalid, the concerned agency may initiate the directive issuance procedure under this proclamation to adopt it anew if it determines that it still needs such a directive.

2.14 Accessibility of a Directives

Article 17 (1)

The Federal Attorney General shall post directives on its own website that has filed in accordance with Article 16 of this Proclamation.

Article 17 (2)

Any agency shall issue a directive:

a) Print and disseminate to Governmental and other Stakeholders; and

b) Post it on its website.

Article 17 (3)

Any person who is interested can observe on the place situated or may get a copy of the directive subject to payment of expenses.

2 It was made known that as soon as this law came into effect, the Attorney General Office circulated a letter to all federal administrative agencies and to administrative agencies in Addis Abeba and Dire Dawa to send their directives in force prior to the coming into force the law for purposes of registration. Similar, call and notification was broadcasted through the media. We were told however that the turnout was unimpressive. The COVID lock down was considered as a possible obstacle resulting in low turnout. As a result, the Office was compelled to grant an extension period to enable more agencies coming out with directives for registration. An updated record on the status of registration proved difficult to obtain.

For a long time, access to directives has been a key problem of good governance in Ethiopia. Because it was not, unlike proclamations and regulations, required to officially be published on the Negarit Gazett. It has been a legal instrument to be accessed only through personal connections or good will of implementing agencies. To mitigate this, though this proclamation[3] did not decide to go as far as requiring a publication in the Negarit Gazett, it has laid down multiple outlets for a greater level of accessibility to directives for the public.

First, as has been indicated above, the Attorney General is obliged to publicize all the directives it has received. Second, the Agency which has adopted the directive is also required to ensure accessibility of its directives through various modalities. It can publish a compilation of its directives and disseminate them to libraries, or can have them deposited at its own offices where interested persons can read and take notes as the case may be. Though Article 17(1) requires that the Attorney General publish directives on its website, it does not preclude any other additional means of dissemination.

One of the reasons that such an obligation is directed at the Attorney General is owing to its general mandate. Under its establishment Proclamation No. 943/2016, Article 6 (5) (b), it is entrusted with the obligation to "carry out codification, compilation and consolidation of federal laws; collect regional laws and consolidate them as necessary". Given the increasing expansion of digital technology, the proclamation aims to gradually introduce the practice of having a central database of all laws that is prevalent in many other jurisdictions.

With regard to promoting access to directives, in addition to the obligations placed upon the office of the Attorney General, each agency that adopts a directive has a broad set of obligations. The first of this is creating a possibility for anyone who may want to get a copy of the directive to be able to do so against payment of fees. The Agency is also required to publish the directive on its own website. Moreover, they have to send copies to relevant stakeholders and agencies. The stakeholders who are entitled to receive copies of directives from agencies could, for example, be representatives of a section of the public on whom the directive is intended to be applied, or associations, or other organizations with particular focus on the subject matters covered by the directive. Needless to say, other administrative agencies who may have a role in the implementation of the directive should receive a copy.

2.15 Implementation of a Directive

Article 18 (1)

A directive that has not been filed pursuant Article 16 or posted on the website of the Agency pursuant to Article 17 (2) (b) of this Proclamation may not be enforced.

Article 18 (2)

A directive that has lost its validity in accordance with sub Article (1) of this Article may be adopted following the Procedures provided under this Sub Section of Two of this Section of Proclamation.

It is a well-known principle that, the proclamation and regulations in the Ethiopian legal system come into force from the date of publication in Negarit Gazett. As we have seen above this proclamation does not require publication of directives on the Negarit Gazett. The fact that directives are much more numerous and come in quick succession, as well as considering that they are more frequently repealed or amended, tying the date of effectiveness to date of publication on the Gazette could create a lot of problem. Bearing in mind that directives are primarily intended to provide details for the implementation of proclamations that are already published, the time and effort it takes for their official publication should not be a limit on efficiency. Hence respecting the principle that no law shall be implemented before its publication, the proclamation has devised its own course.

3 This topic was discussed among the Working Group members regarding the need for directives to be published on Negarit Gazett; however, due to the fact that the number and wide application of directives this approach was taken out of consideration.

According to the proclamation, a directive is required to meet two criteria to become enforceable. The first is to be registered at the Attorney General in accordance with Article 16. The second is being uploaded to the website of the administrative agency in accordance with Article 17 (2 (b)). If one of these conditions is not met, the directive will not enter into force, and hence, a directive that is not registered with the Federal Attorney General and is not available on the Agencies' website may not be enforced. Should an agency implement a directive that does not meet these two criteria, any person may apply to the court for its nullification.

However, it needs to be noted that just because a directive is registered with the Attorney General and posted on the website does not mean that it is legal once and for all. The directive can still be challenged unless it has been established that the preliminary procedures set forth in sub-section two part three of the proclamation has been complied with.

2.16 Periodic Review of Directives

Article 19

An Agency shall from time to time review the implementation of directives it has adopted and take necessary measures.

Survey studies conducted before the adoption of this proclamation have indicated that several administrative agencies do not know how many directives they have in force with full certainty. Moreover, often due to overlapping and successive directives on similar subject matters, it can be difficult even for officials of the agency to properly understand and implement the directives, let alone lay men.

Basically, one of the reasons administrative agencies are allowed to enact laws in the form of directives is to enable them to make changes on a regular basis to adapt to fast-changing circumstances without having to go through the long and complex formal legislative process. Therefore, directives are expected to be more up-to-date than proclamations and regulations. It is also believed that they need to be improved on a regular basis by remedying problems encountered during implementation. Article 19 of the proclamation is meant to enlighten agencies that they have mind-changing circumstances.

Finally, in a similar manner to administrative agencies routinely conduct an inventory of their fixed and recurrent assets and dispose of unnecessary stock from their balance sheet, they are expected to review their directives from time to time and take action. Just as the legislative conducts and monitor the property management of agencies, it should evaluate agencies on their management of the stock of directives.

Chapter Three: The Administrative Decision Making and Enforcement Procedure

As indicated above, administrative decision-making and enforcement is a day-to-day and inherent activity of an administrative agency. Such decisions affect the rights and interests of persons one way or the other. Thus, they have to be exercised according to the rules incorporated under Section 3 of the Administrative Procedure Proclamation. It must be borne in mind that definitions and scope of application of the relevant words and phrases to be employed under this chapter have already been provided under chapter one of this document.

3.1 Initiation of Administrative Decision

An administrative decision may be initiated according to Articles 20, 21 and 22 of the proclamation as regulated as follows.

Article 20

1) [An application for administrative decision [may] be made by an interested person or his agent].

2) [An administrative decision may also be initiated by the administrative agency itself].

Article 21

1) [An application for administrative decision shall be made in writing and may be submitted in person, a registered post or electronic means].

2) A written application of administrative decision shall include:

a) Date, name of the applicant or his agent, signature and address;

b) Name of the administrative agency to whom the petition is made;

c) The right and interest of the applicant being sought;

d) Act that the administrative authority has to do.

e) Facts and evidence relevant for the decision.]

3) An [administrative] agency may prepare forms through which an application may be made.

Article 22

1) Upon receiving an application for administrative decision, the agency shall immediately [register the application and give receipt to the applicant].

2) The [receipt shall confirm submission of the application and details of the documents attached thereto].

Application by the Interested Person or his /her Agent

The administrative procedure proclamation is applicable to administrative decisions which directly or indirectly affect the rights and interests of persons. Due to this, they should be initiated by the person owning the rights and interests. However, the initiation of an administrative decision which does not require the personal presence of owner of the right or interest can be made by an agent since the law of agency allows handling of affairs through an agent. For instance, a person who wants to get a tax payer identification number (TIN) has to appear in the tax office in person

since he has to give his/her fingerprint. He/she can, however, renew his/her business license through an agent once he/she has the TIN. This should happen not through any person but an agent who is duly authorized by the person who possesses the right or interest.

By the Administrative Agency

An administrative decision can also be initiated by the administrative agency itself in the exercise of its powers and functions. For instance, an administrative agency responsible for environmental protection can make environmental protection decisions and affect the rights and interests of persons without applications for the decisions by persons. This self-initiation makes an administrative agency different from a court. A court makes judicial decision only when requested by an interested person.

Submitted in Writing, in Person, through a Registered Postal Address or Electronic Means

An application for administrative decision should be made in writing. The writing can be a handwritten or machine print on paper which is submitted to the agency in person, through a registered post or an electronic communication submitted to the administrative agency by email or means of uploading to the website of the agency. This is intended to avoid the hitherto culture of initiating administrative decisions by oral application. This helps to avail evidence for both the administrative agency and the persons who seek the administrative decision. It also contributes to modernization of work of the administrative agencies.

It is expected that the signature and ownership issues related to an electronic application for administrative decision will be resolved by the evidence and electronic signature laws of the country and the information communication technology itself. It is also expected that these issues can be managed by uploading electronic form and identification mechanism on the website of the administrative agency.

Incorporating the matters indicated under Article 21(2)

The written application for administrative decision should include the matters stated under Article 21(2) of the proclamation. The matters included in “a” and “b” of the article are useful to record the relationship between the applicant (and his agent) and the administrative agency. The matters included in “c” up to “e” are useful to help both the applicant and the administrative agency to sufficiently understand the nature of the right or interest of the applicant, the coverage of the requested administrative decision by the scope of authority of the administrative agency, and the substantive, legal and evidence issues to be resolved in relation to the requested administrative decision.

This helps the applicants for administrative decision to refrain from repeatedly taking irrelevant narrations, legal and evidence matters to an administrative agency and the administrative agency to make correct administrative decision. The applications for administrative decision have not been standardized up to now. They usually include long and irrelevant narrations to the case. The administrative agencies often face difficulty in understanding the core content of the petition. The rule in the administrative procedure law which lists the matters that should be included in the applications for an administrative decision is useful to reduce this problem and standardize the applications.

Application Form

The administrative agency can prepare application form. The form may be prepared according to the nature of the case with a view to increasing work efficiency and speed. This will stop the hitherto practice of writing non-standardized applications for administrative decision. It also helps make and receive timely and quality administrative decision by submitting appropriate applications. The form can be paper print or electronic, consisting of all the matters listed in the law.

The following template may assist administrative agencies in formulating application forms.

Application Form for Administrative Decision

(Write and submit the application in this form)

Date ---/---/---- G.C

To: … (Insert name of the office)

Address: City …; Woreda …; Kebele …; House No.: …; Phone No.: …; Email …

Subject: …

1. Full name of the applicant: …
2. Address of the applicant: City …; Woreda …; Kebele …; House No.: …; Phone No.: …; Email …
3. Name of the section which will decide on the matter: … (Ask the agency)
4. Name of the staff or head which will decide on the matter: … (Ask the agency)
5. Main theme of the application:

……

……

6. 6. The decision sought by the applicant:

……

……

7. The legal basis of the application (Indicate the law and article, if possible):

……

……

8. The list of evidence supporting the application (Attach copies verified with the originals by the staff or head who receives the application when the list of evidence refers to documents)

……

……

9. 9. Signature of applicant: …; Date: …

Registration and Written Receipt

The administrative agency should register the application for administrative decision with all its attachments and issue a written receipt to the applicant. Most administrative agencies do not have the habit of doing these. Requesting receipt has also been considered as a luxury exercise. Registering the application and issuing receipt should happen irrespective of whether the decision is to be made on the spot or by appointment. The receipt should state the time of submission of the application to

the agency, the confirmation of receipt of the application and the list of documents attached to the application. The receipt can be issued as a separate coupon or a note written and stamped on a copy of the application retained by the applicant.

The registration and issuance of receipt for application is useful to keep evidence for both the administrative agency and the applicant and prevent loss of the application before decision. It also helps to prove the submission of the application to a lower administrative office in case the application is taken to a higher office. For instance, a Woreda administration in Addis Ababa which receives an application for ID card issuance may receive an accompanying letter of the applicant from her former Woreda indicating her current residence address, and inform the applicant orally to return after a few days. The applicant cannot be sure whether her documents are registered without receiving receipt. The applicant may often be exposed to submitting new and repeated request and explanation every time she visits the Woreda office because of loss of the application or inappropriateness of registration of the application. The applicant does not get a solution even when she applies to the Head of the Woreda administration. This type of problem can be resolved by registering the application and its attachments appropriately and issuing a receipt to the applicant.

3.2 The Person making Administrative Decisions

The person who should make administrative decision is indicated by Article 23 of the proclamation.

Article 23

[An administrative] decision may only be [made] by the Head or Authorized Official/Manager or Staff of an agency.

Head of the Agency

The Head of an administrative agency gets decision-making power by law. Most laws establishing administrative agencies expressly confer the powers and functions of the agencies to the heads. The powers and functions of the agencies are also often conferred to the heads by legal interpretation when the laws establishing the administrative agencies failed to do this expressly.

Authorized Official/Manager or Staff of the Agency

Deputy heads, lower officials/managers/ and staffs of an administrative agency get power to make administrative decision by law or delegation by the Head. More often than not laws establishing administrative agencies expressly confer decision-making power to the deputy heads of the agencies. In this case, the deputy heads get the decision making power by law. In the absence of this, the deputy heads should get power to make administrative decision by express delegation of the Head. All the lower officials/managers/and staffs of an administrative agency can only get power to make administrative decision by express delegation of the Head.

For instance, the Federal Attorney General Office is authorized to license and control advocates by Article 6(11) of proclamation No. 943/2015. Article 2(6) of the proclamation defines the Attorney General as a person appointed to be so by the House of People's Representatives. By interpretation, the Attorney General gets the advocate licensing and controlling power by law (the proclamation). The advocate licensing and controlling function is, however, exercised through a Directorate of the Attorney General Office since the Attorney General herself cannot handle all works of the Attorney General Office. The staff of this directorate do not get their decision making power by law (the proclamation) but should expressly be delegated by the Attorney General.

May only be made by the concerned person

An administrative decision should only be made by the Head or staff of an administrative agency who is expressly and specifically conferred with power by law or delegation of the Head. Heads and staffs of the Agency who are not expressly and specifically conferred with this power should not make decision by the simple reason of their being Head or staff of the agency. This helps to know is responsible for what and prevent the violation of rights and interest of persons.

For instance, an officer of the Federal Attorney General Office who is working in the Directorate for Legal Research, Drafting and Consolidation cannot make decision to license or renew the license of an advocate by virtue of being officer of the Attorney General Office. A police officer guarding the gate of the Attorney General Office cannot also make a decision regarding the advocate licensing or license renewal by virtue of his employment or knowledge of the matter. Even a secretary of the Advocate Licensing Directorate cannot do this unless expressly delegated by the authorized officer. This is often violated by current practice of many administrative agencies. Administrative decisions and services are often handed down by secretaries, guards and other staffs of the agencies who are not expressly authorized to do so by law or delegation of the Head. This practice should be avoided so that an administrative decision should be made by the duly authorized person. It is anticipated by this provision that every administrative agency will post a sort of business allocation plan through which governmental service seekers will be informed of the person authorized to hand down the particular decision.

3.3 Principles of Administrative Decision Making

The person making administrative decision should respect the thirteen principles set under Articles 24 up to 38 and 40 of the administrative procedure proclamation.

3.3.1 Respecting the Scope of Authority

Article 24

[The] person [making] an administrative decision shall respect the scope of [legal] authority of the [administrative] agency.

The person making administrative decision should verify the existence and scope of legal authority to make the decision. An administrative decision passed without legal authority or beyond the scope of authority is illegal. This authority emanates from the powers and functions entrusted to the administrative agency by its establishing and related substantive laws.

Most of the laws establishing administrative agencies state the powers and functions of the agencies in broad terms. At times, the scope of authority of the agencies is reached by interpretation. The discretion of the person making administrative decision extends only up to the scope of this interpretation.

The discretion of Head of the Agency is as extensive as the full meaning of the power and function of the Agency. The discretion of lower officials and staffs of the agency who are given the decision-making authority by delegation of the Head is as extensive as the full meaning of the delegation so long as this does not surpass the legal authority of the Head herself. For instance, the advocate licensing power of the Federal Attorney General Office refers to the advocates who appear before federal courts. This licensing power of the Federal Attorney General Office should cover the advocates who appear before all the federal courts. Licensing advocates who can appear before regional courts is beyond the legal authority of the Federal Attorney General Office. A license issued accordingly is invalid since it is issued beyond the scope of authority of the Office.

Likewise, a power delegated by the Attorney General to an officer in the advocate licensing directorate to license advocates who stand before Federal First Instance Courts does not enable the officer to license advocates who appear before the Federal High and Supreme Courts.

3.3.2 Balancing between Public and Individual Interests

Article 25

[The] person [making] an administrative decision shall balance the individual interest of the person regarding whom an administrative decision is being [made and] the public interest [included] in the objectives [and powers and functions] of the agency.

The individual interest is the right or benefit sought by application of the person requesting the administrative decision. The public interest is the objective or goal stated along with the powers and functions of the administrative agency by law. The person making administrative decision should strike a balance between these interests. The bal-

ancing decision does not have formula as it is only a moral exercise. The person making the decision is expected to balance the interests by harmonizing them and not enforcing one of them at the expense of the other. This should happen in times where the law leaves decision making discretionary. However, in situations where the law explicitly favors one of the interests over the other, the person making the decision has to stick to the dictates of the law.

For instance, the Road Transport Authority has legal authority to issue a public transport service license to a person who bought a bus and applied for such a license. The Authority is also entrusted with the responsibility to ensure the quality of public transport service by its establishing law. The person making the licensing decision is expected to balance between the individual interest of the applicant to obtain the license and the public interest of ensuring the quality of public transport service. This balancing can be done by determining the conditions for licensing and inspecting the worthiness of the bus for public transportation. Similarly, a City Land Administration Officer whom a land leaseholder asks to incorporate a piece of land adjacent to his holding into his lease has to balance between the individual interest of the land leaseholder to use the piece of land and the public interest of the city administration to use the piece of land for urban development.

Generally, the balancing act does not have a formula as it is merely a mental judgment. However, it is required that the balancing must be carried out on the basis of appropriate criteria. The person making the decision is expected to balance the interests by harmonizing them and not enforcing one of them at the expense of the other. Towards this end, the following could serve as a kind of examination sequence for making a concrete discretionary decision:

Step 1: The decision must be in accordance with the purpose of the enabling act (i.e. it must not be aiming at something beyond the scope or legal purpose of the underlying legal instrument;

Step 2: The decision must be appropriate for achieving the purpose. This stage also serves to ensure that the decision-maker once again examines whether the intended outcome can be achieved by a means of this method in the first place;

Step 3: The decision taken must also represent the least restrictive means (i.e. there are no other decision-making options that are less intrusive for the addressees of the legal instrument;

Step 4: Finally, the decision must also be proportionate in the narrower sense (i.e. the public interests in enforcing the decision is not disproportionate to the individual rights of the individual.

3.3.3 Avoiding Irrelevant Consideration

Article 26

[The] person [making] an administrative decision should [not be influenced by] irrelevant [consideration].

The individual right or interest, the factual and legal matter, and the evidence claimed by application of the person requesting the administrative decision and the public interest included in the objective or power and function of the administrative agency by its establishing law are relevant matters to the administrative decision. Any matter which is not related to these, including the matters indicated under Articles 31 and 32 of the proclamation (discussed below), is irrelevant. A benefit received by the person making the administrative decision in the form of bribery is irrelevant as well. The person making the administrative decision should not be guided by these issues.

3.3.4 Rendering Professional Decision

Article 27

[An administrative] decision shall [be made by respecting the professional, ethical and due diligence standards of the profession].

The heads and staffs of an administrative agency should have the knowledge, skill and ethics necessary for the task. Assigning heads and employing staffs with the necessary knowledge, skill and ethics, and building their capacity is important to make professional administrative decisions. The heads and staffs of an administrative agency often possess various professions. These professions often have ethical, diligence and accountability principles obtained through education. The administrative agencies may also issue ethical, diligence and accountability principles which their heads

and staffs have to respect. The person making the administrative decision should respect the ethical, diligence and accountability principles defined in both ways. This will make the administrative decision knowledge-based and professional. It also helps to make the heads and staffs of the administrative agencies who make administrative decision loyal to their profession instead of their bosses. It is hoped that this will ensure professionalism in government administration. This may help in resolving the good governance discontent of society.

3.3.5 Hearing

Article 28

The person [making] administrative decision in accordance with article 23 of this Proclamation shall [sufficiently hear] the person regarding whom [the] decision is being made and, as the case may be, third parties [and] the public.

Every person has the right to be heard when administrative decision is being made regarding his/her right or interest. The person making the administrative decision should sufficiently hear and investigate the factual, legal claim and evidence of the person applying for an administrative decision before making the decision. The person making the administrative decision should also hear interested third parties and the general public when the administrative decision is likely to affect the right or interest of a third party, or a public consultation is necessary to investigate the substance, legal claim and evidence of the case. Public consultation may be warranted in issues which are associated with environmental pollution or waste management and disposal, or other similar subject matters with communal interest.

For instance, a City Land Administration Office which is preparing to make decision on a request of an applicant for issuance of a land holding certificate should sufficiently hear the applicant and investigate the fulfillment of the legal conditions for issuing the Certificate. The Office may also consult the residents neighboring the applicant and the other City administrative agencies, which may work in connection with the matter. This opportunity to be heard principle should be implemented along with the rules under Articles 36 up to 38 of the proclamation.

Article 36

1) [An administrative decision shall be made after adequate hearing].

2) Notwithstanding sub-article 1 of this Article, [an administrative] decision may be [made] without hearing [in the following cases]:
- ***a) [when it does not involve litigation between parties];***
- ***b) [when it relates to enforcing special right] or [the administrative agency has [legal authority to confer special right]; or***
- ***c) The [case] is urgent.***

Article 37

1) The parties to [the] case [have] right to appear in person and:
- ***a) give testimony;***
- ***b) produce evidence; and***
- ***c) access and examine the documents presented to the administrative agency.]***

2) [The administrative agency may use all legal methods to get evidence from the parties, witnesses and experts].

Article 38

1) [An officer of [an administrative] agency may resign from being a decision maker on the case] on one of the [following] grounds:
- ***a) He has direct or indirect [benefit from the case];***
- ***b) [The applicant is his/her relative by blood or affinity] or a close friend;***
- ***c) [He/she is agent, attorney or a professional service provider of the applicant];***
- ***d) [He/she is making decision on a petition related to a case which was decided by him/herself];***

2) [The officer may resign by his own initiative or request of the applicant seeking the administrative decision];

3) [The officer shall refrain from making the decision until the head of the agency who received the request for resignation of the officer makes decision];

4) [The Head of the Agency who received the request for resignation of the officer shall decide in favor of or against the resignation within five working days].

Administrative decisions are mostly made when services are extended to individual persons in the absence of litigation as part of the daily activities of the agency. They, however, are sometimes made following litigation. Articles 36 up to 38 apply when administrative decisions involve litigation.

Article 36 (1) repeats the hearing principle under Article 28. Article 36 (2) lists the cases where the hearing principle does not apply. Article 36 (2) (a) indicates the situation where the issue requiring administrative decision affects the rights and interests of more than one person and there is no dispute between the persons. For instance, when a land leaseholder applies to incorporate land adjacent to the leasehold and the City Land Administration Office has the full record and documentation regarding the adjacent land, the Officer can make a decision without the need for hearing the applicant and third parties.

Article 36 (2) (b) indicates the situation where the right or interest at issue is exclusively assigned by law to one of the claiming persons or the law gives special authority to the administrative agency to do this in which case there is no need for a hearing. For instance, an administrative agency authorized to return an illegally confiscated house to the owner can consider the confiscation record and decide to return it to the owner without the need for hearing third parties. Article 36 (2) (c) indicates the situation where the issue requiring administrative decision relates to an urgent matter where a hearing would be time consuming.

In all these cases, the administrative agency can make decision without hearing. This does not, however, mean that the agency makes decision without sufficiently investigating the factual and legal claims and evidence of the applicant. It should sufficiently hear the applicant especially when the decision is likely to adversely affect her right or interest.

All other cases requiring administrative decision should be investigated sufficiently as indicated under Article 37 of the proclamation. The applicant has full right to submit his application with evidence and provide all necessary explanation. The agency can also collect evidence from any of the parties to the case, witnesses, experts, documents and other sources as appropriate.

The person making the decision has to vacate from his post by his/her own initiative or request of the applicant when the decision to be made under Article 37 is affected by the situation indicated under Article 38(2), (3) or (4). Administrative decisions such as issuing and renewing ID cards, birth certificates or business licenses do not involve wide discretion so long as the conditions for them are specifically set by law or the administrative agency itself. Strictly, they do not involve much discretion. The person making administrative decision does not have to vacate in such cases. He has to be replaced by another in other cases, such as when the case involves litigation between persons is a tax assessment and the like since these involve discretion and reasonable man decision making.

3.3.6 Good Faith

Article 29

The person [making] administrative decision should make [it] in good faith.

The person making administrative decision is authorized to exercise discretion within the scope of her authorization. She may exercise this discretion with a view to fulfilling or hurting the right or interest of the applicant. Good faith means exercising this discretion with a view to fulfilling the right or interest of the applicant. It is not acting with bad intention to adversely affect the right or interests. This is assessed according to the circumstances. Good faith implies that the person making administrative decision should prefer the option which best fulfills the right or interest of the applicant unless there is substantive or legal ground and evidence to prefer otherwise. It is when decisions are made with this mindset that a governmental service provision becomes genuine public service.

3.3.7 Reasoned decision

Article 30

The person [making] administrative decision should [state sufficient] reason for the decision.

The person rendering administrative decision should give sufficient reason for making the decision in the way it is made. All administrative decisions should be reasoned whether they are bound or discretionary, irrespective of whether they deny

or favored the right or interest of the applicant. The reason can emanate from the substance, legal ground or evidence of the case. Any person referring to the administrative decision should be able to sufficiently understand the application, legal ground, evidence and decision made on the case. This enhances transparency and is helpful to enable the applicant to decide on whether she has to apply for a review of the decision by a higher authority.

3.3.8 Avoiding Conflict of Interest

Article 31

[The person asked to make administrative decision should resign from handling the case when he/she is relative of the applicant by blood or affinity or has any other relationship that leads to conflict of interest].

The person requested to make administrative decision should investigate the substance, legal ground and evidence of the case and make the decision with impartiality. This impartiality will be lost when the applicant and the person expected to make the decision are relatives by blood or affinity. Friendship, close relationship and presence of common benefit between the applicant and the person asked to make the administrative decision will also lead to a conflict of interest and loss of impartiality. The person asked to make the administrative decision should resign from handling the case when she believes that any of these circumstances exist. Vacating may be affected by the request of the application as well.

For instance, an education bureau officer who is authorized to decide on staff assignment is unlikely to decide impartially when one of the applicants is his/her brother. It is likely that he/she will decide in favor of his brother and adversely affect the interests of other applicants. The other applicants may also suspect impartiality even when the officer decides to be impartial. The officer may also hurt the interest of his brother with a view to affirm his impartiality. It is advisable that the officer resigns on his own volition or by the application of interested party from making the administrative decision to avoid all these problems.

3.3.9 Respecting Equality

Article 32

[The] person [making] administrative decision [should] not discriminate between persons based on race, color, ethnicity, sex, language, religion, political view, social background, class, or any other ground.

All persons are equal before the law. They have the right to be protected from discrimination. It is a constitutional duty not to discriminate between persons on the grounds of race, nationality, color, sex, language, religion, political view, social origin, wealth, birth condition or any other ground. This listing has been directly copied from the relevant provision of the Constitution. Administrative agencies are established with a view to giving service to all persons without discrimination. The person making administrative decision should, therefore, make the decision based solely on the substance, legal ground and evidence of the case.

3.3.10 Rendering timely Decision

Article 33

1) The person [making] administrative decision [should decide within] a reasonable period of time and ensure that [the right or interest involved in the case is] not negatively affected as a result of delay.

2) Failure to [make] the decision within [a reasonable period of time] shall be considered as denial of the [right or interest].

The person making administrative decision should investigate the case and make the decision within a reasonable time. The reasonable time is not fixed by law as it varies from case to case. It should be determined by the person making the administrative decision based on the nature of the substance, legal ground and evidence of the case before him. The decision should not be delayed in any case. Despite variability of the reasonable time from case to case, the person making the decision should make it by avoiding unnecessarily repeated appointments and visits of the applicant. The administrative agency should also remove unnecessarily long chains of decision making. For instance, an administrative agency which issues business license can shorten the decision-making chain by organizing one-stop-

shop service for receiving application, paying application fee and making licensing decision.

The delay should be assessed by considering the adverse effect of the allocated time for the decision on the right or interest of the applicant. The allocated time should allow investigating the case without exposing the right or interest of the applicant to damage. An administrative decision is considered to be delayed when it is made after expiry of the time needed to realize the right or interest of the applicant.

Delaying the administrative decision, i.e. not making it within the reasonable time, is considered as denying the right or interest of the applicant. This is consistent with the legal maxim that *justice delayed is justice denied*. This does not, however, mean that the applicant loses his right or interest. It only means that he/she can take the case for review by the body authorized to do so.

3.3.11 Predictability

Article 34

[The person making administrative decision shall make similar decision in similar cases].

The person making administrative decision is authorized to exercise discretion within the scope of her authorization. She should, however, make similar decision in similar cases. She should make different decisions in different cases as well. The decision of an administrative agency will be predictable when the administrative agency discloses the conditions for its decision. For instance, a marriage registration decision can be easily predictable when the registering office discloses to the public that marriage will be registered if the parties have signed agreement and bring two witnesses and that the couple has met these two requirements.

Respecting this principle helps the applicants to an administrative agency to predict its decision and know what they should expect from it. This, in turn, helps them not to bring irrelevant cases to the agency, avoid irrelevant and time-wasting arguments with the agency, and make their relationship with the agency stable, time-saving and productive.

3.3.12 Transparency

Article 35

[The person making administrative decision shall ensure transparency].

Ensuring transparency is a constitutional duty. Persons have the right to know the process and the decision when a decision is made regarding their right or interest. Accordingly, the person making administrative decision should make the process and decision transparent. This includes the process of investigating the substance, legal ground and evidence of the case at hand starting from the time of submission of the application up to the time of making the decision. Justice is measured by both the process as well as the outcome.

For instance, a law that a vehicle with a hidden storage space will be confiscated if it is found with contraband goods. The agency making the confiscation decision should disclose the legal rule, the way the vehicle was caught with the contraband good, the evidence, the process of investigation and the final decision. Disclosing the process and the decision will help the owner of the vehicle and all involved persons to bear responsibility.

3.3.13 Written Decision

Article 40

An administrative decision shall be made in writing and contain [the following]:

1) ***[the] date and number of the decision;***
2) ***[the] name of the [agency];***
3) ***[the name of the parties] to the case and their addresses;***
4) ***[the issue and claim];***
5) ***[the evidence];***
6) ***[the] description of facts and law; [and]***
7) ***[the] decision.***

As indicated earlier, an administrative decision may be made in the absence or presence of litigation between parties. The decision should be made in writing in all cases. The writing can be paper print or electronic. It should include the decision date and file number, the name of the agency, the narration of the facts, the legal ground and evidence for the decision, the identity of the litigating parties when the case involved litigation, the decision, and the name and signature of the person who

made the decision. Doing this will avail evidence to the agency and the applicants. It will also standardize administrative decisions.

The following template may assist administrative agencies in formulating administrative decisions.

Form for Administrative Decision
(Write the administrative decision in this form)

Date ---/---/---- E.C

Number --------/------

... (Insert name of the office)

Address: City ...; Woreda ...; Kebele ...; House No.: ...; Phone No.: ...; Email ...

Administrative Decision Made on ...

10. Full name of the applicant: ...
11. Address of the applicant: City ...; Woreda ...; Kebele ...; House No.: ...; Phone No.: ...; Email ...
12. Name of the section which made the decision: ...
13. Name of the staff or head who made the decision: ...
14. Main theme of the application:

.....

15. The decision sought by the application:

.....

16. The legal basis indicated to support the application (the law and article indicated by the applicant, if any):

.....

17. The list of evidence submitted to support the application (the list in the application):

18. Main conclusion of the decision:

.....

19. Detailed narration and reason of the decision:

.....

20. The legal basis (law and article) and the evidence considered for the decision:

.....

Signature of the staff or head who made the decision: ..... Date: ... Seal

3.4 Enforcement of Administrative Decision

An administrative decision should be enforced according to the rules incorporated under Articles 39 and 42 of the administrative procedure proclamation.

3.4.1 Giving the Decision to the Applicant

Article 39

An [administrative] agency shall notify the concerned person of its decision [and the] reasons in writing.

An administrative agency may enforce, vary or deny the right or interest of the applicant. The decision may be made in the presence or absence of litigation. In all cases, the decision and its reason have to be given to the applicant in writing.

Reason

Giving only the decision to the applicant is not sufficient. The applicant has the right to know the substance, legal ground, evidence and/or other reason for the decision. This assists in ensuring transparency and accountability.

Writing

The decision and its reason should be made and given to the applicant in writing. Making and giving the decision and its reason to the applicant in writing is important to respect the rights of persons and promote good governance even if it is costly and time taking due to the large number of cases requiring administrative decision. The cost and time should be managed by standardizing the format of the decisions.

3.4.2 The Person Executing Administrative Decision

Article 42

An administrative decision shall be [executed] by] the person who made it or a concerned body].

The Person Who Made the Decision

Execution of an administrative decision does not have a special procedure like execution of a court decision. However, like its making, it has to be executed by an authorized person. The person who has authority by law to make the administrative decision is considered to have authority to execute it. The person who has authority to make the decision by delegation should, however, make sure that he/she is authorized to execute it. In the absence of express authorization to execute the decision, he/she should only make the decision and ask its execution by the person who delegated its making.

The Concerned Body

Executing an administrative decision may involve more than one person or office. In this case, the decision has to be made and executed according to the division of labor and legal authority. For instance, an owner of a public transport vehicle may be required to submit tax clearance, renewed business license, and certificate of technical fitness for the vehicle in order to renew the annual roadworthiness certificate. The tax has to be paid to and clearance obtained from the appropriate tax office. The business license has to be renewed by the appropriate trade bureau. The technical fitness has to be certified by the organ authorized to examine the technical fitness of vehicles. Finally, the annual roadworthiness certificate should be obtained from the concerned transport bureau when these conditions are fulfilled. It is anticipated by this provision that every administrative agency will post a sort of business allocation plan through which governmental service seekers will be informed about the person authorized to hand down the particular decision.

3.5 Suspension of an Administrative Decision

A third party who objects execution of an administrative decision may apply for its suspension according to Article 41 of the administrative procedure proclamation.

Article 41

1) [A third] party who may incur irreparable [damage] on his right [or] interest by immediate enforcement of the decision can apply [to the agency which made it] for suspension of the decision.

2) An administrative agency [which received application] as per Sub Article 1 of this Article may [suspend any part of the decision or order the case to be seen again].

A third party who may incur irreparable [damage] on his right or interest

An administrative decision made regarding the right or interest of an applicant may harm the right or interest of another person (a third party). The third party may ask the administrative agency which made the decision to suspend and reconsider it when immediate execution of the decision leads to irreparable damage on his/her right or interest. Justice requires that the third party be given the right to be heard as well.

Suspension of the decision

The third party may request for full or partial suspension of the decision. This should be possible since the third party was not involved in the decision making process where he was not duly heard.

To the Agency which made the Decision

The suspension application should be made not to a court or an office to which the administrative agency is accountable but to the agency which made the decision. This can be done by submitting it to the person who made the decision or the Head of the Agency.

Submitting the application to the person who made the decision enables him/her to reconsider the decision vis-à-vis the right and interest of the complaining third party. This enhances the quality of administrative justice. For instance, the implementation of a building construction permit by a holder of land can be suspended until the holding right is verified when a third party who claims prior holding right challenges it. A decision in favor of the third party cannot be executed after the construction of the building. Suspending the construction permit will prevent irreversible damage to both parties. Making the suspension application to the agency which issued the construction permit will also enable a full and fast investigation of the case.

The Suspension Decision

The person who makes the suspension decision may suspend any part of the administrative decision or order its entire reversal.

3.6 Complaint on Administrative Decision

An applicant who received administrative decision may complain against the decision as indicated under Articles 43 up to 47 of the proclamation.

Right to Complain

Article 43

Any person against whom an administrative decision is made has [right to complain] to the [administrative agency which made the decision].

Every person has the right to lodge a complaint to the agency which made an administrative decision when the decision adversely affects his right or interest. The complaint can be a request for cancellation of the decision or reconsideration of the substance, legal ground or evidence of the decision. The complaint can be made on all administrative decisions, whether they are made upon application or by initiation of the administrative agency.

The following template may assist administrative agencies in formulating application for complaint submission.

Form for Complaint against an Administrative Decision
(Write and submit the complaint in this form)

Date ---/---/---- E.C

To: Complaint Hearing Office of … (Insert name of the office)

Address: City …; Woreda …; Kebele …; House No.: …; Phone No.: …; Email …

Subject: Complaint against Administrative Decision

1. Full name of the applicant: …
2. Address of the applicant: City …; Woreda …; Kebele …; House No.: …; Phone No.: …; Email …
3. Title, date and number of the administrative decision against which complaint is lodged:

   Title: …; Date: …; Number: …
4. Name of the section which made the administrative decision against which complaint is made: … …..
5. Summary of the administrative decision against which complaint is lodged and main theme of the complaint:

……

……

……

6. The decision sought by the complainant:

……

……

……

7. The legal basis of the complaint (Indicate the law and article, if possible):

……

……

……

8. The list of evidence supporting the complaint (Attach copies of the decision against which complaint is made and other documents verified with the originals by the staff or head who receives the complaint)

……

……

……

9. Signature of applicant: ……. Date: …

Establishing a Complaint Handling Body

Article 44

All administrative agencies [should] establish a complaint handling [body] and notify [this to the public].

Every administrative agency should establish a complaint handling body. The body should not be an ad hoc organ which handles a specific complaint but a permanent establishment within the Agency. The nature of its organization is left to decision of each agency.

The Agency has to publicize the establishment of the complaint handling body. The publicity should be made through a medium that can be accessed by clients all the time. It can be done through electronic or non-electronic means of publicity. Establishing a complaint handling body is generally useful to enable the agency to review its decisions according to its own internal procedure.

Suspension of Execution of the Administrative Decision

Article 45

[The execution] of an administrative [decision] against which a complaint is [made] [shall be suspended] until the complaint is processed and a final decision [is] made. However, the head of the administrative agency may order [immediate execution of the decision when he/she believes that suspension of the execution will cause] irreversible damage to public interest.

An administrative decision against which a complaint is made should not be executed until decision is made on the complaint. This is suspension by law. The head of the agency may, however, order immediate execution of the decision where he believes that suspension of the execution will cause irreparable damage to public interest by stating the reasons for immediate execution as per Article 30 of the proclamation. This can happen in connection with environmental and public health matters. For instance, the Head of an administrative agency which decided to close a pharmacy that sales an unauthorized medicine and received complaint against this decision may assess the irreversible damage to the public which may be caused by selling the medicine and order enforcement of the pharmacy closing decision. The irreversibility of the damage to the public should be assessed and determined by the head of the Agency.

Investigating and deciding on the Complaint

Article 46

1) The complaint handling body shall properly examine the complaint it has received and present its recommendation to the head of the [administrative] agency or an officer duly authorized by the head.

2) The decision of the head of the agency or an officer duly authorized by the head shall be considered as final decision of the agency.

The complaint handling body does not have authority to make decision on the complaint. Making the decision falls in the authority of the head of the agency or the person to whom the head delegated. The decision against which the complaint is submitted may have been made by the head or a lower official or worker of the agency. In both cases, the decision on the complaint should be made by the head of the agency or the person to whom the head delegated. When the decision against which the complaint is submitted was made by the head of the agency[4], the complaint will give him the chance to reconsider and improve the decision. When the decision against which the complaint is submitted was made by a lower official or worker of the agency, the complaint to the head will create opportunity to reinvestigate and improve the decision of the official or worker. It is believed that both cases will lead to improved administrative justice. The post complaint decision in both cases is considered as final decision of the Agency.

Giving the Decision on the Complaint to the Applicant

Article 47

[The administrative agency which makes decision

4 There was debate among the members of Working Group on whether the complaint has to be made against decision of a lower official or worker of the agency alone or also against the decisions of the Head of the Agency concerned. It was agreed after a long deliberation that a complaint should also be made against decision of the Head since this will enable the Agency revisit and reconsider its former decisions within its internal structure.

on the complaint under Article 46 shall make and give it to the applicant in writing].

The decision on the complaint has to be made and given to the applicant in writing like the decision against which the complaint was made. Similarly like any other administrative decision it should be sufficiently reasoned out. This is because this is a decision which makes the decision against which the complaint was made final.

The following template may assist administrative agencies in formulating format for decision on complaint against administrative decision.

Form for Decision on Complaint against Administrative Decision
(Write the decision on the complaint in this form)

Date ---/---/---- E.C

Number --------/------

Complaint Hearing Office of ... (Insert name of the office)

Address: City ...; Woreda ...; Kebele ...; House No.: ...; Phone No.: ...; Email ...

Decision made on Complaint against Administrative Decision

1. Full name of the applicant: ...
2. Address of the applicant: City ...; Woreda ...; Kebele ...; House No.: ...; Phone No.: ...; Email ...
3. Title, date and number of the administrative decision against which complaint is made:

   Title: ...; Date: ...; Number: ...
4. Name of the section which made the administrative decision against which complaint is lodged: ...
5. Name of the staff or head who made the administrative decision against which complaint is lodged: ...
6. Summary of the administrative decision against which complaint is made and main theme of the complaint:

.....

7. The decision sought by the complainant:

.....

8. The legal basis indicated to support the complaint (the law and article indicated by the application, if any):

.....

9. Main conclusion of the decision on the complaint:

.....

10. Detailed narration and reason of the decision on the complaint:

.....

.....

11. The legal basis (law and article) and the evidence considered for the decision on the complaint:

.....

.....

12. Signature of the head who made the decision: ...; Date: ...

Chapter Four: Judicial Review over Directives and Administrative Decisions and Miscellaneous Provisions

4.1 Judicial Review of Directives and Administrative Decisions

In the preceding chapters, the procedure for administrative agencies to issue directives and making of decisions have been discussed in detail. This chapter will closely examine issues pertaining to judicial review of administrative actions. In particular, matters such as: who shall file petitions for review, to which organ petitions for review ought to be filed to, the period of time within which such petitions must be filed, and the procedures to be followed to handle and decide such petitions will be dealt with.

Generally, the system of judicial review is a system in which the actions of the legislature and the executive are overseen by the judiciary. It has two main parts. The first is the constitutional review system that examines the constitutionality of laws and decisions issued by both the legislature and the executive. The second is a review system which monitors the substantive legality of administrative laws (in the context of Ethiopia: regulations and directives) and decisions made by the executive. This type of review system, also evaluates the legality of the process in which decisions are made and laws are enacted as well as rationality and proportionality of the decisions and laws.[5]

The former is usually studied in conjunction with the constitutional law while the latter is considered as part of administrative law. With regard to constitutional review, the Ethiopian Constitution gives this power to the House of Federation.[6] Similarly, the Council of Constitutional Inquiry is empowered to make recommendations to the House of Federation on constitutional matters.[7] Accordingly, when the constitutionality of a federal or a state law is challenged, the Council will investigate the matter and submit its recommendations to the House of Federation for a final decision.

In the Ethiopian legal system, judicial review of administrative actions has not yet been executed in a formally recognized and consistent manner. On the one hand, some proclamations stipulate that a person aggrieved by certain administrative decisions may appeal to the regular courts. On the other hand, certain proclamations establish administrative tribunals (quasi-judicial bodies) with the mandate to hear and decide on appeals against administrative decisions. If a person is dissatisfied with the decision of such administrative judicial body, she can appeal to the regular courts on the legality of such decision excluding issues of fact.

Without a doubt, these laws ensure accountability in government administration and enable people to access administrative justice. It is also indisputable that these proclamations enable the judiciary to oversee the administrative institutions. However, these procedures are to be considered as appeal procedures in their own right and not judicial review of administrative actions. Although the difference between regular appeal procedures and the system of judicial reviews is narrow, these procedures cannot be considered as one and the same.

5 David Stott and Alexandra Felix, Principles of Administrative Law (Cavendish Publishing Limited 1997), p. 81, Council of Civil Service Unions v Minister for the Civil Service (1985) in Principles of Administrative Law, p. 44

6 FDRE Constitution Article 83

7 Ibid, Article 84(1)

In administrative matters, especially when administrative decisions are appealed in a regular court, the power of the court is to determine the soundness of the decision made by the administrative body or the quasi-judicial body. This includes the decision to uphold, revoke or modify the decision. However, under judicial review of administrative decisions or laws with lower hierarchy, the court's jurisdiction is limited to evaluating the case against certain principles of administrative law. In effect, the court can either uphold the decision or revoke the same and order the administrative agencies to make amendments. In this regard, the court does not have the power to modify the decision; it can only rule for the amendment of the decision by the administrative agency.

In addition, the right to appeal to a regular court on administrative decision is only applicable on selected administrative institutions emanating from explicit statutory mandate. In contrast, judicial review of administrative actions is applicable to all administrative agencies. Furthermore, in many jurisdictions, the system of judicial review is considered as an inherent power of the court, while the appeal process on administrative decisions is within the jurisdiction of the court only on specially selected administrative matters.

Moreover, judicial review of administrative actions encompasses both the review of decisions and directives, whereas the appeal process is limited to the review of administrative decisions. While, a number of proclamations allow for an appeal against administrative decisions, there has never been a legal framework that allowed for an appeal against directives up until now.

Therefore, the system that has been applicable in the Ethiopian legal system so far is the appeal system as opposed to the system of judicial review. The decisions given by courts at different times to petitions for review of administrative decisions and directives in accordance with principles of administrative law can serve as an evidence of this fact.[8]

In some cases the lower courts, on the belief that they have a jurisdiction, have decided on petitions for review of administrative matters.[9] However, in most similar cases, courts dismiss the case stating that they do not have the mandate to hear administrative cases unless a proclamation clearly allows for an appeal to a regular court. A number of binding decisions were given by the Federal Supreme Court Cassation Bench that reaffirmed the position of the lower courts that they do not have inherent power to entertain administrative cases.

Therefore, the Federal Administrative Procedure Proclamation No. 1183/2020 is the first proclamation in our country to formally introduce the manner in which administrative actions are reviewed by court. Accordingly, with the exception of certain matters that have been specifically exempted from the scope of this proclamation, a petition for review can be filed against the decision and directives of all administrative agencies before regular court. The following sections will elaborate on how the review process put in place by the proclamation.

8 Cassation File No. 23608 (vol.5): The Federal Supreme Court Cassation Decision Bench (FSCCDB) held that, in the absence of an explicit statutory provision stating the same, regular courts do not have the jurisdiction to entertain appeals against the final decisions of the Ethiopian Privatization and Public Enterprises Monitoring Agency.

Cassation File No. 26480 (vol.5): Similarly, the court ruled that for lack of an explicit provision under the Senate Legislation of the Kotebe Teachers Education College, it is not possible for the Federal First Instance and High Courts to review a disciplinary measure/decision taken by the College.

Cassation File No. 51790 (vol.12): the cassation bench ruled that a decision by the Director General of the Ethiopian Revenues and Customs Authority to dismiss an employee for an alleged corruption case is not justiciable, because Council of Ministers Regulation No. 155/2008 states that such decision is final and not appealable.

9 To the contrary, the following cases have exhibited a situation in which federal courts have reviewed administrative actions without any explicit statutory appellate or review power.

Cassation File No. 14226 (vol.11): in this case, both the Federal First Instance and High Courts have reviewed a directive issued by the National Bank of Ethiopia on ground of substantive ultra-vires and contradiction with the Commercial Code. The Cassation bench also reviewed the case by dismissing the objection presented by the bank as to the lack of jurisdiction of the lower courts. Despite the Cassation bench's reversal of the decisions of lower courts, and unlike all the cases discussed above, the Cassation has not ruled that courts do not have the power to review administrative actions without an explicit statutory power. Instead, the bench reviewed the directive and ruled that the directive is not contradictory to the Commercial Code.

Cassation File No. 92546 (vol.10): in this case, the plaintiff, who was a prosecutor, petitioned the court to quash the decision of the Ministry of Justice the effected the dismissal of himself, for reasons that such decision was made without hearing from the plaintiff and allowing him to bring counter evidences. The court admitted the petition and quashed the decision of the Ministry of Justice for the said reasons.

4.1.1 Conditions for the Commencement of Judicial Review[10]

Article48

Without prejudice to the Provisions under Article 46 of this Proclamation:

1. Any interested person may file a petition requesting a judicial review of a directive;

2. Anyone whose interest is affected by an administrative decision may file a petition requesting judicial review.

Pursuant to Article 48, there are two subject matters which are subject of review. One is a directive issued by an administrative agency. The second is an administrative decision. There are a number of differences between a petition for review of a directive and an administrative decision. By whom a petition for review can be filed; the reasons for filing a petition for review, as well as the period within which a petition for review can be filed, are some of the issues of divergence between the review of directives and administrative decisions. These differences will be discussed in more detail in the following sections. However, in light of the differences in the review of directives and administration decisions, it is important to understand the difference between a directive and an administrative decision. For this purpose, it is worthwhile to recall the elaboration made under chapter one of this document.

Article 48 guarantees the right to petition for review of directives and administrative decisions. However, the manner in which each right is guaranteed varies. By virtue of Article 48 (1), "any interested person" may petition for a review of a directive.[11] Moreover, pursuant to Article 2 (2) of the proclamation, a directive is a third level legal document that has an effect on the rights and interests of the general public. In the case of a generally enforceable legal document, it is the concern of everyone to make a general inquiry or to point out a problem with the document. Because the law is a document that affects the interest of the general public, it may not be necessary for an individual to show how a certain directive or law affects her interest. Consequently, the phrase "any interested person" should be interpreted broadly.

Therefore, in accordance with Article 48(1), any interested person may file a petition requesting a judicial review of a directive issued by an administrative agency. It is important to note that the complainant does not necessarily have to be a natural person. Government agencies or non-governmental organizations and professional associations that work to promote the interest of the public may also file a petition requesting a judicial review of such directive. In addition, the concerned enterprises, as well as other federal and state agencies, may apply for a judicial review of a directive issued by another administrative agency.

It is clear from the context of this Article that, Article 48 applies to administrative decisions without prejudice to the provisions of Article 46. This Article relates to earlier provisions, especially Article 44. As stated under Article 44, any administrative agency shall establish a Grievance Handling Body and notify the public of the establishment of such body. Article 43 clearly states that any person against whom an administrative decision is made has the right to lodge a complaint to the Agency. Therefore, if a client has a complaint on the administrative decision given, she can lodge this complaint to the Grievance Handling Body established by the administrative agency in accordance with Article 44. The Grievance Handling Body shall properly examine the complaint and make a recommendation to the Head of the Agency or an officer authorized by the Head. This is the essence of Article 46 (1). After considering the recommendation given by the Grievance Handling Body, the Head of the Agency or an officer authorized by the Head shall give a decision. The decision made by the Head of the Agency or an officer authorized by

10 There is a discrepancy in the numbering of the Amharic and English versions of this Article in the proclamation. In the Amharic version, this is in Article 46 while in the English version it is in Article 48. Looking back at the numbering of the document starting from the beginning, it is evident that the Article should have been Article 48 in the Amharic version as well. Therefore, the English version is the correct version and the Amharic version should be read in line with the English.

11 The working group discussed this issue at length. The following concluding remarks were made at the 21stMeeting Minute of the Working Group on the 7th of April 2019 "On the other hand, it has been suggested that the right to request a judicial review should be broader, as directives are generally applicable and do not immediately affect the interest of people. To this end, using the phrase "any interested person" was presented as an option." Later, when the draft was presented to the Legal and Judicial Advisory Council for discussion, it was agreed that the petition for a judicial review of directives are matters of public interest that should be understood broadly and should open for any interested person to petition.

the Head, after considering the recommendation duly made by the Complaint Handling Body, shall be the final decision of the Agency.

However, any person who has appeared before the Grievance Handling Body pursuant to Article 46 and claims to have her interest adversely affected by the decision given by such body; may file a petition requesting a judicial review of the decision to a court in accordance with Article 48. Save for exceptional cases, this is what it means to say that an administrative decision to be reviewed by the court must first comply with the provisions of Article 46.

Example

The Ethiopian Broadcasting Authority (EBA) issues a new directive regulating media institutions and their producers. The Directive requires that producers employed in all broadcast media institutions shall have certain educational qualification and work experience in order to obtain a professional license. However, the need for such professional license did not appear in the proclamation or the establishing regulation that regulates the power and responsibilities of the Authority. The Directive will put many of the producers currently working in broadcast media out of work and will also restrict the media institutions' freedom of choice. Several parties may file a petition for judicial review of the directive in this example. Media professionals and editors whose interest is affected by the directive, private and public media institutions, as well as professional associations and civic associations working in the field of media freedom, may file a petition for judicial review against this Directive.

4.1.2 Exhaustion of Administrative Remedies and Finality

Article 51

A Judicial Review may only be sought against a final decision of an agency.

Article 52

Unless otherwise provided by law, a petitioner for judicial review is required to exhaust all remedies available within the agency before petitioning the court for judicial review. Notwithstanding to the rule under sub-Article(1) of this article, where there is an undue delay on the part of the agency to provide remedies, the obligation to exhaust remedies will not apply.

We have seen above that it is required to exhaust the procedures prescribed under Article 46; before lodging a petition for a judicial review of administrative decisions. Article 51 of the proclamation further makes it clear that a judicial review may only be sought against a final decision of an agency. Article 52(1), by strengthening what is prescribed under Article 51, asserts that unless otherwise provided by law, a petitioner for judicial review is required to exhaust all available remedies within the administrative agency before petitioning the court for judicial review.

The duty to exhaust administrative remedies prescribed under Article 52 (1) is applicable where it is not provided otherwise in the law. If there is a provision otherwise, such provision shall be given effect. For instance, if there exists a provision in the Regulation establishing the National Educational Assessment and Examinations Agency that any person aggrieved by the decision of the Agency may appeal to the Ministry of Education, such person is required to submit its complaint to the Ministry of Education. However, in the absence of such an explicit provision, it is not a requirement that such person shall submit a complaint to the Ministry of Education merely because the Agency is accountable to the Ministry of Education.

The other remedy is provided under Article 51(2). Pursuant to this provision, though a petitioner for judicial review is required to exhaust all remedies available within the Agency before petitioning for judicial review, *"the obligation to exhaust remedies will not apply where there is an undue delay on the part of the agency to provide remedies."*

This exception is also provided under Article 33(2). Article 33(2) provides that *"failure to render decision within an appropriate period of time shall be considered as denial of the petition [remedy sought]."* Although a petitioner to judicial review of administrative decision is required to exhaust local remedies as a matter of principle, undue delay on the part of the agency in rendering administrative decision is deemed to be a denial of the petition. Therefore, it can be petitioned for judicial review without the need to fulfil the obligation to exhaust local remedies as provided in Article 51.

In cases where there is no law or policy document that clearly provides a time limit within which administrative decisions shall be rendered; the complexity of the matter and the reasonable period of time that a diligent person will require to render a decision on such matter shall be considered in determining whether or not a certain decision is given within an appropriate period of time or not. However, if after considering a reasonable time, the decision is not given, then, pursuant to Article 33 (2) of the proclamation, it can be considered that a negative decision has been rendered. It is also true that many agencies in the interest of ensuring good governance have prescribed time limit within which they provide each of their services. Expiry of this time limit with no response for petition should be considered as a denial of the petition.

Example-1

Assume that someone goes to a Woreda administration to get an ID card and is told by the Woreda Vital Events Registration Officer that he would not be issued an ID card. The person submits a grievance to the Woreda's Complaint Handling Body. The Complaint Handling Body replied that the grievance shall be first brought to the attention of the Director of the Woreda Vital Events Registration to be considered by the Compliant Handling Body. The complainant, who is aggrieved by this decision, petitions for judicial review. The Woreda, on its part, alleges that the petitioner has not received a final decision on the matter as the Woreda Vital Events Registration Process Unit Director has not decided on the matter and, as such, the petitioner did not exhaust all available administrative remedies within the Agency.

In this example, there are two points worth noting. The first point is the existence of several internal grievance handling mechanisms available within different administrative agencies. The Complaint Handling Body to be established pursuant to the Administrative Procedure Proclamation is the final compliant hearing body, but not the only such body. Therefore, any client shall, before submitting his complaint to the Complaint Handling Body established by the proclamation is expected to submit his complaint to the appropriate complaint hearing bodies at different levels.

Therefore, such individual cannot submit the matter directly to the main complaint handling body before submitting the same to the Director of Woreda Vital Events Registration Process Unit and, as such, cannot be regarded to have exhausted all remedies available within the Woreda.

The other point is the decision of the Complaint Handling Body is a mere instruction to submit complaints to the appropriate hierarchy in accordance with the law and not a decision on the merits of the case. Therefore, the decision in respect of which the individual has submitted a petition for judicial review cannot be considered as a final decision. For this reason, it seems that the objection of the Woreda will be acceptable.

The other point worth considering is the extent of exhaustion of administrative remedies. How far is the client aggrieved by the decision of the Woreda, in the example above, is required to go in terms of submitting such grievance to the different levels of authority? Are they required to petition to the concerned sub-city or city administration office?

The answer to this question is found in the agency and the law governing the merits of the case. Therefore, unless clearly provided otherwise under the law, a decision passed by an authorized official after being reviewed by the Complaint Handling Body established in a branch office shall be considered as the final decision of such institution without any requirement to submit a complaint to the head office. Furthermore, unless clearly provided otherwise under the appropriate law, a decision passed by an authorized official after being reviewed by a Grievance Handling Body established in the agency or authority shall be considered as the final decision of such agency or authority without the need to submit a complaint to the agency or authority to which such agency or authority is accountable to.

On the other hand, let us assume that the petitioner has submitted his complaint to the concerned director. However, the secretary of the Director informed the petitioner that the Director is not around and told him to come back another time. The situation was repeated a number of times, and the petitioner, being disappointed, brings the issue again before the Grievance Handling Body, to which the body replies that the issue cannot be brought before the body as it has to be first examined by the Director. As a result, months pass without the Director deciding on the matter. Three months pass, and the petitioner, who is frustrated at the situation, petitions for judicial review to the relevant court. The Woreda, on its part, objected to the petition for judicial review on the grounds of non-exhaustion of administrative remedies.

To help us understand the above example better, let us further assume that no time limit is provided to issue an ID card in the relevant laws and policy documents. Thus, in the absence of such laws and policies that would help us to decide on the matter at hand, providing a reasonable time that could be adequate for issuing or rejecting an ID card is the prudent option.

It can be inferred from practice that the issuance of an ID card should not take more than 10 minutes. Even if the matter becomes complex and require further investigation, one does not have to be an employee of a Woreda to know that it should not take more than a couple of weeks. In the example above, the decision took more than three months and, as such, it would not be an exaggeration to say that it took more time than reasonably required. Thus, it is appropriate to take this delay as a decision of denial, and petition for judicial review would be proper.

Example-2

Concerned individuals request an administrative agency to issue a directive pursuant to the power given to it by a proclamation alleging that the agency's failure to issue such directive for many years has negatively affected their interests. Although the request is submitted on September 14 2020, the administrative agency failed to provide any official response to the requests. Furthermore, the agency failed to post notice and organize records showing the process required for issuing the directive in accordance with Article7 and 8 of the proclamation; until November 19 2020. For this reason, the individuals have petitioned for a judicial review. The administrative agency objected to the petition stating that it has not reached a final decision not to issue the directive and it is just examining their request.

From this example, we can clearly understand the importance of Article 52(2) of the proclamation. The Article stipulates that where there is an undue delay on the part of the agency to provide remedies, the obligation to exhaust remedies will not apply. The reasonable time that is needed to render administrative decisions is already explained above in part two. Laws that provide powers and functions of the agency or relevant laws that govern the issue or time limit provided in other laws may be considered as appropriate time.

Furthermore, if there are any clearly provided timeframes under policy documents which serve as manuals of the administrative agency or documents such as citizens' charters, shall be considered as appropriate time. As such, if there is any document that provides, at least to some extent, the timeframe within which a request for issuance of a directive shall be decided upon, it is the Federal Administrative Procedure Proclamation. Accordingly, the administrative agency had to commence the issuance of the directive or reject the request until 19 October 2020. If, however, the time limit lapses then, it should be considered as rejecting the request and could be a valid ground for petitioning for judicial review. Therefore, unless sufficient justification is provided for not issuing the directive, the court may order the agency to start the process of issuing the directive forthwith.

4.1.3 Exhaustion of Administrative Remedies and Directives

It is not required to lodge a petition of judicial review to a Grievance Handling Body with regards to directives pursuant to Article 43, unlike for administrative decisions. This is because; Part Three of the proclamation, Sub Section Five (Article 43-46), is generally concerned with complaints regarding administrative decisions. The provisions under the Sub Section are concerned with the right to lodge complaints (Article 43), establishment of Grievance Handling Body (Article 44), stay of execution (Article 45), and reviewing and deciding on complaints (Article 46).

Overall, it can be said that the focus of these provisions is directed to administrative decisions, not directives. Therefore, there is no need to submit a petition for review to the Grievance Handling Body and get a decision in accordance with Article 46; in order to exercise the right under Article 48 and request for review of a directive. Practically speaking, there is no such thing as exhaustion of administrative remedies when it comes to the process of issuance of directives.

4.1.4 Court of Competence for Judicial Review

Article 49

1. A petition to review directives or administrative decisions shall be submitted to the Federal High Court and the decision of the Court will be final.

2. Notwithstanding the stipulation under sub-article (1) of this Article, a decision of High Court directive may be appealed to the Federal Supreme Court.

3. The Federal High Court shall establish special benches dedicated to handle petitions for judicial review of administrative acts.

With regards to judicial review of administrative actions, different countries have their own peculiar experiences. For instance, France has established a separate administrative court that examines and reviews administrative decisions.[12] In America and England, on the other hand, it is ordinary courts that examine and render decisions on administrative matters. In this regard, the Federal Administrative Procedure Proclamation stipulates the establishment of an administrative affairs division under the Federal High Court solely mandated to receive, examine, and review petitions on administrative actions. This approach is more or less similar to the German judicial review system. As a matter of fact, matters which have been reviewed and decided by administrative agencies have passed through one level of review and, if they necessitate a further review, they can be considered to be fairly complex. As a result, it is believed that petitions for review should be submitted to the Federal High Court than the Federal First Instance Court.

The fact that the proclamation provides for the establishment of an administrative division within the Federal High Court does not affect judicial independence. Because it is through the proclamation, i.e. the legislature, which stipulates this arrangement., the judiciary is required to comply with the dictates of the Legislature. Moreover, such arrangement will facilitate the development of special judicial expertise in administrative matters and help in bringing consistency in judicial services. The establishment of such a bench is also believed to be necessary as it envisages the special emphasis accorded to review of administrative actions in the judicial system.

Therefore, as prescribed under Article 49(1), a petition to review directives or administrative decisions should be submitted to the Federal High Court. pursuant to Article 49(3), the Federal High Court shall establish special benches dedicated to receiving, examining and deciding on petitions for judicial review of directives and administrative decisions.

As noted under the second paragraph of Article 49(1), the decisions of the Administrative Bench of the Federal High Court on the petitions for review shall be final. Nevertheless, as per the constitution, if there is a fundamental error of law in the final decision of the Court, it shall be subject to cassation procedure. However, decisions passed by the bench with regard to directives, as per Article 49(2), may be appealed to the Federal Supreme Court.[13]

12 The system of judicial review of administrative actions has different conceptual underpinnings in different jurisdictions. The structure and the legal procedure is also different. This difference emanates from the different legal traditions countries follow. The common law and civil law legal systems have influenced the manner in which judicial review of administrative actions is conducted in different legal systems. Generally, we have three types of review of administrative matters. The first category is the one adopted by U.S and Britain based common law tradition. In these countries, the power to review administrative matters is vested in regular courts. These courts render decisions in light of principles of administrative law and precedents. This is not however intended to say that every administrative matter is brought to the attention of courts. There are certain grounds that allow judicial review of administrative actions. The second category is the model adopted by civil law countries such as France. In this model, administrative matters are reviewed by parallel and distinct administrative courts. In France, Counseild'Eta, serve as a supreme court of administrative matters. This court is also structured starting from first instance administrative court, and follows its own procedure. The procedure to appoint administrative judges is different from the way judges are appointed in ordinary courts. At Counseild'Eta, judges are bureaucrats who are equipped in knowledge in public administration. The common law model is based on the notion of check and balance between the judiciary and the executive while the civil law model emphasizes the principle of distribution of power between the judiciary and the executive. The third model is a mixed model found in between the previous two models. This approach is followed by European countries such as Germany and Spain. This approach establishes administrative bench in the ordinary courts which is destined to entertain only administrative matters. The judges are also equipped with administrative law knowledge and government services.

13 The drafting team has in mind that the review procedure shall be expeditious court to ordinary litigation, be implemented in line with Article 56 of the proclamation, and intended to make it non-appealable. The stipulation of Article 49 (2) was not part of the draft produced by the Working Group, and it was included somewhere during the final stage of the law making process.

4.1.5 Principles and Grounds of Review

Article 50

1. A directive will be revoked by the Court where:

a) it is proved to have failed to comply with the procedural rules provided in Chapter Two of this Proclamation;

b) it is ultra-vires; or

c) it is contrary to other laws placed higher in the Hierarchy of Laws.

2. An administrative decision may be revoked if it is made in violation of the Principles provided under Chapter Three of this Proclamation.

What are the Grounds for Judicial Review of Directives?

As it is prescribed under Article 50 (1), a directive is reviewed for three main reasons. A petition to review a directive needs to show the following reasons:

Failure to comply with procedures for Issuing Directives (Procedural Ultra-vires)

One of the grounds for the review of a directive is failure to comply with the procedures for issuing directives provided under section two of the proclamation. These procedures are extensively discussed under chapter two of this document. We will only provide a short summary of the chapter here.

Any administrative agency issuing a directive is expected to strictly adhere to the provisions in section two of the proclamation (Article 4-19). Stressing this requirement, Article 4 (2) provides that an administrative agency may issue directives only through procedures provided under this proclamation. Article 50 (1) also confirms this requirement. Where the directive issued failed to adhere to the prescribed procedure of section two of the proclamation, a petition for review such directive is admissible and, where it is proved that it has not properly adhered to the procedure, the court shall nullify it.

Sub Section Two of Section Two of the proclamation outlines the procedures for issuing directives. Overall, any administrative agency issuing a directive needs to adhere to the following main procedures:

- the administrative agency preparing to issue a directive shall keep a record indicating the timeline for issuing such directive (Article 7 (1)(a));
- publish a public notice concerning the draft directive and its issuance procedure (Article 8);
- send the draft directive to concerned administrative agencies, other stakeholders and the Federal Attorney General(Article 9 and 12 (4));
- organize public consultation on the draft directive and allocating enough time to participants(Article 10);
- prepare explanatory note describing the content of the directive and the process of issuance thereof (Article 14);
- prepare the Directive in line with the form prescribed under Article 15 of the proclamation; and
- send the Directive to the Attorney General to be registered and post it on the agency's website (Article16 and 17).

Further to these steps, Section 2 of the proclamation provides time frames and other mandatory provisions required to be followed by administrative agencies. Therefore, a directive issued without fulfilling any of the above conditions and requirements is regarded as contravening the mandatory provisions of Article 4(2) and could be subject to a petition for judicial review, and it can be reviewed, pursuant to Article 48(1) and 50 (1)(a).

Example-1

An administrative agency is planning to issue a directive and published a notice and organized an official record of the directive making process. Then, it sends the draft directive to the relevant administrative agencies and the Federal Attorney General. A public consultation was held between these entities, and thorough discussions were held on the draft directive. However, private sector actors or their representatives, who may be subject to the directive, were not invited to take part in the consultation.

Few stakeholders, having seen the announcement made by the administrative agency, have submitted written comments on the draft directive. However, the agency adopted the directive under the signature of the Minister and entered the directive into effect, without taking into consideration the comments it has received in writing. The stakeholders, who realized that the agency has not revised the directive based on their feedback or did not indicate why their comments were not incorporated; did not send the directive to the Federal Attorney General for registration; and started implementing the directive without posting it on its website; file a petition for judicial review. The petition mainly stated the following procedural violations by the Ministry:

1. *The agency failed to consider comments submitted to it in writing, as per Article 12(2 and 3); and if it did not accept such comments, has not prepared an explanatory statement as to why it did not accept them.*

2. *It has not prepared a statement explaining the contents of the directive and the process of issuing directive as per Article14.*

3. *It has failed to send the directive to the Attorney General for registration as per Article16, and it has also failed to post the directive on its website as required under Article 17.*

All of these violations of the provisions of the proclamation constitute good causes for judicial review. The court, by looking into the violations committed by the Ministry while issuing the directive may decide to invalidate the directive as per Article 18(1) and may order the agency to reissue the directive rectifying the non-compiled procedures.

Example-2

Ministry of Trade and Industry sent a circular to all regions and city administrations on Sep. 6, 2013, EC (Sep 16 2020). The Circular stated that anyone who intends to engage in consultancy service pertaining to the economy, business and investment development is required to have a special Certificate of Competence. The Certificate is to be issued by regional and city administration trade bureaus. A schedule of the requirements to issue a certificate of competence is attached to the circular. A concerned professional association submitted a petition for judicial review stating that the circular failed to take practical conditions into consideration and fails to comply with the directive issuance procedure provided under the proclamation. The Ministry of Trade and Industry, on its part, argued that the circular was prepared temporarily until a comprehensive directive regulating the matter is adopted, and a petition for judicial review cannot be submitted where a proper directive is not yet issued.

This brings to our attention the question of whether or not a petition for review can be brought with respect to different documents issued by administrative agencies that do not necessarily bear the name 'directive' and are not prepared in the form of a directive but have legal effect. As explained under chapter one earlier, the practice reveals that there are various documents issued by administrative agencies that have legal effect. Circulars and manuals can be good examples here. In addition, there are also documents which are issued as decisions of senior officials of administrative agencies but have a general effect on all clients of the agency with certain exceptions.

However, as per the definition provided under Article 2(2), all these documents shall be considered as directives. This is because all the above-mentioned documents clearly affect the rights and interests of individuals. Therefore, despite the nomenclature used by the administrative agencies to refer to such documents, it should be noted that these documents are directives as far as they fulfil the definition of a directive under the proclamation.

Directives, in turn, are expected to be issued in conformity with the provision of Article 4(2) of the proclamation. In the above example, the criteria that the Ministry of Trade and Industry has issued in relation to certification of professional competence have a general effect on the rights and interests of individuals. Therefore, though they may be referred to as a circular or otherwise, the issuance of any directive shall adhere to the procedures provided under Part Two of the proclamation. Therefore, the court shall nullify the circular, as it is issued in contravention to the procedures provided under the law and has the effect of a directive. Any such documents shall be issued as "directives" in accordance with the proclamation.

Substantive Ultra-Vires Directive

Another ground for judicial review of administrative directive is ultra-vires. Such petition is made in accordance with Article 50(1)(b) of the proclamation. As indicated above, the administrative agency acquires the power to issue directives based on delegation from the legislature. The importance of this delegation is stipulated under Article 2(2) of the proclamation, where directive is defined.

As it is well explained in detail in Chapter 2 of this document, the power of administrative agencies to issue directives emanates from the delegation of the legislative organ. The FDRE Constitution under Article 55(1) provides that federal legislative power is vested in the House of Peoples' Representatives. Article 77(13) also provides that the Council of Ministers may issue regulations pursuant to the power vested in it by the House of Peoples' Representatives. As per these provisions, the House of Peoples Representatives may, in the proclamations it issues, delegate the Council of Ministers to issue regulations and other administrative agencies to issue directives. Therefore, it is clear that administrative agencies do not have inherent law-making power unless delegated by proclamation or regulations.

Under the Ethiopian legal system, it is usual to see provisions that stipulate the delegation of the power to issue regulations and directives at the final part of many proclamations. Accordingly, an administrative agency is required to make sure that it has the power to issue directives from the outset. Hence, making sure that it has such power is the fundamental and primary task of the process of issuing a directive. In the absence of such power, such agency shall not speculate to issue a directive in the first place. This is also why Article 8(1) of the proclamation provides that an agency that is preparing to issue a directive is required to indicate its public notice that it has the power to issue directives. Therefore, if the question as to whether the administrative agency has the prescribed power to issue the directive is not answered in the affirmative, this will suffice as a good cause to petition for the review of the directive.

Although an agency may have the power to issue directives, that does not mean it can issue any directive of any nature and content as it wishes. For example, levying tax and prescribing criminal punishments are mandates of the House of Peoples' Representatives, which is directly responsible for public sovereignty; these cannot be delegated to the executive organ.

Therefore, it would be ultra-vires to levy tax or prescribe criminal punishments by directive. Thus, as provided under Article 50(1)(b), any interested party can file a petition for the judicial review of such a directive (Article 48(1).

Example

We can raise various examples to show ultra-vires directive. However, for the sake of having a general insight, let us consider directives, or parts thereof, relating to administrative fees. There are many ways in which administrative agencies may collect fees for diverse services they offer. However, an administrative agency cannot levy or collect fees. Therefore, a petition for judicial review on the ground of ultra-vires may be brought against directives which levy and provide that an administrative agency shall collect administrative fees. The same applies to directives providing for criminal punishments. Similarly, a directive issued in the absence of a clear power given on the matter by proclamation or directive, or in a manner that broadens/stretch such power, can be also considered as ultra-vires and invalidated through judicial review.

A Directive contrary to laws with Higher in Hierarchy

The third ground for judicial review of directives prescribed under Article 50(1)(c) is an instance where the directive contradicts or conflicts with laws of higher in hierarchy. As we have seen above, laws with higher hierarchy than directives mean proclamations enacted by the House of Peoples' Representatives and regulations issued by the Council of Ministers.[14]

As it is established, where the hierarchy of laws are unbundled, proclamation is placed at the top, followed by regulation and then directive. This is the reason why a directive is designated as third level legislative instrument. The two levels of law are

14 It is also important to note that a directive may be contrary to the Constitution. But, this does not prevent it from being reviewed by courts. What is prohibited, for courts, under the Constitution is interpretation of laws enacted by the legislative organ of both the federal and regional government.

above the directive, which is on the third level of the hierarchy. As we have seen earlier, an administrative agency acquires its power to issue directives by virtue of the powers delegated to it by the legislative organ on the basis of a proclamation that establishes it.

The legislative organ has delegated the power to issue Regulations to the Council of Ministers, which is the highest executive organ. Therefore, proclamations and regulations are superior in hierarchy to directives. Thus, the proclamation is the highest legislative document as it is enacted by the House of Peoples Representatives that chips and delegates its power. Regulations are second-level documents issued by the Council of Ministers by virtue of the powers delegated to it by the legislator. Therefore, directives, which are third in the hierarchy, shall not in any way conflict or contradict with proclamations and regulations.

Where a directive is found to be in contradiction with a proclamation and/or regulation, this entails a good cause to petition for a review as per Article 50(1) (c) of the proclamation. Such contradiction with higher laws can be tested against laws establishing the administrative agency, which provide for the powers and responsibilities of such agency. Additionally, if a directive is found to contradict any other proclamation or regulation issued by the federal government, a petition for judicial review may be brought in respect of it. Therefore, an administrative agency cannot claim that it is immaterial whether or not a directive it issued contradicts other proclamations or regulations as long as it does not directly contradict its establishing proclamation.

The other issue to be considered with regards to judicial review of directives is the question of how and in what ground a request for judicial review is made; if an administrative agency rejects a request submitted to it in accordance with Article 6 of the proclamation, to issue a directive.

The Article provides that where an administrative agency fails to issue a directive, it is required to issue, any person may request that the administrative agency to issue such directive. The administrative agency to whom such request has been made shall, within thirty days, start the process of issuing such directive or reject the request by stating the reasons for such decision.

What recourse does the person making the request to issue a directive have where the administrative agency rejects such a request? The decision of the administrative agency denying the request to issue a directive is an administrative decision in its own right. As such, a petition for judicial review of the agency's decision not to issue the directive shall be considered as that of any administrative decision and not as that of a directive. However, once the agency accepts the request to issue a directive and issues the directive, then any person who has issues against the procedures under which such directive was issued and the contents thereof may file a petition for judicial review of such directive.

Example

As attempted to elucidate in section two, directives can be issued in two ways. First, it is a directive issued by administrative agencies to implement the power vested to it by proclamations and regulations. These kinds of directives are intended to facilitate the implementation of the proclamation and regulation and do not impose or create new rights and duties except for those that are stipulated in the relevant proclamation or regulation. These types of directives do not also provide new policy alternatives.

On the other hand, it could also be the case that based on the general provisions of proclamations and regulations, and administrative agencies may be given the power to issue detailed right and duties by directives in accordance with the appropriate policy alternatives they follow. For instance, the proclamation establishing an administrative agency might explicitly authorize such agency to issue a directive that determines the administrative fees for the services it provides. In this case, the agency is allowed to come up with a directive that determines appropriate payments for all the services that are provided by the Agency.

For example, with regard to taxation and related legal schemes, it is the relevant proclamation, or in some cases the regulations, that determine the tax rate. The tax administration agency is only empowered to issue directives that will facilitate the tax administration and should not issue directives that will levy taxes on their own or introduce new tax rates. If the tax rate provided under the income tax proclamation for a type of income is 10% and the tax authority provides for a higher rate by directive, this would constitute a contradiction with a law higher in hierarchy and, as

such, such part of the directive may be invalidated by the Court.

What are the grounds for the review of administrative decisions?

An Administrative Decision made in Violation of the Principles provided under Part 3 of the Proclamation.

An administrative decision may be subject to judicial review where it is made in violation of the principles provided under Part 3 of the proclamation. This happens where the decision is made ultra-vires, or it is within the agency's power but violates the principles and procedures provided under Part 3 of the proclamation.

4.1.6 The Judicial Review Procedure

The proclamation contains three provisions (Article53-55) concerning procedures of judicial review. Furthermore, pursuant to Article 58, the Civil Procedure Code is applicable in the proceedings of judicial review on matters not covered by the proclamation. Therefore, the Civil Procedure Code is a gap-filling instrument to this general procedure of judicial review. The main procedures provided under the proclamation are related to the period within which petitions for judicial review must be filed, replies thereto and submission of documents. In this part, attempts will be made to discuss these procedural provisions in detail. The remaining is left to be filled by, and undertaken in accordance with, the Civil Procedure Code.

Period of time within which petition for Judicial Review of a Directive with Procedural Ultra-Vires must be filed

Article 53(2)

A petition under Article 50 (1) (a) to review a directive shall be submitted within 90 days after the adoption of the directive.

Article 50 (1)(a) deals with a directive issued without the observance of procedures set under Articles 4-19 of the proclamation summarized above. As per Article 53(1), a petition to review a directive issued without observance of the procedures for issuing directives shall be submitted within 90 days after the adoption of the directive. The 90 days shall start to be counted consecutively from the day of the adoption of the directive. Thus days including weekends and holidays are to be considered.

Any petition filed after the said 90 days, on the grounds that a directive has failed to comply with the procedures under the proclamation for the issuance of directives, shall not be accepted. Therefore, claims for review of a directive on the ground that the administrative agency issued the directive without due consideration for procedural matters such as; that it did not organize proper records of the proceeding, no public notice were published, the draft was not properly circulated to stakeholders, the public was not well informed, no adequate discussion was made on the draft, no adequate discussion time was allocated, or that comments made during discussions were not properly recorded and considered and the like, shall not be submitted; after ninety days of the issuance of the directive.

This begs for two questions: wouldn't that mean that the administrative agency issued a directive without following the provisions of the proclamation? Does this not encourage similar subsequent action? Of course, we cannot say that these things can never happen. As stated in the preamble, the purpose of the proclamation is to bring accountability, transparency and a fruitful system of administrative justice. Article12 sub-articles (1) and (2) of the Constitution also provide that public administration shall be transparent and entails accountability.

Nevertheless, the aim is to make sure that the effect of a directive issued in such a manner shall not be interrupted indefinitely as long as it does not contain any substantive defects. To reissue a directive for mere failure to follow the procedural process so far as it does not have substantive defects will not add any value other than waste time, man power and resource. Therefore, the law, after considering the cost and benefit of reissuing such directive, opted for efficiency, where it is better to maintain the implementation of the directive.

Nevertheless, officials of administrative agencies are duty-bound to implement laws and shall comply with the provisions of Part two of the proclamation while issuing directives. As stipulated in Article 4(2) of the proclamation, directives shall

only be issued in accordance with the procedures provided under the proclamation.[15] It is prohibited to issue directives contrary to the provisions of the proclamation. This is the basic objective of the administrative procedure.

The provision of Article 53 (1), in other words, is a wakeup call for stakeholders to be vigilant and challenge procedural defects as promptly as possible. On the other hand, the law is also suggesting that you are given ninety (90) days to file your petition for the directive to be revoked or revised, or you could have even helped the directive to be issued in accordance with the proper procedure with your participation. Other than that, the law seems to imply that it is not proper to provide more time for failure to observe procedural matter or those matters which may not merit much attention.

The Time within which a petition for Judicial Review of Ultra-Vires Directive to be filed

Article 53(2)

A petition under Article 50(1) (b)(c) to review a directive can be submitted anytime.

As per Article 50(1) (a) (b) and(c), where a directive is substantively ultra-vires or where it contravenes with other laws higher in hierarchy, a petition to review such directive under Article 53(2) can be submitted at any time without any restriction. As a directive can be simultaneously ultra-vires and be in contradiction with laws higher than its status, a petition for review may be filed at any time under such circumstances.

Earlier, we have said that a petition to review a directive issued without due regard to procedural matters shall be brought within 90 days from the adoption of the directive. When it comes to substantive ultra-vires directives or directives in contradiction with laws higher in hierarchy, however, the petition for review may be filed at any time. This begs the question as to why there is such a distinction; the answer to which is not that complicated.

A directive that was issued ultra-vires has no legal basis. Furthermore, the administrative agency might have also issued the directive outside of its jurisdiction. Perhaps, it could have been the case that another administrative agency with the appropriate mandate might have already issued a directive. Whether joint or several, these are substantive legal issues. Hence, it is possible to conclude that the administrative agency has issued the directive outside of its mandate prescribed to it under its establishment proclamation. Therefore, such types of errors have to be rectified at any time. Such a directive should not have been issued in the first place.

To uphold such an error of law by stating expiry of period for petition would amount to providing a shortcut to the administrative agency to acquire a power not granted to it by law, through its own directive. This contradicts with the principle of legality and the basic principles of operations of government, and it is only appropriate to allow for its rectification at any time.

The same applies to a directive which contradicts with laws of higher in hierarchy. The above explanation with regards to grounds for judicial review without time limit for substantively ultra vires directive, apply in this case as well.

More often than not, a directive issued ultra vires means a directive which contradicts or conflicts with a proclamation and/or a regulation. This is because the administrative agency acquires its powers from a legislative instrument. Normally, after the functions of the administrative agency are outlined in the proclamation, the power to issue regulations and directives shall be given to the Council of Ministers and the administrative agency, respectively, in order to properly implement the proclamation. The duties and responsibilities of the administrative agency are specifically provided by law. It shall issue directives within the limit of the specific powers entrusted to it. Thus, it cannot issue directives outside the powers entrusted to it.

Where such directive is ultra-vires, it means it is in disagreement, contradiction or conflict with the proclamation establishing the agency and the regulation issued by the Council of Ministers. Therefore, this contradiction or conflict with laws of higher status is a substantive error. Unless it can be rectified at any time, it means a directive,

15 This failure may entails criminal liability as prescribed under Article407-411(1)(c), 420,436(c),735,741(2),776,796,798 and 801 of the Criminal Code.

which is lower in hierarchy, has in effect amended or repealed a regulation and a proclamation, which are of higher status. The administrative agency in effect granted powers that were not subscribed to it under the laws with higher status. This contradicts with the basic principle behind the hierarchy of laws.

Therefore, it shall be rectified at any time without any statutes of limitation. This is why Articles 53(2), 50 (1) (b) and (c) allows a petition for judicial review of a directive to be filed at any time where such directive is issued ultra vires, or it contradicts with laws that are with higher status than directives. In addition to the personal liability it may entail, the law does not allow the directive issued by officials of the administrative agency as such to continue to be effective upon lapse of 90 days in the same manner as a directive issued without observance of a procedure. Therefore, even though the ninety days period of limitation may lapse, a petition for the review of a directive in contradiction with legislation with higher standing may be filed at any time. Such a petition for judicial review is not subject to any limit of period.

The Time within which a petition for the Judicial Review of Administrative Decisions to be filed

Article 53(3)

A petition to review an administrative decision shall be made within 30 days after the petitioner was notified of the decision.

As it is stated under Article 53(3) of the proclamation, a petition to review administrative decisions shall be made within 30 days after the petitioner was notified of the decision.

As provided under Article 39, any administrative decision, the justification thereof, shall be communicated to the concerned client in writing. Therefore, the petition for judicial review shall be made within 30 days from the date the decision is handed to the client in writing. If the thirty days fall on a holiday, there is no prohibition against filing the petition the next day as provided in Article 1848 (3) of the Civil Code and Article192 of the Civil Procedure Code.

Here, there are some issues that may need to be taken into account. The particular decision in respect of which the client wishes to file a petition should be known clearly. As discussed above, it is important to recall Articles 43, 51 and 52 of the proclamation. A person is first expected to lodge a complaint to the complaint handling body of the agency in accordance with Article 43 and 44, before going to court. Therefore, before a matter is brought to court, the Grievance Handling Body of the administrative agency shall review the matter and submit its recommendation to the head of the administrative agency. The head of the administrative agency or the person delegated by her shall review the recommendation submitted to him and give a final decision on the matter. Thus, it is against such final decision that a petition of judicial review is allowed to be filed. This is consistent with the provision related to the exhaustion of administrative remedies provided under Article 52.

It can only be said that administrative remedies are exhausted when the above-mentioned procedures are met (i.e., the authorized official of the administrative agency gives a decision on the petition submitted to it). If there are grievances against the decision rendered, such grievance shall be submitted to the Grievance Handling Body of the administrative agency (Article 43), where it provides recommendation. After reviewing the matter, the head of the administrative agency shall give a decision based on the recommendation made by the complaints handling body (Article 46). Such decision shall be issued to the client in writing (Article39). Where the client is not satisfied with the decision rendered as such, he shall file a petition for judicial review within 30 days (Article53 (3)).

The only exception where a petition can be submitted for judicial rearview other than avenues stated earlier is a petition in accordance with Article 33(2) and 52(2), where the administrative agency delays a final decision on the matter beyond a reasonable time the process may require. As per these articles, any client who claims that a decision has been unduly delayed may request the Court for review and order on the matter.

4.1.7 Actions of the Court to Which a Petition for Review has been submitted

Article 54: Written Response

Where the court finds that the petition for review has the merit, the court shall give to the agency against whom a petition of review had been filed an opportunity to submit a written response within 15 [working] days.

Article 55: Submission of Records

The Court may order the agency against whom a review petition is being considered to submit records relating to the directive or administrative decision under consideration.

Article 54 provides a general provision regarding the actions of a court to which a petition for review has been submitted. Accordingly, where the court finds that the petition for review cannot be filed to it or does not have merit, it can reject the petition forthrightly. However, if the court finds that the petition for review has merit, it shall order the agency against whom the petition for review had been filed to submit a written response within 15 working days. That means the court shall not decide on the petition without hearing the agency that gave the decision in the first place. As we have said earlier, a decision affecting a person shall not be made without hearing such person; and likewise, as administrative agencies are legal persons, the same principle applies to them as well.

Where the court to which a petition for review or order on the grounds of delayed decision has been submitted believes that the issues have merit, then it may order the administrative agency to submit records related to the matter, in addition to a written response in accordance with Article 55. Accordingly, where the court believes that a written response and other supporting documents are necessary, it may order for the submission of any records related to the matter as per Article 54. The administrative agency is required to submit its written response within 15 working days from the date of receiving the order, though nothing shall prevent it from submitting its response and the necessary documents before such time.

Although the type of documents required pursuant to Article 55 may vary based on the type of the petition for review, the general outline of documents required can be observed from different provisions of the proclamation. If the petition is made in respect of a directive issued by an administrative agency, it is assumed that the following documents may be required to be submitted during the review process:

- a copy of the official record outlining the directive making process, and all other documents required to be included in such record, including the draft directive and comments made thereon (Article7(1));
- all public notices made regarding the draft directive and the drafting process (Article 8);
- confirmation showing that the draft directive was sent to relevant administrative agencies, other stakeholders, and the Federal Attorney General (Article9 and Article12(4));
- documents showing that public consultation forums were organized on the draft directive and that relevant stakeholders have taken part in the discussions, (Article10) and;
- confirmation showing that the directive was sent to the Federal Attorney General and was posted on the agency's website (Article16 and 17).

Where the petition for judicial review is brought against an administrative decision, the following documents may be required to be submitted at the review process:

- if the administrative decision process was initiated by the client, his request and, the evidence conveyed to him in accordance with Article 20;
- if the process was initiated by the agency itself, the minute or any other appropriate document under which the process was initiated;
- directives applied on the administrative decision, if any;
- if the administrative case has been heard in accordance with the provisions of Article36-38, the minutes of any other appropriate document showing the hearing process;
- if there were any preliminary rulings or injunction order as per Article 41 in relation to the matter, claims brought by the client, responses thereto and other petitions.

Documents to be submitted by administrative agencies to the court shall be copies of the original documents; however, if the court deems it necessary, it may order for the original documents to be furnished.

4.1.8 Ruling of Judicial Review

Article 56

1. ***The Court shall investigate the petition of review and render its decision within the shortest possible period of time.***

2. ***The Court may confirm; or partially or fully reverse the administrative decision or directive submitted for review.***

3. ***Where the court renders a decision which partially or fully invalidate the administrative decision or directive, it may also order the administrative agency to revise or reenact the directive or reconsider its administrative decision by rectifying the shortcomings identified through the court's decision.***

In general, the main purpose of the Administrative Procedure Proclamation is to ensure legality and the rule of law. In particular, the basic procedural principles outlined in Part Three of the proclamation which are required to be followed by an official making a decision, clearly demonstrate this purpose. The main objective of these procedures and principles of legality and rule of law is to ensure administrative Justice. In this regard, one of the goals is to provide speedy administrative justice. The provisions of Article 33 (2) and Article 52 (2) are clear evidence of this. The provision of Article 33 (2) stipulates that a delayed decision is a denied decision. In accordance with Article 52 (2), if a requested administrative decision is not given or is delayed, the requirement to exhaust administrative remedies shall not be a ground to preclude the right to request for judicial review. Since a delayed decision is considered as a denied decision, it is possible to file a petition for review on such denied decision. The concept reflects the basic legal maxim that *justice delayed is justice denied*.

In spite of the obligation of officials of administrative agencies to follow procedures and principles to ensure administrative justice, the proclamation also requires courts to provide expedited justice. This is evident from the provisions of Article 56 (1).

Accordingly, the court must examine the petition for review and render its decision within the shortest period of time possible. This provision is in line with the principles enshrined under Articles 33 (2) and 52 (2) referred above. Just as officials of administrative agencies are required to review and provide their ruling on administrative decisions as quickly as possible, courts are also required to examine and render their decision on petitions of review as quickly as possible. Otherwise, they may also commit the mistake of delaying the requested review of the decision or directive submitted to them. Thus, a delayed justice would amount to denied justice.

Indeed, on the other hand, it is also very important to be careful so that rushing too much would result in miscarriage of justice. Rushing justice may have adverse consequences in this regard, and justice rushed may be justice crushed. Therefore, just as the courts have to be careful not to delay in administering justice, they must also be careful not to rush it and result in miscarriage of justice. That is why the provision of Article 56 (1) reminds the courts that a decision must be made *"within the shortest* ***possible*** *period of time."*

The basic point here is that examination and rendering of decision on administrative petitions should not be unduly delayed or unduly hastened, and decisions or orders must, as much as possible, reach a fair conclusion within the appropriate time. The phrase *"within the shortest possible period of time"* suggests that it should take the reasonable and appropriate amount of time. So far, the attempt to fix dates to be followed by courts, in some proclamations, did not succeed, and this proclamation did not want to repeat the same mistake.

By virtue of Article 56(2), the court, after examining the petition, may affirm or partially or fully revoke the administrative decision or directive submitted to it for review within the shortest possible period of time. It should be worth noting that this provision is different from Article 347 (1) of the Civil Procedure Code. The provision of the Civil Procedure Code states that "the appellate court may uphold, amend, change or revoke any judgment or decision in respect of which an appeal is made." On the other hand, Article 56 (2) of the Administrative procedure proclamation states:

"the Court may affirm or revoke, in whole or in part, the administrative directive or decision on which a review request is made."

Whereas the Civil Procedure Code allows the court to uphold, amend, change or revoke the decision, the administrative procedure proclamation only allows the court to uphold or revoke the same in whole or in part. The administrative bench cannot amend or change the matter brought before it. The appellate court may review the petition brought before it and may confirm, amend, change or revoke the decision as necessary. Whereas the administrative bench can rather confirm or revoke (in part or whole) but cannot change or amend the decisions. This is one of the differences between appeal and review.

This difference is a key principle that can help to maintain the division of power between the three branches of government. The role of courts in the review of administrative matters is to ensure whether administrative agencies follow and comply with applicable laws and procedures but not to make decisions on their behalf. If courts are allowed to overturn administrative decisions and make their own decisions, it could be considered as replacing themselves with administrative agencies. More importantly, administrative directives or decisions require special technical skills and professional expertise. Therefore, the administrative bench of the courts is not expected to have the necessary expertise and technical skill to render decisions on administrative matters.

For example, substantive examination and deciding on the validity of the standards set by the Ministry of Health or the Food and Drug Administration or directives containing detailed standards of the mining or construction process etc., are not matters which are left to courts.

Similarly, examining and deciding on the validity of decisions made with regard to quality and standards is not only beyond the jurisdiction of courts but also requires that they should have the special skills needed to decide on such matters. It is not up to the courts to examine the merits of the directives as they do not have the specialized skills to make decisions in examining quality and standards. Thus, the legal authority of the courts during the review process is to investigate the cases in accordance with the provisions of the proclamation and to confirm the decisions if they are in line with the required laws and procedures or to revoke the inaccurate or erroneous decisions in whole or in part if the directives or decisions do not follow the required administrative procedures.

On the other hand, as we examined above and as discussed in Chapter One, enacting directives is a power given by the discretion of legislature to administrative agencies. Therefore, only the administrative agency to whom such power is delegated can issue directives by virtue of such power. One of the reasons why this is necessary is that the administrative agency needs detailed directives that require specialized technical expertise to carry out its administrative functions. If these detailed issues which require specialized technical expertise are enacted in the form of higher legal documents such as proclamation and regulations, it may cause lots of complicated problems. The legislator may lack the required specialized technical skills and expertise. If these detailed technical issues were to be included in proclamations and regulations, these documents would have to be very bulky and unnecessarily detailed. If they are enacted in the form of proclamations, it is also difficult to make amendments and changes from time to time when technical and professional changes are necessary. The administrative agency is the one which has this detailed technical expertise. If the courts are allowed to amend or change administrative decisions, they would be forced to enter into this detailed technical and professional work, which in turn pushes the courts outside of their jurisdiction and the context of their work. On the other hand, as directives are laws, if courts are given the power to amend and change these laws, it will turn the courts into legislative body. This violates the basic principle of separation of powers and disrupts the system of check and balance.

However, when we say that the administrative bench cannot amend or change matters brought before it, it does not mean that its power is limited only to confirming and revoking directives or decisions. Rather, in accordance with Article 56 (3), the court can order the administrative agency to revise or reenact the directive or reconsider its administrative decision that it partially or in whole revoked. This is a broad power the courts have, short of revising and changing administrative matters on their own. The agency ordered to revise and reenact the directive or rectify the errors and ren-

der the decision again has the duty to comply with such court order and execute the same accordingly. Failure to comply with a court order is a violation that entails legal responsibility on officials of the agency.

The procedure set out in Article 56 aims to balance and ensure that the executive body acts in accordance with the law. No matter how technical or specialized the work of the administrative agency may be, it is not permitted to exercise this power in breach of the principle of legality. It can only exercise the power given to it by the legislator in accordance with the law. As long as the agency follows the law, there is nothing to prevent it from exercising the responsibilities assigned to it. On the other hand, the provision stipulates that the agency must carry out its functions in compliance with the law and that failure to do so entails accountability.

On the other hand, the courts review the directives and decisions issued by the administrative agencies to ensure that they are complying with the law; by doing so, and with their review, they monitor and help them to execute their responsibilities properly. In the meantime, the courts respect the technical and specialized skills of administrative agencies. They shall not interfere in their technical and specialized activities. However, courts will check compliance of the agencies with legal requirements provided for good governance. They shall also make sure that the directives issued by such agencies are within the framework of the legal authority granted to the agencies, do not conflict with other laws, and that they follow principles of legality and respect the rights of persons.

In short, they supervise them that they are issuing directives in accordance with the procedures set out under Chapter Two of the administrative procedure proclamation, and by doing so, they enable them to carry out their duties in accordance with the law. They ensure that administrative decisions meet the principles of legality as well.

That means the court shall check whether administrative decisions are within the jurisdiction of the decision-making body, that they balance personal and public interest, respect the right of the client to be heard, decisions are made in good faith, are reasonable, treat all clients equally, are predictable, and made without delay.

With their review, courts ensure that administrative decisions are made in accordance with Chapter Three of the proclamation. This balanced exercise of power of the legislature, the executive, and the judiciary will help ensure separation of power and ensure the system of check and balance. Furthermore, they are also very important to reinforce the protection of the right of citizen, ensure administration of justice, and the promotion of good governance.

4.1.9 Execution of the Decision

Article 57

1. ***The decision of the Court to uphold or invalidate a directive or and administrative decision shall be executed immediately.***

2. ***Where the Court renders a decision for the revision of an administrative decision or directive, the administrative institution shall do the same in an appropriate time, by giving due consideration to the Provisions provided under Chapters Two and Three of this proclamation.***

3. ***The judgment of the Court fully or partially invalidating a directive or administrative decision, or an order of amendment shall, either fully or partially, revoke the legality of such directive or decision.***

4. ***Notwithstanding the rule under sub-article (3) of this Article, decisions of an administrative agency made on the basis of a revoked directive prior to the ruling of the court shall stay valid.***

In accordance with Article 57 of the Administrative Procedure Proclamation, a decision made by the administrative division shall be executed immediately. If the judgment of the court fully or partially revokes the directive, it shall be executed according to the decision of the court. If the review decision is to invalidate the whole directive, then the whole directive will cease to have effect starting from the time the decision is made. If the decision nullifies only a part of the directive, then that part of the directive will cease to have legal effect while the remaining part continues to have effect.

Whether the matter is an administrative decision or a directive, the effect is the same. If all or part of the administrative decisions is revoked, then the part that is revoked shall immediately cease to have effect.

The judicial review decision of the court covers a judgment as well as execution order that might be separately rendered by a regular court. There are several reasons for this. The first is to prevent the process from taking extended time. Second, as mentioned in the previous discussion, an administrative review decision does not include amending or changing of the administrative directive or decision. The administrative division could rule that the administrative decision or directive is partially or entirely revoked; thus, the order to the administrative agency is to amend or change the directive or decision according to the applicable laws and procedures; and it would not be a ruling revising the matter or grant new right. Third, a decision of judicial review is basically an order of confirmation or partial or complete revocation and a remand order to the administrative agencies to reconsider the case. Fourth, except for an administrative decision made at the request of a client, a directive is a generally applicable document. As with any judicial review decision made on a personal matter, it is not possible to take measures in order to execute or enter a directive into force. In order for the directive to be enforced, there has to be a client that petition for an administrative decision on the basis of the said directive. Therefore, no decision can be made as per the directive so far as there is no petitioner. However, attempts to enforce the directive which is invalidated by court would amount to a violation of the ruling of the court, and such an act will entail accountability, as discussed earlier.

However, an administrative agency may not be held to account on the grounds that it has not issued a new directive replacing the one revoked by the court so far as a client did not shows up. Furthermore, there may not be an immediate urge to execute the order where there are no provisions of a proclamation or regulation clearly requiring the administrative agency to issue a directive without delay; just on the grounds of judicial review order to the effect that "the directive is revoked in its entirety or part thereof and amend and reissue". However, the administrative agency shall be obliged to provide services that may be covered by the directive, without interruption, until it issues a new directive.[16] Therefore, for these and other reasons, a judicial review decision of an administrative directive or an administrative decision does not necessarily require petition for execution order, filing or a separate execution order that are stipulated under the Civil Procedure Code.

The stipulation of Article 57 (2) by itself requires an administrative body to execute a court order. If the court orders the amendment or revision of a directive or a decision, the administrative agency is required to comply with such a decision. If the decision is to amend a directive, the directive must be re-issued in accordance with the procedures enshrined under Part Two of the proclamation. If the court decision is related to an administrative decision, it must be revised in accordance with the procedures provided under Section Three of the proclamation. Under both conditions, the administrative agency is required to comply within the "appropriate time". However, the administrative agency cannot claim that an order has been given to invalidate or partially revise the directive, so I will revise and re-issue it at my own convenience.

Where the judicial review is made on an administrative decision, it cannot ignore its duty to revise or re-issue such decision. It shall revise or amend the directive or the decision within the appropriate time in accordance with the order. As discussed earlier, miscarriage of justice may happen if the revision is made with extreme speed or with an attitude of whatever time it may require. Therefore, the administrative agency should take the appropriate and reasonable amount of time necessary for the work. In any case, the concluding phrase *"shall revise"* in Article 57(2) is a mandatory obligation upon the agency to execute the court order. Failure to make the necessary revisions on the directive or failure to amend and re-issue the administrative decision is by no standard an option at all.

The provisions of Article 57 (3) reinforces the need to amend or revise directives or administrative decisions that are revoked as soon as possible. As provided by the provision, the legal force of the entire or part of the revoked directive or adminis-

16 As stipulated in Art 4(4) of the proclamation, administrative agency cannot use nonexistence of directive as a reason to excuse itself from providing services.

trative decision will cease to have effect. Unlike the decision by regular courts, which apply to the specific cases, the decision of an administrative division invalidating a directive will have a wide-ranging effect, and the directive ceases all its legal force to all future matters.

Therefore, a directive or decision that is partially or completely revoked and loses it legal force must be replaced immediately. As mentioned above, since an administrative agency cannot use the lack or nonexistence of directive as pretext not to provide service; it is necessary to prepare and issue the directive and be ready for services. Thus, it may not be proper to delay the revision and issuances of a directive on the pretext that there are no clients or no service is requested for the moment.

On the other hand, where the order is given to invalidate or revise an administrative decision, the same shall be revised immediately and provided to the concerned client. It is not difficult to imagine the great injury that the client will suffer due to the delayed administrative decision. The case that was submitted for a judicial review was definitely a case that has been rolling over for a long time. Earlier it was with the administrative agency where it was entertained and resolved. Then as the client was unhappy with the decision, it has been submitted to the Grievance Handling Body established within the administrative agency. After being investigated by the Grievance Handling Body; a recommendation was submitted to the higher official of the agency (Article 43, 44, and 46). That means the case has taken considerable time under the internal process of an agency.

On the other hand, the case might have been brought before the court for the reason that the administrative agency failed to render its decision at an appropriate time and might have been submitted to the court as a denied decision (Article 33(2) and 55(2)). One way or the other, the case was pending for a long time. Thus, it shall not be delayed any further after the review order. Therefore, the judicial review order in accordance with Article 57 should be executed immediately.[17] We will take a closer look with regards to damages and claims related to delayed decisions in the following sections.

Article 57(4)[18]

Notwithstanding the rule under Sub Article (3) of this Article, decisions of an administrative agency made on the basis of a revoked directive prior to the ruling of the court shall stay valid.

As the provision clearly subscribes, any decision made on the basis of a challenged directive and nullified by judicial review shall not be revoked and shall remain valid. The main purpose of this provision is to ensure that cases do not drag on, wrangling does not continue, and issues already dispensed with are not raised again, and time is wasted as a result. This emanates from the approach that let bygones be bygones and resurrecting dead cases benefits neither the client nor the administrative agency that handles the matter. It can also be considered as whatever the case may be, timely justice is better than delayed justice. Sometimes, efficiency should also be considered as justice in itself.

4.2 Miscellaneous Provisions

4.2.1 Applicability of the Civil Procedure Code

Article 58

On procedural matters not covered by Chapter Four of this Proclamation, the relevant Provisions of the Civil Procedure Code shall apply.

This provision stems from the general nature of the administrative procedure law itself. The administrative procedure laws of various countries are very detailed and provide detailed solutions or directions for each and every issue. However, this Federal Administrative Procedure Proclamation only covers the most important issues. There are various reasons for this. One of these reasons is the fact that the rules on the administrative procedure is a new introduction to Ethiopia and can only grow

17 Decision making process and efficiency must be balanced. As explained in the main document, when rendering justice, it is important to be prudent, rational and in a way that should not defeat justice.

18 This provision of Article 57 (4) of the proclamation is not included in the draft prepared by the working group. It was added later at the law making process.

gradually through time. Moreover, the other reason stems from the idea of the need to use the existing court system rather than establishing new and independent administrative courts. If the approach to use the exiting court system is adopted, then it will be logical and easier to use the existing rules of the Civil Procedure Code with which the courts are familiar and which they use in their day-to-day operations.

However, this does not mean that the Civil Procedure Code could be applicable to administrative matters in its entirety. This also arises from the nature of the administrative procedure law. As noted in the various sections of this explanation, among the major objectives that the administrative procedure proclamation aims to achieve, one is to make the administrative system transparent and efficient. Efficiency requires shortening of extended procedures as much as possible. Moreover, it should be noted that efficiency should not stifle justice. The process must be fast and efficient, but it must as well ensure administrative justice.

Another factor that needs to be considered is the nature of administrative decisions. Many administrative decisions do not require long and complex procedures. Issuance and renewal of business license, issuance and renewal of driving license, issuance and renewal of ID, paying rent or land use fee, concluding civil marriage and rendering many other day-to-day administrative decisions are easy to make and do not require long procedures. This, however, does not mean that there are no complex decisions. But, one of the purposes of this proclamation is to ensure that even complex decisions are carried out in an efficient and transparent manner.

As we have seen above, the so-called judicial review system differs from ordinary civil or other appeals. However, it may be necessary that when courts receive a petition for an administrative, judicial review, they receive petitions through the registrar's office, schedule the case for hearing while examining the case, and orders the furnishing of documents, adjournment of the case and perhaps hear expert witnesses in accordance with Article 54 and 44. During judicial review, it is not mandatory to hear witness. Where there are contentious issues of fact, however, courts may order witnesses to be heard. Thus, the provisions of the Civil Procedure Code can be used as a gap-filling role during the review process.

4.2.2 Compensation for Damage

Article 59

A person who has incurred damage as a result of a fault committed through issuance of directives or an administrative decision is entitled to seek compensation from the administrative authority that is responsible, in accordance with the relevant laws.

The Administrative Procedure Proclamation has opted for issues related to compensation to be entertained in accordance with the appropriate law. Any client who alleges that his petition for administrative decision was not considered properly or that the decision was delayed more than what is required and as a result suffered damages could claim for compensation. However, such claim for compensation may be brought in accordance with the applicable law. The Administrative Procedure Proclamation cannot answer questions related to issues of fault, type, amount and time of payment of compensation. These matters are outside the scope of the administrative procedure proclamation, thus should be made in accordance with the applicable law.[19] Claims for compensation shall be brought in accordance with the provisions of the Civil Code. It is important to refer to Book Four of the Civil Code, Title 13; Extra Contractual Liability and Unlawful Enrichment.

As attempted to elucidate in the previous sections, it is important to note here also that administrative process entails transparency, responsibility, and accountability. Administrative agencies and officials of such agencies have their own respective responsibilities for not performing their duties properly. In addition, as a result of their failure to properly execute their duties and responsibilities, they commit fault, and the client suffers damage therefrom, they would be held responsible for the damage. One of their direct responsibilities related to the client would be to compensate for the damages suffered.

Compensation is not only related to rendering administrative decisions. The injury on the client could have been also resulted from directives

19 Compensation is claimed in accordance with the provisions of the Civil Code. For this purpose, book four of the Civil Code, Article13-Extra Contractual Liability and Unlawful Enrichment (Art 2027-2161, especially Article 2126-2136 and in addition it is important to look in to Art. 2090-2121)

issued by the administrative agency. This includes the objective stated at the preamble of the administrative procedure law and further includes directive issuance process and decisions rendering to clients as provided in Section Two and Three of the proclamation. This reinforces the requirement that the process of rendering decisions as well as issuance of directives has to be transparent, prudent and follow the legal process. A decision or directive that did not follow the law will entail accountability; this has been already elucidated in detail above. One among these responsibilities is compensation for the damage that the client suffered. Although compensation is primarily to be paid by the administrative agency, the law gives the agency the right to be reimbursed by the official or employee that committed the fault.

4.2.3 Duty to Provide Information

Article 60

Where any administrative agency is requested to provide information relevant in the issuance of directives or rendering of administrative decisions by legal organ, such agency shall provide the information.

As per this provision, any administrative agency has an obligation to provide information related to directives or administrative decisions it made. Such information can be requested by any legal organ. The term legal organ[20] is very broad. It seems such information can be requested by anybody with a natural or legal personality. Therefore, an administrative agency has a duty to provide such information upon request.

This provision is in line with Article 7, 8(2), 17(3), and 55 of the proclamation. They set out the examining of records or getting a copy of a draft directive or directives which are enacted and entered into force. Under such circumstances, the only discretion the agency could have is to require the requesting body (if it is not a government body) to cover the copying cost. What is worth noting in this regard is that the provision of Article 60 goes beyond the mere request for copies of directives or decisions. The provision imposes the responsibility to provide any information related to the issuance of directives, rendering of administrative decisions and their execution thereof. For this reason, the provision is broader than the requirements provided under Article7, 8(2), and 17 (3) of the proclamation.

However, requests for information on administrative decisions and their execution should be made in line with Article 39 of the proclamation. As provided under Article 39, a decision shall only be provided to the client concerned. Where a petition for review is made, the court can order documents to be submitted to it in accordance with Article 55. Otherwise, an administrative decision which is rendered based on private complaint cannot be given to any other organ (third party) without the consent of the client concerned, unless a petition for review is made in respect of the decision.

20 The working group that prepares the suggested the phrase "when requested by another administrative agency". However, on the process of its enactment the word "when requested by other administrative agency" was replaced with the "when requested by other legal organ".

Annex

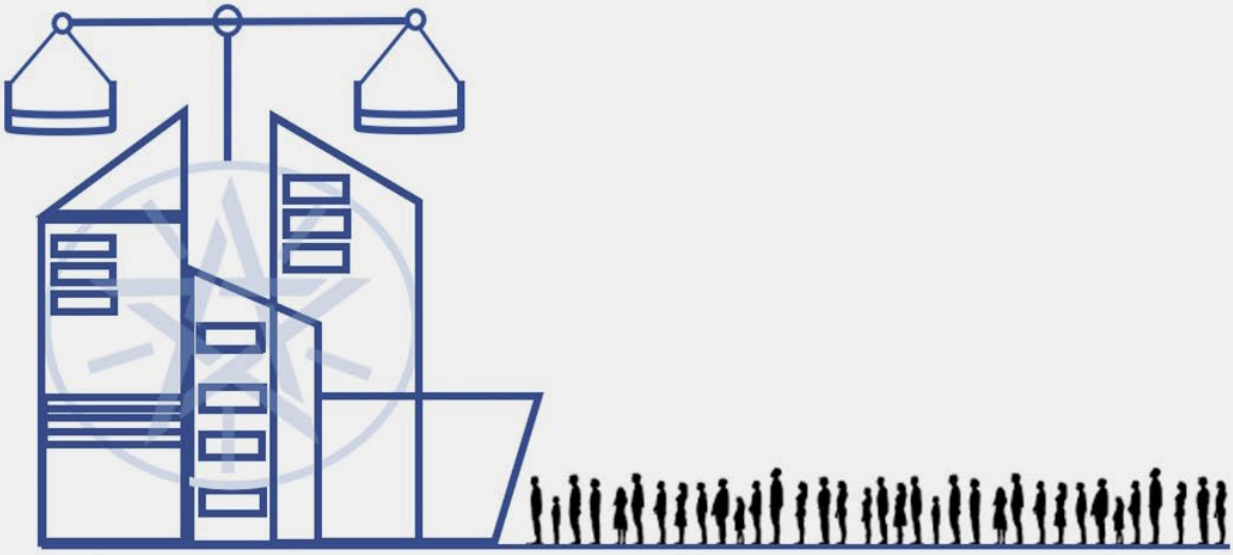
List of Working Group Members

1.	Mehari Redae (PhD)	Coordinator
2.	Solomon Abay (PhD)	Member
3.	Wondemagegn G/Selassie (Mr.)	Member
4.	Mesfin Lemma (Mr.)	Member
5.	Amsalu Baye (Mr.)	Member
6.	Sileshi Ketsela (Mr.)	Member
7.	Yonas Birmeta (PhD)	Member
8.	GebreAmlak G/Giorgis (Mr.)	Member
9.	Demelash Shiferaw (PhD)	Member
10.	Zenaye Tadese (Mrs.)[21]	Member
11.	Tafesse Yirga (Mr.)[22]	Member
12.	Abdulatif Edris (Mr.)[23]	Member
13.	Minilik Assefa (Mr.)	Minute Taker

21 Left the Working Group after some time due to personal reasons

22 Transfered to another working group after serving this working group for some time

23 Served as a minute taker under this working group for few months; later on had an additional responsibility and served as a Head to the Secretariat of the Legal and Justice Affairs Advisory Council



በኢፌዲሪ ጠቅላይ አቃቤ ሕግ
የሕግና ፍትህ ጉዳዮች አማካሪ ጉባኤ

Legal and Justice Affairs Advisory Council
Federal Attorney General