

Federal Democratic Republic of Ethiopia

*Comprehensive
Justice System Reform Program*

FEDERAL DEMOCRATIC REPUBLIC OF
ETHIOPIA

**Comprehensive
Justice System
Reform Program**

BASELINE STUDY REPORT

Ministry of Capacity Building

Justice System Reform Program Office

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CONSULTANT



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Foreword

The Center for International Legal Cooperation would like to express its gratitude to the Ethiopian Authorities for have choosing its approach and proposal. Additionally, very special thanks go to the justice system stakeholders who shared their visions, concerns and aspirations with us. We hope this study will make their voices heard and draw attention to their situation. We would also like to thank the international and local experts for their dedication and valuable contributions to this study. In particular, we would like to thank the Ministry of Capacity Building and our colleagues at the Justice System Reform Program Office, especially Ato Mandefrot Belay and Laura Bourassa for their assistance and co-operation in the conduct of this study and preparation of this report.

List of Abbreviations

AAU	Addis Ababa University
ADR	Alternative Dispute Resolution
APAP	Action Professionals Association for the People
CEP	Continuing Education Program
CIDA	Canadian International Development Aid
CILC	Center for International Legal Cooperation
CPC	Criminal Procedure Code
EHRCO	Ethiopian Human Rights Council
ENDPI	Education National Development Program I
ENDPII	Education National Development Program II
IAJ	International Association of Judges
ICRC	International Committee of the Red Cross
ICT	Information and Communication Technology
IT	Information Technology
JLSRI	Justice and Legal System Research Institute
JSRP	Justice System Reform Program
JSRPO	Justice System Reform Program Office
JTC	Judicial Training Centre
MoCB	Ministry of Capacity Building
MoE	Ministry of Education
MoJ	Ministry of Justice
NGO	Non Governmental Organisation
NVvR	Nederlandse Vereniging voor de Rechtspraak (Netherlands Association for the Judiciary)
PA	Practical Attachment
PC	Penal Code
PP	Public Prosecutor
PPS	Public Prosecution Service
PSCAP	Public Service Capacity Program
SPO	Special Prosecutor Office
TG	Transitional Government
UNCAT	United Nations Convention Against Torture
UNDP	United Nations Development Program
USA	United States of America
USAID	United States Agency for International Development

Glossary of Terms

Derg (Regime)	Former Marxist Regime in Ethiopia
Hiba	gift
Kadi	Appeal <i>Sharia</i> Court
Kebele	a small community up to about 10.000 citizens
Naiba	<i>Sharia</i> First Instance Court
Sharia	Islamic Law
Tabia	Station
Wakf	will (succession)
Woreda Courts	States' First Instance Courts
Zonal Courts	States' High (Appeal) Court

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1

Executive Summary

In 1991, following many years of fighting led by various rebel movements, the Derg, as the Marxist regime which came to power in 1974 was called, was replaced by a political coalition intent on establishing a democratic state. A new Constitution, enacted in 1994, provided for a federal system of government in which sovereignty was to reside in “the Nations, Nationalities and Peoples of Ethiopia”.

The new government soon embarked on a series of reforms designed to encourage the economic and social development of the country and reduce poverty. It was assumed that progress in these fields required a complete overhaul of the justice system, allowing citizens to seek and obtain an affirmation of their rights as embodied in and guaranteed by the democratic new Constitution. It was also felt that the country urgently needed to adapt its judicial system to the demands of the changing world economy. Under the aegis of the Ministry of Capacity Building (*hereinafter* MoCB), the Justice System Reform Program was charged with designing a comprehensive reform plan to attain these objectives.

In March 2003, the Center for International Legal Cooperation (*hereinafter* CILC) was contracted by the Justice System Reform Program Office (*hereinafter* JSRPO) to undertake a baseline study of the Ethiopian justice system and make recommendations for its reform. This document is the outcome of the CILC’s study combined with feedback from the Ethiopian stakeholders and local experts.

The report first describes in some detail the context within which the study has taken place and the initiatives and achievements of the JSRPO in this field. It then explains the methodology used in the study. Five working groups of international experts were to make several visits to Ethiopia to join national experts. Together they would form five working groups which would study relevant documents and meet officials in the various sections of

the justice system in order to collect and collate data, assess the situation and gradually form their own opinion on possible remedies to identified weaknesses. The five working groups were:

- Working group on Law Making and Revision
- Working group on the Judiciary
- Working group on Law Enforcement (Prosecution, Police and Penitentiary System)
- Working group on Legal Education
- Working group on Information Flow within and outside the Justice System

The five teams gradually deepened their knowledge of the institutions they were studying. Members of the various teams met on a regular basis to discuss their findings and benefit from their respective analyses. In November 2003, a seminar was organised with the participation of stakeholders, when their first reactions to and comments on the experts' provisional findings were aired.

Following the visit of the last team of experts in February 2004, CILC began drafting the final report. It was decided to integrate the Information Flow's report into the four other elements of the study since it was relevant to all aspects of the justice system. The draft final report was discussed in Utrecht by available experts in May 2004 and forwarded to the Director of the JSRPO who, in turn, circulated it to various stakeholders for comments. Questions were raised and answered by CILC in consultation with the experts who had taken part in the base line study. Finally, in January 2005, a meeting was held in Addis Ababa between the JSRPO Director and his staff on the one hand, and CILC, represented by the Program Director, one of the experts on the Judiciary and the Team Leader on the other. This meeting put the final touch to the final report, which is now presented.

A "horizontal analysis" precedes the description of each institution. For each of the four institutions of the justice system, the study first describes its organisation; it then highlights its major shortcomings and, lastly, proposes changes in the form of recommendations. It ends with an plan of action and a suggested implementation strategy. The main findings of the study can be summarised as follows:

Law Making and Law Revision

The Constitution of the Federal Democratic Republic of Ethiopia provides for legislative institutions and procedure at both federal and state levels. On the federal level, the initiative of legislation mainly belongs to the Council of Ministers. The laws or “Proclamations” are discussed and adopted by the House of Peoples’ Representatives. A similar procedure exists for each of the nine Federated States.

The analysis of the present situation shows that the current legislative and regulatory procedure leads to a fragmentation of the legal system, a lack of coherence between existing codes and laws and, as a result, an uncertainty as to the legal norm. This lack of clarity is compounded by the lack of published judicial decisions in civil and criminal cases. Until recently, co-ordination and collaboration between the Council of Ministers, the Minister of Justice and the sector Ministers have not been satisfactory. The Council of Ministers has now adopted a new procedure which should clarify the functions of the Minister of Justice and the sector ministries in the drafting process and give the newly created Minister of Cabinet Affairs a major role in the drafting of new laws. The lack of consultation with various stakeholders in the drafting process prevents drafters from fully meeting the needs of society for lack of precise information. Regarding the legislative work of the House, no general provision has been laid down for the compulsory review of draft laws by the Standing Committees. As a result, draft laws, which are submitted directly to the House, are not examined in depth before a vote is taken. The legal assistance given to the Standing Committees by the Secretariat of the House is currently insufficient. The laws published in the *Gazeta* are not always circulated in sufficient numbers among ministries and the public at large. This increases the uncertainty as to the legal norm. This applies equally to international treaties ratified by the House, which are not always published, let alone circulated. Even when they are properly circulated, the relevant ministries do not always implement laws.

The law making process in the Regional States is similar to the procedure on the federal level. The Regional Administration initiates the legislative proposals and submits them to the Regional Council for approval. However Regional Councils’ sessions are very short. This slows down the legislative work. The problems confronting the Regional Councils and the Regional Administrations are similar to those encountered on the federal level.

Conflicts between federal law and customary and religious law abound. The present system whereby federal law is not forcibly enforced is working relatively well. However problems of conflict of laws are bound to multiply in the future and should be addressed.

The Judiciary

Chapter nine of the Constitution describes the structure of the courts and distinguishes between the Federal and the State Courts' system. Beside the "regular" courts, the Constitution recognises Religious Courts and Customary Courts. Though not mentioned in the Constitution, so-called "Social Courts" exist in five States. An appellate procedure allows appeals from the Social Courts to be heard by State High Courts. The Federal Judicial Administration Commission selects persons qualifying for judgeship and deals with conditions of service and disciplinary measures. State Judicial Administration Commissions fulfil the same functions at state level.

The Ethiopian justice system has three core problems. Firstly, it is neither accessible nor responsive to the needs of the poor. Secondly, serious steps to tackle corruption, abuse of power and political interference in the administration of justice have yet to be taken. Thirdly, inadequate funding of the justice institutions aggravates most deficiencies of the administration of justice. The perception of the independence of the Judiciary is very low. The operation of the courts is managed and supervised by the court presidents who therefore act both as judges and administration officials accountable to the President of the Supreme Court. Potentially this compromises their independence. Besides, the process of selection and promotion of judges is insufficiently transparent and lacks inputs from other legal professions. The same can be said of performance evaluation. The lack of training of judges remains one of the most important problems of the Ethiopian Judiciary. Court administration and case management are weak. The caseload of the average judge appears to have substantially increased over the last years. Access to all kinds of legal information is limited: courts are not automatically sent the *Gazeta*, which publishes new laws, libraries are poorly equipped or non-existent and most court decisions are not published. Although the general public understands that the courts are the appropriate organs for dispute resolution, it is only those who have a case before the court who can gain some understanding of elementary procedures. Lastly, the judges' poor working conditions threaten their independence, reduce their efficiency and constitute incentives for corruption.

The Law Enforcement Institutions

The Public Prosecution Service (PPS)

The PPS is formally part of the executive branch of government. The authority of federal prosecution is vested on the Ministry of Justice. However other government offices also have prosecutorial authority. On state level, the Head of the Justice Bureau's functions and authority are similar to those of the Federal Minister of Justice. The latter appoints Federal Prosecutors, either directly or through a commission, which he appoints. Candidate prosecutors at federal level must have a degree or a diploma in law. The public prosecutor is in charge of criminal investigation and has authority over the police. There is no formal link between the PPS and the prison administration. The bases for the PPS's authority - the Criminal Code (1957) and the Criminal Procedure Code (1961) - are obsolete. Drafts of new codes have been submitted to the House of Peoples' Representatives.

The Federal Minister of Justice and the Head of Justice Bureau combine judicial and executive powers. This may be detrimental to the independence of the PPS. The fragmentation of public prosecution weakens the institution, especially as different prosecution authorities are accountable to different ministries. The procedure for the selection and appointment of prosecutors is not open to outside expertise and there is a general shortage of prosecutors. Training is insufficient. Despite the authority given to it by law the PPS, in practice, does not exercise its power. As a matter of fact, the PPS has a minimal role in the investigation performed by the police. The shortage of staff and very poor working conditions lead to a very heavy and increasing backlog of cases. Relations with the Judiciary, the police and the prison administration are poor.

The Police

The Ethiopian police system consists of a Federal Police Service, nine Regional Police forces and the police forces of Addis Ababa and Dire Dawa, which have a special position. The Federal Police Commissioner is accountable to the Minister of Federal Affairs. The Regional States are free to organise their police as they see fit. Nevertheless, all State police forces have a structure similar to that of the Federal Police. They are accountable to the Minister of State Affairs of their respective State. The Commissioners of Addis Ababa and Dire Dawa are accountable to the Governors of these cities and to the Minister of Federal Affairs. Police training takes place at the Training Centre for Federal Police, at the Police College and at regional training centres. A start has been made in improving conduct and integrity.

Police strength is much higher in Addis Ababa than in the regions. The militia is a voluntary organisation. It is run by professional and paid executives. Ethiopia has one forensic laboratory. Police resources are limited, vehicles are scarce. The managers of the Federal Police Service have formulated a plan to meet these limitations.

The image of the police is very poor. The mentality of police officers is still not entirely de-militarised despite the efforts made to introduce the concept of police by consent. The housing and working conditions of regional training centres are very poor. The training methods at the Police College are traditional, drilling, as practice is hardly compatible with the objectives of community policing. The ratio of police density in comparison with population is not satisfactory, especially if the recent decision on entrusting police with guarding the national borders is implemented. The resources available to the police are inadequate. There is little use of Information and Communication Technology (ICT). As a result it is impossible to establish a strategic prevention strategy. Police mobility is far too limited. Police officers frequently disregard forensic evidence because the only forensic laboratory cannot cope with the potential demand. The fact that the militia operates with a large measure of autonomy is potentially dangerous as they receive no training and are not controlled by the central government. The relations between the PPS and the police are poor. All too often the PPS is unable to control police activities.

The Penitentiary system

The legal framework for the penitentiary system is theoretically based on Proclamation 45/1944, which is regarded as obsolete. It is to be replaced by a new “Federal Prisons Commission Establishment Proclamation” which is still in draft form. The Penal Code defines criminal liability, sanctions and parole. The Criminal Procedure Code contains a few articles concerning pre-trial detention. At federal level, the Minister of Federal Affairs is responsible for the Federal Prison Administration Service. At state level, the prison service is the responsibility of the Justice Bureau. The so-called prison police are not part of the regular police force. The prison police receive different kinds of training according to their functions at federal or State level. The station commander is responsible for the conditions of detention in the police stations. In theory, the PPS inspects the prisons but this rarely happens. The Ministry of Federal Affairs has drafted a Concept Paper to Reform the Federal and State Prisons of Ethiopia. It plans to improve prisons facilities and conditions, to build a new prison in Addis Ababa and to develop a multi-disciplinary “human resource capacity”. The paper aims to

develop electronic registration and manuals for prison administrators. It also lists the needs of prisons in some detail. The States of Oromia and Amhara have also initiated reform of their prison services. It is unclear whether there is a flow of information between the prison service and the police and the PPS. Few licensed lawyers are willing to act as defence lawyers when legal aid is required.

The draft Proclamation on the Federal and State Prison Services (2003) is rudimentary where it addresses the treatment of prisoners and the conditions of detention. Beside, at present, the Penal Code is not implemented regarding the treatment of young persons in custody. The rule regarding the separation of prisoners on remand and those serving a sentence is ignored. Special laws and regulations relating to the right of conditional release (or parole) do not exist. Likewise the Probation Service is still non-existent. Suspects remanded in custody during the pre-trial period may remain in police stations until the investigation is complete and this can take a very long time. The Federal Prison Administration is accountable to the Ministry of Federal Affairs while the State Prison Administration is accountable to the State Justice Bureau. This can create complications when co-operation is needed. Eight out of nine States have not yet legislated on prisons. This undermines the treatment of prisoners and their rehabilitation. Possibly the most important shortcoming of the prison system generally is the insufficiency of training. The lack of clear provisions regarding the relations between prison employees and the inmates, as well as the poor conditions of police stations and prisons are also grave shortcomings. The prisoners' committees are non-legal bodies which are filling vacuums where created due to bad prison management. The legal basis for prosecutors to inspect police stations is doubtful. On national level, no independent watchdog exists. There is a total absence of affordable legal aid. The budget of the Prison Service is insufficient for day-to-day management, let alone needed improvements.

Legal Education

Legal education began in Ethiopia in the mid-1960s with the opening of the Addis Ababa University College Law Faculty. When the revolution broke out in 1974, many expatriate staff left and teaching was mostly left to undergraduate teachers. After the overthrow of the military regime in 1991 private law schools started to emerge. Regional universities were also established in several States. There are currently six universities in the country where law teaching is provided and also five private colleges accredited to offer undergraduate programs in law. The Ministry of

Education (MoE) has developed national education programs known as ENDP I and ENDP II. These include the teaching of law at tertiary level.

There does not seem to be a national register for all law students and the degrees they receive. The teaching staff is often required to give a large amount of their time to administrative tasks. The optimum number of law graduates needed for today's Ethiopian society requires clarification. The MoE decides on the attribution of resources following consultation with each university. In universities where the law school is part of a wider faculty, the chances of the law department competing with other departments are reduced. There is an acute need for judges, attorneys, prosecutors and other legal professionals. While it was recently recognised that systematic and upgrading training was necessary, not enough is done in this regard. The government should clarify the relationship between the Ministry of Education, the Ministry of Justice and the Ministry of Capacity Building regarding their respective competence in respect to legal education. The success of newly established law schools will largely depend on their ability to co-operate with established domestic and foreign law schools. Curriculum development is often lacking or unsatisfactory. As a result, students are little more than generalists. Research should also be developed.

2

Summary of the Recommendations

Law Making and Law Revision

Recommendation 1

Parliament must recognise that the Speaker and Deputy Speaker of the House of Representatives are the only authorities to initiate legislation, apart from the Council of Ministers. To do this it must:

- Amend the Constitution to allow this to happen;
- Revise article 4 of *Proclamation No. 271/2002*;

Recommendation 2

Parliament must give constitutional validity to article 57 of Proclamation 251/2001 allowing for the House of Federation to initiate legislation. To achieve this it should:

- Cause article 62, paragraph 8 of the Constitution to be amended.

Recommendation 3

Draft laws should only be submitted to the House through the Council of Ministers. For this to be achieved:

- The Council of Ministers and the Sector Ministers should scrupulously adhere to the new procedure of the Council of Ministers.

Recommendation 4

The positions of the Minister of Justice, the Sector Ministers and Minister of Cabinet Affairs must be clarified. To make this possible, all Ministers must:

- Give full effect to article 23 of Proclamation No. 4/1995 and amend this provision to make clear that the Minister of Justice has a role in the preparation of all draft laws (see below).
- Ensure that the Minister of Justice is the chief advisor on all legal matters relating to the Council of Ministers.

Recommendation 5

Clarify the role and place of the Justice and Legal System Research Institute. To this end:

- The resources of the Research Institute and those of the Ministry of Justice should be joined.
- The Research Institute should be placed under the authority of the Minister of Justice.

Recommendation 6

Sector ministries, as part of the drafting process should consult stakeholders.

Recommendation 7

Parliament should amend the law making process. The following steps should be taken:

- The Parliament Secretariat should be re-enforced;
- The process through the Standing Committees should be improved;
- The procedure for public hearings should be improved;
- The right to amend legislative proposals should be regulated;
- The discussion of bills should be done article by article;
- All provisions relating to voting majorities should be brought in line with the Constitution;
- The public should have access to the plenary meetings of the House;

Recommendation 8

International treaties ratified by Parliament must be integrated into national law. For this to happen:

- All ministries must co-ordinate with Ministry of Foreign Affairs during the negotiating process of international agreements.
- The Ministry of Justice must insert the treaties into national law.

Recommendation 9

The Ministry of Justice must ensure that drafters expressly mention all provisions cancelled by the new law. To this effect the Ministry of Justice must set up appropriate procedures.

Recommendation 10

Laws must be consolidated, codified and published. The Ministry of Justice must establish procedures for the consolidation, codification and publication of laws, possibly in collaboration with a specialised private firm.

Recommendation 11

The House should ensure that laws are implemented.

Recommendation 12

The Ministry of Justice must improve drafting skills:

- A drafting department, composed of senior staff, must be created.
- Salary scales must be revised.
- Training courses in drafting must be provided.

Recommendation 13

The issue of law making in the Regional States should be studied in depth.

Parliament should ensure that the issue of law making in the Regional States is researched and that the Regional States be given assistance in this matter.

Recommendation 14

While not an immediate priority, a study should be conducted to determine the customary and religious legal norms with a view to ensuring that all justice in Ethiopia accords with Constitutional and international legal norms.

Judiciary

Recommendation 1

The independence of the Judiciary should be consolidated and its professional capacity should be enhanced. This has to be made a high political priority.

Recommendation 2

The Powers vested in the function of the President of the Federal and States Supreme Courts should be transferred to the Judicial Administration Commissions.

Recommendation 3

A more transparent recruitment and selection system for judges should be set up. A working group will have to map the existing methods of recruitment and selection of members of the Judiciary, evaluate them and discuss adaptations to them or the setting up of new possible ways of selection and recruitment, the contents of the procedure and the conditions that should be set to enter the Judiciary and to be able to take part in the selection procedure.

Recommendation 4

Objective, regularised, merit-based and transparent procedures for administrating judges' career paths should be developed.

Recommendation 5

Systems for periodic evaluation of judicial performance that are transparent and based on a balance of relevant quantitative and qualitative criteria must be developed. Performance evaluation should be integrated into the training programs.

Recommendation 6

An Association of Federal and States Judges should be established.

Recommendation 7

The initial and continuous training of judges and staff must be improved. Education, curriculum building and terms to be met at the end of training period must be developed. Technical and managerial skills should be incorporated into training curricula.

Recommendation 8

The government of Ethiopia must finance the training of judges in a stable and sustainable way.

Recommendation 9

The administrative staff should be trained in professional skills, job qualifications should be described and a uniform selection method for staff members must be developed.

Recommendation 10

Transparency of courts and accountability of judges should be increased. An inventory of the current administration system should be made and the internal structures of the court administration should be reorganised.

Recommendation 11

Professional management at the court level should be introduced. Managerial and administrative functions should be transferred from judges to trained professionals under their supervision.

Recommendation 12

As far as computerisation is considered, nomination of pilot courts to try out newly developed computerised systems for court administration and new ways of court administration must be envisaged.

Recommendation 13

Priority should be given to solving the problem of backlogs.

Recommendation 14

The current system of legal aid should be revised. Legal aid (advocacy) should be strengthened everywhere in the country and in particular in the regions.

- Legal clinics at all faculties should be strengthened and/or established.
- Possibilities for establishing funds for providing legal aid should be considered.
- It is imperative that training be provided to lawyers and practitioners.
- A working group composed of representatives of the Bar to do the necessary research on the possibilities and the form in which the Federal and State Bars must be organised.

Recommendation 15

Licensing, training and all other matters related to the functioning of a lawyer should be the responsibility of the Bar itself.

Recommendation 16

The current system of civil execution should be revised. The establishment of bailiffs' service should be considered. Funds for establishing these judicial officers must be made available and training developed.

Recommendation 17

The Proclamation on the Establishment of the Institution of the Ombudsman must be implemented. Consideration should be given to empower the Ombudsman to receive public complaints concerning the conduct of judges.

Recommendation 18

The Proclamation on the Establishment of the Human Rights Commission must be implemented.

Recommendation 19

The civil society and the media should be encouraged and supported in informing the public at large thus improving the legal public awareness at grassroots.

- NGOs providing legal aid to indigents¹ should be supported.
- The EHRCO public litigation programs should be strengthened.
- The EHRCO civic education program should be supported.

Recommendation 20

Copies of the court decisions must be made available to the lawyers and the public at large. To enable this to happen presidents of courts should issue appropriate administrative directions.

Recommendation 21

Court decisions should be commented upon by academics. These case comments should be made available to judges, lawyers and prosecutors offices. A web site containing this information should be created and made freely accessible.

Recommendation 22

Selected Federal Supreme Court decisions should be printed regularly and in a sufficient number and sent out to every court, justice ministry and university in the country.

Recommendation 23

The working conditions of judges must be improved as soon as possible.

- Each court must receive compilations of the Official and the Regional Gazette and get subscriptions to them.
- The French program of consolidated codes should be supported and the codes disseminated.
- A CD-ROM containing consolidated codes with appropriate index and search engine should be issued and disseminated in the courts.
- Court libraries should be created where they do not exist, and improved in other courts, in order to provide judges with a minimal standard of reference material and documentation. Given the situation in some regions, establishing public libraries that are open for all legal professionals, including judges should be considered.

¹ Based on action plans to be submitted by them.

Recommendation 24

Possibilities for use of Alternative Dispute Resolution must be explored. Consideration should be given to using ADR to address the backlog of criminal cases. A corps of ADR specialists should be trained.

Recommendation 25

A separate and comprehensive study of the status and the position of the Social Courts in the judicial system should be initiated.

Recommendation 26

Three pilot courts in different levels of court and in different areas of the country should be designated to implement all above-mentioned recommendations.

Public Prosecution***Recommendation 1***

The reform of the PPS should be well co-ordinated and the federal and state Ministers of Justice across the country should endorse the formation of a national group of heads or directors of PPS.

- The national group should meet regularly and discuss issues of common concern.
- The national group should be co-chaired by a federal and a regional head of prosecutions.
- The national group should set up a working group of national, regional and international experts to whom specific matters can be submitted on ad hoc basis for study and recommendation.
- The recommendation of the working group should be submitted to the Ministers.

Recommendation 2

There should be one meeting per year of all prosecutors within the jurisdiction, federal or state, to discuss issues of common concern and receive information about new policies and pertinent legal developments.

Recommendation 3

The political/executive and judicial powers of the Minister of Justice and the Heads of Justice Bureaux should be divided.

- An Office of the Prosecutor General, which has a judicial rather than executive relationship, should be established.

- The Minister of Justice should not be making day-to-day operational decisions in the PPS, nor should s/he be reviewing or changing decisions taken by line prosecutors.

Recommendation 4

The Authority of Federal Prosecution should be brought into a single Institution, namely The Public Prosecution Service, which would be the only authority that has access to court in criminal cases. If the Ethiopian authorities choose not to change the current system, the exchange of information between the different services should be standardised and intensified.

Recommendation 5

The Federal Prosecution Service should be given the competencies of Articles 8 and 9 CPC in the framework of an investigation by the State Police on behalf of the Federal Police. The PPS should be given, in Article 23 of Proclamation No 4/1995, power to supervise and give necessary legal orders and directives to:

- Federal Police investigation units (organs)
- Regional Police investigation units and other police organs where federal crime suspects are detained.

Recommendation 6

The competencies of the Federal PPS should be the same as that of the State PPS. The Federal Prosecutor should have the same duties in the field of prison administration, such as to:

- Supervise the legality of any imprisonment or detention.
- Ensure that the rights of the person under custody are respected.
- Visit at any convenient time any place where a person is detained or imprisoned.
- Order the release of illegally detained or imprisoned persons.
- Ensure the execution of sentences and ensure regularity of prisoners' living conditions.
- Design and implement policies for the rehabilitation and social integration of prisoners.

Article 23 of Proclamation No. 4/1995 should be further amended to:

- Give power to supervise the legality of imprisonment and handling of inmates wherever housed.
- Give pertinent legal orders and directions with respect to federal inmates.
- Order the immediate release of those held unlawfully.

Recommendation 7

All States should issue the necessary Proclamations for the PPS. They should make clear the provisions about the position of the prosecution in the regions.

Recommendation 8

The policies of selection, appointment and promotion of prosecutors should be made more transparent. For this purpose:

- A working group to develop new ideas about a new procedure of selection, appointment, promotion should be installed.
- Other stakeholders of the justice system, such as the Judiciary, the Bar Association, universities and the civil society, should be involved in the selection of applicants.
- Psychological testing could be used as an objective means to assess the qualities and skills of the candidates.
- An active recruitment policy, including the provision of information about the PPS to law school students, should be developed. The practice of awarding scholarships to law students should be considered.

Recommendation 9

The Federal Government and the States should take effective measures to ensure that the public prosecutors have appropriate education and training, both before and after their appointment

- Each prosecutor should be required to undertake a certain number of days or hours of continuing legal education each year. That education should be approved by the management and paid for by the prosecution service.
- Universities should be used for this purpose.
- Federal co-ordination in training and education should be considered to avoid duplication of state efforts and to share best practices.

Recommendation 10

As a matter of priority, clear policies on the supervision of investigation should be instituted

- Consulting between the different related parties in order to set up a plan for realising this target should be started.
- As a first step, it is advisable to start involving prosecutors only in the investigation of grave crimes.
- For minor crimes, one can develop guidelines and standard formats for the police that can quickly be approved by the prosecutor after police filled it in.

- The prosecutor should be the only party to be able to apply for extended pre-trial detention of a suspect.

Recommendation 11

The Public Prosecution Service should be made accountable for its professional performance.

- The PPS should uphold and abide by the existing laws.
- The roles and responsibilities of line prosecutors should be increased.
- The number of decisions taken by prosecutors that have to be reviewed by management should be reduced.
- Only persons who actively prosecute or manage prosecutors should in fact be given the title and salary of prosecutor.
- Clear policies about the exercise of discretion to discontinue cases should be instituted.
- Job descriptions for junior, intermediate and senior prosecutors, which reserve certain types of decisions and cases to senior prosecutors, should be created.
- Prosecutors should attend court on every occasion files assigned to them are scheduled for court.
- Regular office meetings, at least monthly, between line prosecutors and management within each office should be conducted.
- A code of professional conduct and a peer review mechanism should be shortly adopted. The Heads of Justice Bureaux of the Regional States should be encouraged to use the Federal Code of Conduct as an example and shortly introduce their own codes.
- Special emphasis should be put on accountability and good conduct while selecting and training candidates to become prosecutors.
- The PPS should institutionalise a regular evaluation of the prosecutors that is aimed at upgrading and improving their performance. Due attention should be given to the remedy of the identified shortcoming and training should be provided.
- Disciplinary measures against unfit elements within the prosecution should be taken.

Recommendation 12

Judges and prosecutors should have and show due respect to each other and to each other's role in the criminal justice

- Judges and prosecutors should be informed about each other's role in the criminal justice.
- Judges and prosecutors should attend joint training to discuss different issues of joint concern and learn about each others vision.

- Co-operation and communication between High and First Instance Courts and the PPS should be developed in order to discuss matters of common concern such as backlogs, summoning of witnesses and the exchange of statistical data.
- Minutes of the discussions and the agreed procedures should be disseminated.

Recommendation 13

Police-prosecutor relationships should be improved and co-operation between them enhanced.

- The Ministries of Justice and of Federal Affairs and on State level the Head of Justice Bureau should play an active role in organising talks and discussions on how structural consultations between the PPS and the police can be developed. Subjects for consultation should include the development of a criminal policy, the problems of the backlogs, the summoning of the witnesses, the exchange of statistical data.
- Minutes of these meetings should be appropriately disseminated.
- As a matter of urgency, clear policies on when prosecutors should return files to the police for investigation should be instituted.

Recommendation 14

A working group consisting of the Judiciary, the PPS, the Ministry of Justice and the police should be set up to discuss guidelines for the appearance of witnesses and accused in courts.

- Appearance of a witness should be seen as a shared responsibility and all involved parties should work towards having witnesses showing up in courts.
- Compensating witnesses for their transport and contributing to their food and residence expenses should be considered as a means to induce their appearance.
- An in-depth study on witness protection programs in the Ethiopian situation should be initiated.

Recommendation 15

The drafters of the new Penal Code and the Criminal Procedure Code should seek international expertise. Due attention should be given to the reclassification of penalties and the clarification of jurisdictions under which crimes fall.

Recommendation 16

In all cases in which the prosecutor declines prosecution, complainants should be provided with the fundamental right of access to courts to seek a judicial order from the court that the prosecutor institutes proceedings.

Recommendation 17

The PPS should develop a reliable system of internal statistics that covers Federal and States' Public Prosecution in a compatible way. This system should be computerised. At least the following information should be gathered:

- The number and dates of files received. How long it takes to allocate a file to a prosecutor.
- How long a prosecutor takes to decide on continuing, discontinuing or sending a case back to the police.
- The number of files discontinued and the reason for that.
- The number of files sent to the police and the reasons for that.
- How long it takes to receive the file back from the police.
- How long it takes to get to court.
- The number of prosecution appearances in court.
- What happens at its court hearing.
- Appearances of witnesses at every hearing.

Recommendation 18

The PPS should work jointly with the police and the Judiciary to rid the justice system of the current huge backlogs and avoid future ones.

- The PPS should discuss with the Judiciary and agree on the number of cases that could be handled in a year.
- The PPS should discuss with the police and agree on the number of cases to be investigated and brought before court.
- The PPS should discuss with the Judiciary and the police and agree on alternative procedures to deal and process the remaining cases.

The PPS, the Judiciary and the police should develop guidelines to get rid of the current backlog. Minimum criteria could be:

- The seriousness of the crime.
- The age of the defendant.
- The age of the case.
- Closeness of the case to limitation.
- Appropriateness of for e.g. the use of ADR.
- If the relationship of the victim and defendant has been restored.

Recommendation 19

The administrative organisation and procedures of the offices of the PPS, both on federal and state levels, should be developed and strengthened.

- The “Project Document for the Reorganisation of manual filing system for the Administration of the Prosecution offices of the Addis Ababa region”, should be carried out.
- The computerisation pilot project that has been started in the Addis Ababa Administration, Lideta and Arada branches should be carried out and followed both at federal and state levels.
- The Ministry of Justice should share information about the progress of organisational reform with the Heads of Justice Bureaux.
- The different branches of the High Court and the First Instance Courts should be reorganised into one centralised organisation.
- A qualified Office Manager should be appointed to head the administrative organisation with appropriate training to administrative staff members. This should be considered both at federal and state levels.
- The same administrative procedures for all the offices of the PPS, both on federal and state levels, should be developed thus promoting the future introduction of information and communication technology into the administration of the criminal justice.

Recommendation 20

In order for the prosecution to function well, the shortage of prosecutors should be reduced. The Prosecution Service should prioritise on recruiting qualified graduates. It should develop an active recruitment policy and consider awarding scholarships to students.

Recommendation 21

The working conditions of the Public Prosecution Service should be substantially improved in order to be able to retain and attract good and qualified prosecutors. Funding must be made available to do so.

The PPS should have its own budget, set priorities, and ensure that offices are appropriate in size, quality, and security to maintain files, store equipment and provide for proper work areas.

A review of the existing structural systems should take place and lead to making recommendations for improvement. These recommendations should include minimum requirements for office equipment, access to professional books and equipment and support/administrative staffing requirements.

The recommendations might be:

- Each prosecutor must have access to a desk, chair, typewriter, telephone and sufficient paper and pens to do his or her job.
- Appropriate filing systems should be developed.
- There is an office in every courthouse for prosecutors to conduct their work from.
- There is space in every office for confidential interviews with police and witnesses.
- There is space in every police station for prosecutors to attend and review files and meet with police.

Police

Recommendation 1

Police must increase their capacity to manage information. To do this the police should retain external expertise to assist them to:

- Conduct a thorough assessment of the information used by the police in the performance of their duties.
- Determine what information could be dealt with using computer technology.
- Determine those areas that urgently require or which would be most beneficial to computerise in the immediate future.
- Determine and obtain the equipment, manpower, skills and budget required to implement and sustain the IT system.
- Plan and implement a pilot or test project, which would see to the utilisation of computers to manage information in the selected areas.
- Evaluate the project and consider whether to expand computerisation.
- In developing the test project it will be important to consult with other stakeholders including all police services, prosecutions and courts to ensure compatibility of systems and to avoid duplication of efforts.

Recommendation 2

Police should establish a distinct project to reinforce and improve the existing communications infrastructure. As with the development of ICT this should involve retaining external expertise to assist the police in:

- Documentation of existing communication processes.
- Identification of needs.
- Establishment of priorities.
- Budgeting for acquisition, implementation and sustainability.
- Implementation of new communication processes.

Recommendation 3

It is imperative that police mobility be increased substantially.

Recommendation 4

Police strength should be increased in areas outside of Addis Ababa.

Recommendation 5

Police play a vital role in the operation of the criminal justice system. They will be more effective in the performance of that role if they intensify and improve their relationships with their partners in the justice system: prosecutions, other police services, and courts. Police should give priority to strengthening existing relationships and working together with other justice actors to improve the operation of the criminal justice system as a whole.

Recommendation 6

Police should work with Regional Governments to consider whether or not the militia could become a more formalised partner in the justice system. A study should be conducted which documents the existing relationship between police and militia and militia and community and critically assesses whether the existing system should be retained or modified in some way.

Police should have greater responsibility for controlling, supervising and providing adequate training to militia.

At a minimum all militia should be regulated and its roles and processes circumscribed in federal and regional legislation.

Recommendation 7

Police should implement community policing.

Recommendation 8

Police must improve their relationship with the public and improve their public image. They should conduct research to determine how the public perceives them and tackle factors that may negatively impact on the image of police. They should immediately start a “charm offensive”, that is, take action to make the police more approachable and instil in the police the understanding that they perform a valuable public service.

Recommendation 9

Police must be subject to the rule of law and accountable for their actions.

The following measures should be taken to enable this to happen:

- Police should adopt and enforce a Code of Conduct (Ethics).
- Establish a clear policy on the use of force, which advocates alternatives to the use of force and restricts the use of firearms.
- An independent body should be established to handle complaints against police.

Recommendation 10

Police need to develop a vision of policing and police education. A workshop should be held for this purpose. That vision should be informed by a clear understanding of what day to day police work requires in Ethiopia and the transformative goals of the police service. This should be the basis upon which a new police training curriculum is developed. As a practical matter functional buildings that meet minimum standards must replace some of the existing education premises for police.

Recommendation 11

Police training must be improved. The Police College should be supported to improve its services. Police should receive more training in the work place. Both the Police College and the work place should have access to the internet and computers for the purpose of gaining access to information and participation in training programs.

Recommendation 12

Successful reform requires a high level of commitment and involvement by managers. The existing hierarchical management style should be changed and a flatter management structure, designed to encourage all personnel to engage in and commit to a new vision of policing, adopted. A flatter management structure is more conducive to the adoption of community policing models, which devolve greater decision making capacity to the lowest ranks of the police service. A study tour should be organised to gain exposure to the management models and structures used in other countries.

Recommendation 13

The delivery of professional police services requires the support of forensic services to investigators. The resources of the existing federal forensic laboratory must be immediately updated so that it can work more effectively. The laboratory must be developed to a level where it can deliver new services as well. Services like DNA analysis and some chemical analysis can not be

performed now. Efforts should be made to ensure the forensic laboratory could provide a full range of modern forensic services to the police as efficiently as possible.

The national forensic laboratory should be developed as a teaching resource to ensure that the police can effectively use forensic services in conducting investigations.

A long term strategy must be developed which ensures that forensic services are delivered in a manner which best meets the needs of the police services throughout the country. This may involve consideration of the establishment of regional forensic facilities and or the incorporation of forensic services within local police facilities.

Recommendation 14

There should be a central fingerprint registry that is computerised.

Recommendation 15

Further research must reveal whether or not it is desirable and possible to incorporate the riot police into the regular police.

Prisons

Recommendation 1

A National Committee comprised of federal and state representatives should guide the ambitious prison reforms that are planned.

Recommendation 2

All stakeholders in the justice system must work together to achieve consensus regarding the basic principles that should be applied to the treatment of prisoners in Ethiopia. These basic principles will then form the basis of reform in this sector.

Recommendation 3

Prison reform programs should be designed based upon sound knowledge of the actual state of affairs within the country. Consequently, high priority should be given to the conducting of a national survey of the population in prison or otherwise detained. Statistics about the operation of prisons and the nature of prison population should be developed.

Recommendation 4

Prison reforms must be financially affordable and morally acceptable for the government and the general population.

Recommendation 5

Prison reforms must not only focus on improving efficiencies but also upon improving the quality of prison administration. While reform may entail changes to legislation, changing the law by itself is not enough. There must be a change in the attitude and philosophies of those working in corrections.

Recommendation 6

While recognising the importance of maintaining security, reforms should emphasise the importance of rehabilitation and reintegration. These principles should be imbedded in the penal law and in the laws governing prisons.

Recommendation 7

Any investment of energy and financial resources in meeting the material needs of prisons should be undertaken only after there is a clear understanding of how prisons will be expected to function in the future.

Recommendation 8

Universities should be encouraged to develop the disciplines of penology and corrections and encourage evaluative research in those fields.

Recommendation 9

The problem of overcrowding in prisons must be addressed. A task force should be formed to examine how best to pursue reforms in the following key areas:

- Effective case management strategies.
- The availability of sanctions that are alternatives to imprisonment.
- The role of the prison administration in regulating the parole of prisoners under Article 112 of the Penal Code.
- How to make use of the provisions enabling conditional release, as found in articles 194 to 205 of the Penal Code.
- Strategies to reduce the numbers of prisoners held in custody pending trial.
- Whether a form of community corrections or probation service should be developed in the country.

Recommendation 10

Decisions with respect to pre-trial detention should always be in writing and subject to appeal and review. Pre-trial detainees should be held in appropriate facilities. There should be a fixed limit on the period of time that suspects may be held in custody in police stations.

Recommendation 11

The National Committee, referenced in Recommendation 1, should be charged with developing recommendations for the establishment of national legal standards for the treatment of offenders. These recommendations should be incorporated into relevant federal and regional proclamations.

Recommendation 12

New prisons should be designed and built only after there is a clear vision of how the prisons are to operate in the future.

Recommendation 13

Prisons should keep better and electronic records on detainees. Legislation should be drafted which governs record keeping in prisons.

Recommendation 14

Juvenile offenders should be detained separately from adults.

Recommendation 15

Female detainees should never be guarded by male police or prison personnel.

Recommendation 16

Special provisions should be made for mentally ill and vulnerable prisoners.

Recommendation 17

Prisoners must be able to fulfil their spiritual needs.

Recommendation 18

High priority must be given to the improvement of prison medical services (preventive and curative), hygienic and sanitary conditions and the supply of food and drinking water in police stations and prisons. The food supply must not be dependent on what the family of the detainee brings him during visits.

Recommendation 19

Prisoners should have access to activities and educational and vocational training.

Recommendation 20

The issue of conjugal visits should be addressed in reform plans.

Recommendation 21

The role of prisoners' committees should be formally regulated and controlled by the prison administration.

Recommendation 22

Clear disciplinary procedures as well as effective grievance and inspection procedures must be formally established.

Recommendation 23

To be effective, rehabilitation efforts require the development of individual detention plans. Prisons need to establish mechanisms for development and implementation of those plans.

Recommendation 24

Prison staff must be transformed from prison police to prison warder with a service-oriented mentality and a commitment to rehabilitation of detainees. This requires a change to recruitment and training policies.

Recommendation 25

The use of force and carrying of weapons by prison staff should be strictly limited and regulated.

Recommendation 26

The curriculum for training prison staff should be directly linked to the job function of the trainee. It should be a combination of classroom, follow-up and on the job training. Those responsible for developing curriculum should be given the opportunity to attend a high level training institution in Europe to learn from their experience.

Recommendation 27

Prisons should be regularly inspected by an independent authority and by prosecutors and supervised by an independent "Board of Visitors".

Recommendation 28

Prisoners should have access to free legal advice.

Legal Education***Recommendation 1***

Co-operation between the various Ethiopian law schools/faculties should be improved

This can be done in the following way

- Law schools/faculties should share information on curricula, teaching methods, teaching materials, administration system and quality assessment.
- Representatives of law schools/faculties should meet regularly in order to share information.
- Promote collaboration between the stronger and the weaker law schools/faculties through exchanging teachers and researchers for agreed periods.
- Consider formalising the co-operation between law schools/faculties by establishing an association of laws schools/faculties.
- The law faculty of Addis Ababa should play a leading role in facilitating this co-operation.

Recommendation 2

Co-operation between the Ethiopian law schools/faculties and foreign faculties and other academic institutions should be initiated and enhanced.

- Through their universities, Ethiopian law schools/faculties should initiate and develop sustainable contracts with foreign faculties for mobility of staff and post-graduate students.
- They should be encouraged to send their staff for training in teaching and research abroad.
- Ethiopian law schools/faculties should work towards twinning with foreign faculties, especially with African ones sharing the same interest and ambitions.
- The Ministry of Education should ensure financial and technical support to those faculties, which wish and are competent to establish durable contacts with foreign universities.

Recommendation 3

The inter-relations between the law schools/faculties on the one hand and the legal professions and the civil society on the other hand are very

important and they should be initiated or developed. That can be achieved in the following way:

- Members of the legal professions, such as the Bar Association, courts and prosecution, should be invited to give guest lectures or seminars on specific topics. These guest lectures and seminars should be seen as a complement of rather than an alternative to a course.
- Members of the legal professions should be invited to give students an opportunity for practical training at their offices. This relationship/ traineeship should be formalised between the university and the legal profession(al).
- The legal professions should be invited to take part in the discussions on the development and revision of the curricula.
- Members of the civil society, such as Human Rights NGOs, women's organisations and any other association whose activities are relevant to developing practical skills of students, should be invited to give guest lectures or seminars on specific topics. These guest lectures and seminars should be seen as a complement of rather than an alternative to a course.

Recommendation 4

There is a huge need for legal research and publication. Teaching staff must devote more time and energy to research and publication. In order to achieve this,

- They should be provided with administrative support.
- Legal libraries should be improved.
- Better use should be made of information technology.
- Inter-action with the legal professions and access to information should be facilitated.
- International exposure should be guaranteed.
- Seminars for researchers and teachers should be organised on a regular basis.
- Researchers and teachers should be trained in research techniques.
- Increasing the salary of the teaching staff should be considered so that they can solely concentrate on teaching and research rather than combining different jobs.
- The teaching staff should be held to their contractual obligations to undertake research.
- The Ethiopian Law Journal should be supported financially and technically and developed into a national widespread journal.

Recommendation 5

Law libraries should be set up and where they exist they should be reinforced and upgraded.

- Laws and proclamations should be delivered to law libraries on a regular basis and shortly after their adoption or publishing in the Negarit Gazeta. A mechanism for this delivery should be developed (example subscribing law libraries to the Negarit Gazeta).
- Decisions of the Federal Supreme Court and the State Supreme Courts should be delivered to law libraries. A system of publishing and/or distributing single decisions on demand from law schools has to be worked out.
- The management and organisation of the law libraries should be upgraded.
- Staff and administrative personnel at law libraries should be trained in special programs in archiving and managing stored materials and in modern means of information technology.
- Law libraries should be better equipped and furnished. They should also be provided the financial means to purchase the necessary books and subscribe to among others the Negarit Gazeta and the Ethiopian Law Journal.
- Law libraries should be shortly provided with modern means of information technology and access to the internet. A pilot project on automating one of the law libraries should serve as a precedent before transferring the know-how to other libraries.

Recommendation 6

Law schools/faculties should design curricula to meet the need of the present Ethiopian society. To that effect they shall:

- Make a division/department or a group of people (a commission) responsible for dealing with curriculum developing and periodical revision. Curricula development or revision should not be dependent on one or two leading persons. It should be the joint responsibility of the commission in which law schools/faculties but also the legal professions and other disciplines should be represented.
- Clearly define the objective of the curricula taking account of the academic and professional needs of current Ethiopia (see Annex 10).
- Ensure that the curricula be dynamic, be monitored and revised whenever needed
- Ensure that new legislation and development in the country are taken into consideration while revising curricula.

- Ensure that the designers of curricula be trained and competent in methods of developing and revising the curricula.
- Involve instructors and teachers in curricula development and revision.
- Encourage (Organise) regular meetings (seminars) between curricula designers of the different law schools/faculties to exchange ideas and expertise.
- Establish relationships and develop interaction with the legal professions such as the Bar Association, courts and the prosecution and with the civil society such as human rights NGOs and alumni associations in order to guarantee their practical input in the curricula.
- Establish relationships and develop interaction with other disciplines such as economics, accounting, sociology, criminology, psychology, psychiatry, pedagogy, and anthropology and assure their specialised inputs in the curricula when deemed specifically necessary.
- Enrich the curricula and diversify them by adding optional/elective courses that are problem and practice-oriented. A pilot project in one of the law schools can serve as a precedent for this introduction.
- Research the need and desirability to include Alternative Dispute Resolution and *Sharia* law and customary law.
- Provide an opportunity for the designers of curricula to visit foreign countries and get international exposure (study visits or training in techniques of designing curricula).
- Establish relationships with foreign universities that could assist by providing highly qualified experts in the field of development and revision of curricula and advice in this matter.

Recommendation 7

Teaching methods at Ethiopian law schools/faculties should be modernised and upgraded by introducing more practice and profession-oriented methods. To this sake:

- Flexibility in the credit hour-measuring system should be introduced.
- The distribution of workload to instructors in teaching hours should be reconsidered.
- Law teachers should be trained in teaching methodology and in pedagogy through various seminars and programs. A manual on training of law teachers should be developed.
- The severe lack of teaching materials should be remedied. Teachers should be induced to spend part of their time preparing teaching materials.
- Students should receive the prepared and compiled teaching materials of their courses before the start of the courses.

- Classes should be organised in small seminar groups in order to allow students to ask questions, discuss and argue.
- Guidelines and restrictions in terms of students/staff ratio and facilities should be set.
- Law schools/faculties should be encouraged to introduce participatory and practice-oriented methods of teaching such as: moot courts, legal clinics, practical attachments, exercises in legal drafting and legal interpretation, field research, problem-based assignments, tutoring by legal professionals.
- The Ministry of Education and law schools/faculties should set up a working group that will explore new and practical teaching methods that fit the Ethiopian situation and aspirations.
- Whilst teaching in English is necessary, local languages should be used in order to apply the legal knowledge in local situations.
- The design of examinations should be improved to mirror the new teaching methods.
- The number of part-time instructors should be reduced as they are not taking part in research.

Recommendation 8

Quality control must be established and developed. In particular:

- The Agency for Quality Control should set up a specialised body to define criteria and systematic assessment methods in relation to legal education.
- The law faculty should introduce self-evaluation schemes with student participation.
- The problem of lack of essential facilities should be addressed as a matter of urgency. Universities/law schools may consider a small participation by students in the cost of running such facilities.

Recommendation 9

As a matter of urgency the facilities at the universities should be improved.

Recommendation 10

Human resources at law schools must be improved. In particular:

- Universities/law schools should give consideration to long term career planning for academic and administrative staff.
- Such planning should include contacts, exchanges and sandwich programs with foreign universities.

Recommendation 11

The management of universities/law schools must be strengthened and rendered transparent.

- University/law schools' regulations should be printed and distributed to all staff and students.
- A program of study visits abroad should be developed to enable university/law school managers to acquaint themselves with alternative management models.

3

Historical and Constitutional Background

In May 1991, after years of armed struggle, the Derg's highly centralised system of government gave way to a democratic and decentralised federal system. The Constitution of the Federal Democratic Republic of Ethiopia (*hereinafter* the Constitution) was adopted on 8 December 1994. It establishes a federal system of self-determination of nine regions or "States" to which judicial and wide legislative and administrative powers are devolved. The elected House of Peoples' Representatives is the law-making organ in all matters assigned by the Constitution to the federal jurisdiction. The laws it enacts are called "Proclamations". In each State, the State Council is given legislative power for all matters falling under state jurisdiction. At federal level, the Council of Ministers headed by the Prime Minister is the supreme organ of the Federal State's executive branch. It is accountable to the House of Peoples' Representatives. Similarly, at state level, the executive organs are the State Cabinets headed by the Chief Administrator of the State.

The House of the Federation is composed of representatives of Nations, Nationalities and Peoples. The House has the power to interpret the Constitution. It is the guardian of the States' equal treatment within the Federation and, to that effect, ensures that solutions are found to problems that may arise between States.

The independence of the Judiciary is guaranteed by the Federal Constitution. Judicial functions, both at federal and state levels, are vested in the courts. These comprise the Federal Supreme Court, the Federal High Court and the Federal First Instance Courts. The same three-tier system obtains in each State under the names of State Supreme Court, Zonal or High Court and Woreda Courts. The Constitution also enables federal and state legislatures to legally recognise the jurisdiction of Religious and Customary Courts where the parties consent. Besides, "Social Courts", whilst not mentioned in the Constitution, operate in several States.

4

The Ethiopian Justice System

In Ethiopia, as in any other country, the justice system is not limited to the provisions of the Constitution defining the structure and powers of the courts (Chapter 9) or by *Proclamation No. 25 of 1996* establishing the Federal Courts. It necessarily extends to other institutions that enact legislation, facilitate the functioning of the courts, are charged with law enforcement or teach law. All these components of the justice system are functionally linked to one another. As a result, any assessment and any reform proposal must take account of the whole system as well as its different parts.

4.1 The Law Making Institutions

They are the House of Peoples' Representatives and the House of the Federation. The legislative power resides in the former. Its law making procedure forms part of the justice system. The latter has indirect legislative functions as it can determine civil matters, which require the enactment of laws by the House of Peoples' Representatives.

4.2 Institutions Facilitating the Functioning of the Courts

The Ministry of Justice acts as chief adviser to the Federal Government in matters of law. It studies the causes of crime and the methodology for their prevention. It also issues, supervises and revokes licences of advocates practising before Federal Courts. In the regions, the State Justice Bureaux fulfil this role.

The Bar Association is an organisation of licensed lawyers whose function is to assist the courts in rendering justice.

4.3 Institutions Charged with Law Enforcement

The Public Prosecution Service, under the Ministry of Justice, prosecutes federal crimes before Federal and State Courts.

The Federal Police, under the Ministry of Federal Affairs, are responsible for the investigation of federal crimes at federal and state levels. The State Police investigate state crimes and co-operate with the Federal Police.

The Federal Prison Commission is responsible for the management and administration of prisons and the rehabilitation of convicts. In the States, the Regional Prison Commission fulfils this role.

4.4 Law Teaching and Research Institutions

A number of university law faculties and private law colleges provide legal education at various levels. The Civil Service Law Faculty has also, in the past, trained a relatively large number of lawyers. But its functions are changing away from law teaching. Lastly, the Justice and Legal System Research Institute was established in 1997 with the aim of undertaking research activities to strengthen and modernise the justice and legal system of the country.

5

Critical Appraisal of the System

The Justice System Reform Program (JSRP) was established in 2002, under the authority of the Ministry of Capacity Building, to assess the performance of the various institutions of justice and to propose appropriate reforms. In a document published in April 2002², the JSRP identified a number of major problems hindering the machinery of justice. These need not be listed here since they will be analysed in detail in other sections of this report. But it is important to note that the decision to engage independent experts to review the justice system was precisely based on the recognition by the Ethiopian authorities of the existing weaknesses and deficiencies of the system. In the same document, the JSRP explains that *“Fragmented and piecemeal approaches in reforming and building the capacity of justice institutions could not solve all problems and bring the intended results. Effective resource utilisation in the sector could only be achieved by working towards a comprehensive justice system reform program, which looks (to) the system as a coherent whole. To this effect, the government of Ethiopia has prepared Terms of Reference for international consultancy work to achieve a comprehensive justice system reform program.”* However, the JSRP did not await the input of the independent international consultancy team to propose and begin to implement a number of urgent reforms.

² Justice System Reform Program, Ministry of Capacity Building, Addis Ababa, April 2002.

6

Current Reform Efforts

The JSRP addressed what it regarded as the most blatant deficiencies in the justice system, i.e. the insufficient number of qualified judges and public prosecutors, the inappropriate and inefficient administration of the courts at both federal and state levels, and the lack of clarity and coherence in respect of existing laws and codes. In these three major sectors, reforms were initiated and implemented.

6.1 Training of Judges, other Justice Personnel, Police Officers and Prison Administrators

A phase of the training program focused on the training of would-be judges and public prosecutors in Woredas in order to solve the immediate shortage of trained manpower. About 3,000 judges were trained during this phase. Another phase of the program focussed on upgrading the skills of low-level judges and prosecutors during court recess time. These programs were organised at both federal and state levels. The Faculty of Law of Addis Ababa University and the Civil Service College have also carried out upgrading programs. As they develop their law faculties and departments, newly established provincial universities are expected to offer similar upgrading courses and seminars. In addition, the Ethiopian Police College and regional police training centres are expected to enhance the professional competence of police personnel and prison administration officials.

Pursuant to Proclamation No. 364/2003 a Justice Sector Personnel Training Centre (*hereinafter* the JTC) has been established. After developing its curricula, the JTC is shortly expected to become operational and deliver training for justice personnel.

6.2 Court Administration Reform

Ways and means were explored to improve effectiveness in the operation and management of the courts. Eleven pilot projects were undertaken at the Federal Supreme Court in collaboration with donor agencies. The program was later extended to lower Federal Courts and some State Courts and it is eventually expected to cover all courts in the country.

6.3 Law Reform and Harmonisation

The Ministry of Justice and the Justice and Legal System Research Institute are playing a major role in implementing a law reform and a revision program to harmonise existing laws with the constitution. The consolidation and the eventual codification of existing laws as well as the updating of existing codes are part of this important process.

7

The Baseline Study and the Needs Assessment

As mentioned in Section 5 above, The Justice System Reform Program, on behalf of the Ethiopian Government, prepared terms of reference for international consultancy work to achieve a comprehensive program aiming at the reform of the entire justice system. With this general objective in mind, the Center for International Legal Cooperation presented a baseline study and needs assessment proposal which was accepted by the Ethiopian authorities. As a result, a consultancy contract was entered into on 27 May 2003 between the Ministry of Capacity Building of the Federal Democratic Republic of Ethiopia, and the Center for International Legal Cooperation. The executing party on behalf of the Ministry of Capacity Building, and the counterpart of CILC, has been the Justice System Reform Program Office (JSRPO). The UNDP was part of these discussions and agreed to fund the study.

7.1 Main Objectives of the Study

In the course of discussions with Ethiopian officials and international donors, the consultant learned of the efforts undertaken or underway aiming at strengthening the justice system and improving its functioning (see Section 5 above). Despite notable improvements, considerable shortcomings remained, hampering its further development. In this context, it was agreed that the main objectives of the Study would be:

- To review the overall justice system and develop a baseline study.
- To develop a needs assessment of the justice system with a view to identifying shortcomings and to suggest remedies.

7.2 Strategy and Methodology

The Study regarded the role of the consultant as being that of an adviser and a catalyst. The consultant was to give priority to mobilising and stimulating participation of Ethiopian institutions and local experts. In accordance with the agreed overall proposal, a Team Leader, Mr Thierry Fagart³, was appointed to co-ordinate all activities and maintain permanent contacts with the JSRP Office, the UNDP, and various donors interested in the justice reform program from his base in Addis Ababa. Five working groups of international and local experts were set up to study five aspects of the justice system (for a list of Ethiopian stakeholders that have been met with, please refer to Annex 1). The JSRP Office recruited the national experts. CILC enrolled the international experts (for a list of the international and local experts, please refer to Annex 2). The five working groups were as follows:

- Working Group 1: Legal Education
- Working Group 2: Law Enforcement
- Working Group 3: Judiciary
- Working Group 4: Law Making and Law Revision
- Working Group 5: Information Flow within and outside the Judiciary

Each working group was to deal with a component of the assignment. In accordance with the proposal, high-level international experts were recruited by CILC in the Netherlands, France and Sweden.

7.3 Implementation of the Program

Work began in June 2003 when the Team Leader arrived in Addis Ababa. As originally planned, three visits to Ethiopia were to be successively made by all working groups travelling together. This proved difficult to implement. Soon after the start of the study, CILC was informed about the recess of the Ethiopian Judiciary and the beginning of the summer vacation at universities. Visits to the universities and other teaching institutions, and to courts in recess were either difficult to organise, or were unlikely to result in a high quality study that met the aspirations of the involved parties. Consequently, and following discussions between the JSRP Office and CILC, and with permission of H.E. Mr Tefera Waluwa, Minister of

³ Mr Roger Briottet replaced him in September 2003.

Capacity Building, it was decided to interrupt the study between late July and mid-September 2003.

Due to the reshuffling of the initial schedule, CILC was obliged to make fresh arrangements with the international experts and to fix new dates for their missions. Another complicating factor was the deterioration of Mr Fagart's health, which led to his premature withdrawal of the project and evacuation to France in September 2003.

After each of their visits, the teams produced a provisional report, which was sent to CILC and to the Team Leader in Addis Ababa. These reports were circulated among the local experts for comments. After their last visits, the experts sent their final reports, which were circulated in the same way. On two occasions, on 24 October and 18 November 2003, the experts present in Addis Ababa met to exchange views on the basis of their respective findings. In addition, on 21 November 2003, a workshop was organised to which Ethiopian stakeholders of the Justice Reform Program and donors were invited. This allowed for very fruitful discussions, which supplemented the experts' own findings and conclusions.

In addition to the changes mentioned above, the international experts, at times, found it difficult to gather the information they required despite the assistance they received from local experts and the staff of the JSRP Office. This is partly due to the lack of a centralised information system, partly to the very nature of the Ethiopian federal structure, which requires research in nine different States, and partly to the fact that, in some circumstances, data simply do not exist. It is however believed that the present report, based as it is on the final findings of the five expert working groups, is an accurate and reliable assessment of the Ethiopian justice system as a whole, which can sustain sensible recommendations for reform.

8

Observations Relating to the Justice System: Horizontal Analysis

8.1 Structure

Structural problems are those which go beyond the smooth running of the existing system and necessitate fundamental changes in order to remove obstacles preventing the system from functioning properly and reaching its objectives.

Impact of federalism and decentralisation

The Constitution adopted in 1995 provides for a Federation of Nine States and Addis Ababa and Dire Dawa having a “special status” as independent administrations. The constitutional choice for a federal system that respects the cultural, religious and ethnic diversity of the country, resulted in a huge challenge to reform the country from a highly centralised system under the former Derg regime to a highly decentralised one. Extensive powers in all respects, including the legal and judicial ones, have been given to the regions. Underpinning the decentralisation and their independence, the regions went in the division of their administration as low as a *Kebele* level (communities with an average population of 5,000 to 10,000). This necessitated the creation of many new layers and divisions of administration and created the need to find qualified people to assume all those new posts and responsibilities.

The justice system is no exception in this respect and the demands placed on it have been multiplying since the decentralisation. However, support to the justice system in terms of financial and technical resources, qualified manpower and strategic vision did not keep pace with the increased demands. Besides, the dismissal of many legal professionals (such as judges) after the overthrow of the Derg regime paved the way for a new generation of legal professionals. But it also took away experienced and qualified ones. The

courts' system is probably the best example of the described situation. During the Derg period, the courts' system was unitary and followed the division of the country in 14 regions where 14 High Courts used to sit. The federal system has introduced no less than 9 regional courts' systems and new levels and other courts such as the Social Courts. This weighs heavily on a system that is in need of reforming many of its aspects and needs mobilising all energy and efforts to succeed in this task.

The Constitution and the Federation should be praised for the many rights they provided for the regions and the full liberty and independence they have given to States. However, sometimes one could think that this independence goes too far. There are obvious cases of justice lacunae in the regions where the federal level has been turning a blind eye, because the regions are independent. In many cases, the federal system only serves as an example for the regions and it is not binding. Regions may or may not follow the federal examples. Only a few did and do. The current situation of the justice system has grown more and more diverse and different. This is the case when comparing the federal to state systems. But it is even more the case when comparing state systems with each other. The reform program must thus be as diverse and different as the current situations of the federal and the different state systems.

A mixed legal and judicial system

The legal and judicial system is a mosaic of different systems and traditions. Ethiopia is a civil law country but the system has also common law elements. Besides, the country has a mixture of modern and secular laws, and customary and religious rules. All those systems do work parallel and sometimes even impede each other. This is mainly the case for rules and customs whose constitutionality is arguable. However, discussions and decisions on those different systems are often avoided.

Alternative Dispute Resolution

Seen from an Alternative Dispute Resolution (ADR) angle, Ethiopia is a country with enormous possibilities and rich traditions. ADR can potentially provide solutions for many existing shortcomings of the system such as the backlogs. It can also bring "justice" to the poor and reach the remote. Unfortunately, the potential of ADR has not been studied. Thus the possibility of using constitutionally tested ADR methods in the regular system have neither been studied nor considered. Taking into consideration the current situation of the legal and justice systems, one can only hope this shortly changes. The challenges of finding a *modus vivendi* for the integration

of constitutionally tested ADR methods are high. Perhaps it is good to bear in mind that the challenges in Western countries are high as well. Yet, the use of ADR methods is growing in the West. It is even a new trend in many countries that are eagerly importing it.

Non-established Institutions

A number of institutions of the justice system or related to it have not been established. Those institutions are provided for either in the Constitution or in laws where their important role in the system has been rightly described. We would like in particular to list the following three: i.e. the Institution of Ombudsman, the Commission of Human Rights and the Probation Service. Financial constraints seem to be the reason behind the “postponing” of their establishment. To our understanding, finance is not the only obstacle. In view of the role those institutions can play in solving some of the current shortcomings of the system, it would be most recommendable to shortly establish those institutions.

Regular system paralleled with non-regular one

One of the characteristics of the justice system of Ethiopia that is most particular and striking is the existence of a “non-regular” system that is paralleling and sometimes even replacing the regular system. Some examples: the police are paralleled by the militia; regular courts are paralleled by Social Courts (and with the constitutionally approved Religious and Customary Courts); the lack of Legal Aid to (remand) prisoners is substituted by advises of the Prisoners’ Commission.

While the non-regular parallel system has manpower at its disposal to be functioning, in an accessible manner and relatively quick, the regular system is plagued with shortcomings. The possibility of making use of the parallel institutions should be considered. The relations and possibilities to link some of those institutions to the regular ones should be studied. Obviously, those non-regular institutions should be first tested for their constitutionality and legality.

Independence of the Judiciary

The division of powers and the independence of the Judiciary are enshrined in the Constitution. This is a historical and wise decision. In practice, however, the independence of the Judiciary should be more strengthened and supported than is the case now. Both internal and external influences on a genuinely independent Judiciary should be tackled.

Internally, this could be done by strengthening the Judicial Administration Commission. Upgrading and making transparent its work and procedures, opening it up to outside input and making its work a permanent instead of the limited current meetings. The Judicial Administration Commission, if technically strengthened and willingly supported by the Judiciary, including the Supreme Court and other stakeholders, could eventually play the role a Council of the Judiciary plays in European countries. It is up to the Ethiopian authorities to accept this recommendation or to remain faithful to the current system whereby the Supreme Court assumes the administration of the Judiciary.

Independence of the Judiciary should not only be a matter of laws and provisions but also one of behaviour and daily practice. The independence of the Judiciary begins with the selection, education and training of competent people.

Externally, influences and interventions from the executive and the legislative should be stopped. An example: the Constitution provides for the Judiciary to have its budget. In practice, the decision lies fully with the Ministry of Finance that administers the judicial budget and can refuse a plan to increase the salaries of judges.

Ministry of Justice

The Ministry of Justice is by law responsible for the prosecution of crime. The Minister of Justice fulfils the role of “Chief” Public Prosecutor. To our understanding, the Minister combines executive and judicial competencies. This does not fit the aspiration of Ethiopia to be a democratic country where the rule of law prevails. Obviously, there are many countries in the world that have opted for this same system. There are many systems and points of view as to the prosecution authority. Some would even doubt whether it is a judicial competence. In modern democratic states, however, it has become a standard of democratic rule to separate the executive and judicial competence of the Minister of Justice and establish an Office of the public prosecutor as a means to assure the autonomous work of the prosecution. Autonomous in the sense that it is not subject to ministerial intervention and influences. In the Netherlands, the principle within the Judiciary, the Public Prosecution Service being part of it, is the following: The Judiciary is *independent* while the Public Prosecution Service is *autonomous*. The Dutch system is being praised for this quality and even the Explanatory Notes of the Council of Europe Recommendation on the Role of the Prosecution (enclosed as

Annex 6) mention it as an example when it explains article 13, to which we referred earlier in this report.

The issue of establishing a separate and autonomous Office of the Prosecution might be sensitive because of the recent history of the country.

Defence and legal aid

For the administration of justice to work the way it should in a democratic society, it is important that everyone has access to court when they so desire. A well functioning, balanced and closed system of legal aid is an imperative in order to guarantee access to court. The aim of the system of legal aid is to create the opportunity for legal assistance at affordable prices for all citizens. This does not only require funding for the provision of the actual aid, but also regulations describing the system and the organisation responsible for putting the system into practice.

The Bar in Ethiopia is intolerably weak and its contribution to the system is very limited. The situation in the regions is very worrying, as there are almost no Bar Associations. The Bar needs all kinds of support.

Most astonishing in the current system is that lawyers are requested to apply yearly for a license that is given to them by the Minister of Justice. The Minister of Justice combining executive and judicial (prosecution) competencies can this way also control the Bar. Licensing, training and all other matters related to the functioning of a lawyer should be the responsibility of the Bar itself. In any case, the Ministry of Justice is the wrong institution to license an advocate one moment and meet him with his or her client in court at another. The independence of the advocate or his license is indeed at stake.

8.2 Manpower

Shortage of qualified manpower

The shortage of qualified legal and judicial personnel is severely high. The universities do not have an answer to this problem either quantitatively or qualitatively. The many layers of the system both at federal and state levels, complicate the situation and aggravate the shortage. According to local estimates Ethiopia would need about 8,000 to 10,000 lawyers to be able to meet all requirements of the current system. The country is said to have 800 to 1,000 lawyers only. The gap between supply and demand is indeed very big.

In the short term, intensive training is needed in order to upgrade and improve the qualifications of the legal professionals in the whole system. In the long term, training alone cannot be the solution. There should be a national strategy and program that aims at improving the legal education and there should be vocational and continuous training to get rid of the current shortcomings in this respect.

Low level of education

The level of legal education in the country is fairly low. Traditional methods and backward curricula combined with unskilled university teachers make up the picture. In this context, training (initial and continuous) is a *sine qua non* to remedy the loopholes of the weak legal education. However, the lack of training in the whole justice system is a serious problem.

Where the government takes initiatives to improve the level of education and thus improve the flux of well-educated legal professionals into the public sector, the alumni who benefited from those governmental measures paradoxically opt for the private sector. Besides, the justice system and mainly the Judiciary seems to be used as a spring-board of young alumni to acquire experience before joining the private sector and earn much more money than in the public one. A national policy should be created aiming at inducing young and good qualified manpower to remain with the public sector. Increased salaries could be an important incentive as well.

Low qualifications

Bearing in mind the enormous shortage of qualified manpower and the weak legal education, the Ethiopian authorities seem to have intentionally or unintentionally chosen to limit criteria and qualifications and ease the selection procedure for legal professionals in the justice system. This is the case for judges but also for prosecutors. Therefore, many judges and prosecutors do not hold law degrees. Many of them have only attended short legal courses and are in fact inadequately equipped to become a judge or a prosecutor. This is obviously not the right basis for a competent and well functioning justice system.

Relaxing the criteria and easing the procedure to select judges, prosecutors and other legal professionals might on a short term give some relief in the struggle against the shortage of qualified manpower. In the long term, it is damaging to the justice system both in terms of performance of the system as well as in terms of confidence of the public. Despite the shortage, the selection procedure for judges, prosecutors and other legal professionals

should be targeted on getting highly qualified and experienced manpower for the justice system. The selection procedure should also be transparent and open for outside input. Another possible source of qualified and experienced manpower in the short term could be the Ethiopian Diaspora in Europe and the USA.

It might be necessary at one time in the coming years to re-test judges, prosecutors and other legal professionals. This should happen after giving them the possibility to be trained and to acquire the needed qualifications. The re-testing can purge the system of unfit and unqualified elements. Besides, it is an incentive for the legal professionals to look for qualifications and seriously attend training in order to pass the re-testing.

Low morale

Without any prejudice to the dedicated and enthusiast people we met with, the morale in the justice system is low. This is obviously due to the current situation of the justice system, the conditions of work and the very low salaries if compared to the private sector. Often low morale results in negligence and indifference leading to abuses of laws and human rights.

8.3 Resources

Lack of budget

There is no doubt whatsoever that all justice institutions lack budget and financial means to be able to remedy their shortcomings. This can be concluded after visits to courts, prosecution offices, police stations and prisons. The lack of budget is a huge shortcoming not only in terms of infrastructure, facilities and furniture. But most problematic is that justice has been prevented from taking initiatives in the field of training and education. Besides, lack of budget has disadvantaged the justice system in its competing for qualified manpower with the private sector.

Working conditions

Working conditions are generally poor and sometimes so insufficient that justice personnel are virtually paralysed. This is particularly true of prosecutors' offices, especially outside Addis Ababa where buildings are often inadequate, furniture and stationary lacking and communication with the courts and the police inadequate. The courts are slightly less affected by the same lack of facilities. In all cases, including the universities, indispensable legal material such as proclamations, court decisions and essential textbooks

are lacking or incomplete. Libraries, where they exist, cannot perform their essential service since, in most cases, they cannot afford to purchase the required books and periodicals. In a country like Ethiopia where the production of written material is difficult and expansive, the installation and use of modern technology such as the internet would be of great help to judges, law schools, public prosecutors and advocates.

Poor facilities and lack of essential legal material gravely impede the functioning of the justice system as a whole: backlogs accumulate in the courts and the prosecutors' offices, the law is not properly implemented, and university students cannot access essential sources or conduct productive research.

8.4 Performance

By performance we understand the functioning of the system as it currently exists and the shortcomings which affect it.

The gap between law and the practice

As has been explained, the law is often uncertain because of delays in consolidation, lack of codification and imperfect knowledge of proclamations and courts decisions by the practitioners. But even when the law is known, it is not often strictly implemented. Rules of procedure are ignored. In criminal cases, this leads for instance to suspects being kept in prison far beyond the legal maximum period of fourteen days, sometimes for a very long time. Faulty implementation of the law by judges, the Prosecution Service and the police amounts, in some cases, to a denial of justice, procedural confusion and opens the door to corruption.

Mentality of isolation vs. co-operation

The lack of co-operation between practitioners is a prevalent and unfortunate characteristic of the justice system as a whole. It affects *inter alia* the relations between the Ministry of Justice and the Ministry of Federal Affairs, the police and prosecutors, the judges and prosecutors and, in legislative matters, the Ministry of Justice and the other ministries as well as the Research College, to cite but few manifestations of this phenomenon. As a result of this state of affairs, the machinery of justice cannot fully achieve its goal of bringing a fair deal to ordinary citizens.

Lack of accountability

The gap between law and practice leads to a lack of accountability within the justice system since, by ignoring the law, practitioners tend to shirk their obligations. All too often prosecutors fail to attend court sessions, summons are not issued within the legal period of fourteen days and police investigations are not supervised as they should be. As a result, the system as a whole is fragmented and its coherence in danger. The result is huge backlogs and denial of justice.

Congestion and backlogs

The insufficient number of practitioners at all levels and the lack of facilities are major reasons for the *congestion* of courts, prosecutors' offices and prisons. The backlog of cases thus generated slows the system as a whole to the detriment of good and fair justice. The congestion can however not fully be blamed on the bad facilities and the circumstances. Much of the backlog has been and is being caused due to the bad performance of the professionals or the complete absence thereof. A visit to a prison tells the whole story. Prisons are *overcrowded*. Roughly speaking half of the prisoners have not been sentenced. Some are waiting a long time already for a court decision. Due to the *backlog* in courts this might take a period that is longer than the eventual sentence. Others are waiting for a summons from the prosecution so that they can be presented to courts. By law this should happen within fourteen days. In practice, this may take months and sometimes years due to the *backlog* at prosecutors' offices. Some are held in prisons pending further investigation requested by the prosecution. Here again the case may take weeks or months before an answer is sent to the prosecutor and the investigation can thus be completed. It is not clear whether the delay is to be blamed on the relation between police and the prosecution service or whether the police are also suffering from *backlog*. The justice system is plagued with arrears and congestion at all levels, layers and institutions. The justice system is held captive in a vicious circle called backlog. It is very astonishing to hear legal professionals pretending not to be able to do something about the backlogged cases but entertaining them. This is blamed on the absence of legislation enabling courts, prosecutors and other legal professionals to do away with the backlog. A comprehensive criminal policy should be quickly developed. The current backlogs, ways to get rid of them and to avoid them in the future as well as changes in the system (e.g. new guidelines for selecting new criminal cases) should be to the heart of such a policy. Besides, co-operation and most importantly communication between the different institutions as to solving this systemic and joint problem should

be intensified on all levels and should be made transparent so that the various institutions can be held accountable for their behaviour and performance.

Civil society and justice

The Ethiopian society is slowly emerging from a long history of violence and dire poverty. Illiteracy, especially in rural areas, is very high. As a result, most people cannot read newspapers, and written law remains for most of them an abstract notion. Social Courts, *Sharia* and Customary Courts provide a fairly easy access to elementary justice. But “regular” courts, be they Federal or State Courts, are often too remote, and their procedures too complex to be of use to plaintiffs in distant areas. In addition, the dichotomy between the two categories of courts may, in the long term, lead to worsening fragmentation of the whole judicial system. In Europe the media and the civil society are called “the fourth power” after the *trias politica*. The civil society in Ethiopia is embryonic and cannot be expected to play a quintessential role in the development of the legal and judicial systems. Much must be done in the field of awareness raising and legal consciousness developing of the general public. The sometimes-problematic relations with the government should be overcome in favour of the common interest of the country and the people of Ethiopia.

Access to justice

It goes without saying that when legal aid, the civil society and information flow are as weak or lacking as in Ethiopia and the justice system is as congested as the Ethiopian one, access to justice is significantly impeded. In such a situation, one can rightly doubt the value of the constitutional right on access to justice as enshrined in Article 37 of the Constitution.

Computerisation of the system

The lack of facilities described above encompasses also the lack of information and communication technology. All Ethiopian institutions have pinned hope on the introduction of computers to solve the above-described problems. Computers can be a useful means in solving many problems. Computers are however not a magic stick that can turn a badly functioning system in a well functioning one. Prior to any introduction of computers, the system should be made functioning. For example court management should be firstly well done manually and on a daily basis before one can introduce the computer. Besides, the introduction of computers shall weigh heavily on the system in terms of training, manpower, costs and starting problems. Above all, the infrastructure in the country will not allow a smooth

introduction of computers and this side of the computerisation should not be neglected.

Training

The lack of training of the legal professionals in the whole justice system has reached a severe level. This is partly due to the lack of financial means. But there is also a lack of vision on training policies in all institutions. It is high time training of the legal professional such as judges and prosecutors was made a national priority both on federal as well as on state level.

Lack of Statistics

Despite efforts that have been undertaken by the Federal Supreme Court, courts, the police and the Ministry of Justice, the Ethiopian justice system flagrantly lacks reliable statistics both on federal as well as on regional levels. It goes without saying that statistics are an important tool for the management of justice and the monitoring of the performance of the different institutions in terms of caseload. This is even more the case today in the framework of the reform process of the justice institutions. It would be wise for the sake of continuity and because of its neutrality to entrust the Central Statistical Authority with this task. A computerised justice statistics system that encompasses regional and federal statistics of all the justice institutions in a compatible way should be developed and implemented. For this sake, it is advisable to seek co-operation with statistical offices of developed countries for their advice on conducting needs assessment and assistance in developing an Ethiopian statistical justice system.

The following international offices could be considered:

- United States Statistics Office, Washington
- United States Statistics Office, New York
- United Nations Statistics Office, Washington
- United Nations Statistics Office, New York
- United Nations Centre for International Crime Prevention, Vienna
- United Nations Interregional Crime and Research Institute, Turin
- The Netherlands Central Bureau for Statistics

9

Assessment of Each Justice Institution

Before presenting the results of our work, we would like to stress the following:

- The current study of the justice system is not meant as a test for the system whereby the involved institutions may succeed or fail. Neither is it meant as an assault on one or more of the Ethiopian justice institutions. It is not the purpose or intention of the current study to support particular institutions and denigrate others. As independent international consultants, we have worked on the basis of the situation as it was presented to us in meetings and discussions with the national and states' authorities, the national and states' stakeholders, the local experts, the donors and the counterpart i.e. the JSRPO. We have no interest whatsoever in picturing the situation brighter or gloomier than it really is. Our engagement and aim have been to provide an objective study that will help improve the justice system in Ethiopia and thus strengthen justice, the rule of law and democracy in the country. In a study like the current one, one focuses on the shortcomings and highlights them in order to suggest remedies. This does however not mean that the system only consists of shortcomings.
- The study aims to be comprehensive inasmuch as it covers the whole justice system and all its important institutions. Piecemeal initiatives dealing with one institution or one side of an institution have proved less efficient inasmuch as they neglected the interrelation between the upgraded and the non-upgraded parts of the system leading thus to a smaller impact than was aspired. In the current final report, we have opted for a vertical and a horizontal analysis. The vertical analysis will deal with each justice institution separately, concentrating on a description of this institution, findings and observations on shortcomings related to this institution and recommendations to remedy the situation. Besides, the vertical analysis closely looks at the relations of every justice institution with other institutions of the justice system. It identifies shortcomings in these relations

and Barriers for co-operation. Based on the vertical analysis of the studied justice institutions, the horizontal analysis will deal with system-related issues and aspects. We have opted for this approach in the light of the various and sometimes-flagrant shortcomings identified in the structure and performance of each institution. By dealing with those issues vertically, we give them due attention and highlight them but we do not compromise on the comprehensiveness of the study. Bearing in mind the current bad situation of the Ethiopian justice institutions, one cannot do only with a horizontal analysis that is presented concisely and in a synthesis. In section 9 of this report, we will describe the structure and organisation of each institution. In section 10, we will present our observations and conclusions as to the shortcomings of each institution. In section 11, we will present our recommendations in respect of each institution. The horizontal analysis (system-related analysis) will be dealt with in section 12.

- Our experts have visited as many States as was logistically possible within the framework of the study. However, the visits were too short and the international experts often spent more time on travelling to the regions than on talking with stakeholders of the justice system. Therefore, the visits did not always lead to an in-depth analysis of the situation in the visited regions. Still, we have obtained a good impression of the shortcomings in the regions. Therefore, we have chosen to use the gathered information and experiences in this report and mention many examples and figures from the regions in order to make clear that the situation in those regions is worse than on the federal level. In order to get a detailed description and analysis of the situation in the nine States, we would advise an individual assessment and a reform program for each region that is tailored to meet the needs of that very region. Perhaps the donor community should be induced to leave Addis Ababa and embrace the regions.
- The Ethiopian counterparts expect the study to result in recommendations as to best practices in the field of justice systems and the reform thereof, in the world. As a matter of fact, when looking at certain aspects of the justice system, the international experts are doing that, based on their experiences in the different developed systems of their countries. Besides, all international experts have been selected because of their international experience in many different countries in the field of legal and judicial reforms. This automatically induces a comparable approach in their work whereby the experts compare the Ethiopian system not only with their national one but also with different systems they have worked on in transition and developing countries. Mobilising international experts from

different countries makes available the expertise and the legal mindset of those different countries i.e. France, the Netherlands and Sweden. When selecting the international experts, we have also taken into consideration the reputation of their countries. For example, Sweden is said to have a very modern education system in Europe. That's why we enrolled education experts from Sweden. The Netherlands are said to have a modern Judiciary and Prosecution Service. We decided to enrol Dutch experts for studying those institutions. We have done this bearing in mind the aspiration of the Ethiopian counterparts to get best practices in the world. There is no doubt whatsoever that the recommendations and advises of the experts are based on the best practices, even though we have taken into consideration the situation of the country.

- The current presentation of the final report is pursuant to a plan that has been suggested to us by the JSRPO.
- The current analysis is a co-production of the international and local experts and though the international experts do carry the final responsibility all reports have been discussed with the local experts and their input has been respected and welcomed.
- Next to the input of the local experts and the advice of the stakeholders that have been gathered during the organised workshops (see above), the current version of the report takes into consideration and accommodates much of the comments of the Ethiopian stakeholders and the JSRPO that have been communicated to CILC after the first drafting of the report. Although many of the comments have been used, not all of them could be accommodated.
- We have chosen to embed the report and findings of the working group on Information Flow in the other parts of the final report dealing with the different institutions. This way the final report is presented according to the various justice institutions studied. Information flow is not an institution but rather an aspect of the functioning of the different institutions. The findings of this working group are faithfully reflected and used in all other parts of the final report.
- The current study covers the period June 2003 to December 2003. Naturally, the Ethiopian authorities have undertaken many efforts reforming the justice system and strengthening it. Though the final version of the

current report was finalised in 2004, it does not mention those reform efforts.

9.1 Law Making and Law Revision

It is necessary to begin with a brief description of the constitutional framework of the country and to present the major provisions of the Constitution, which constitute the overall legal setting for the power to initiate, prepare, present and enact legislation.

Ethiopia is a Federal Republic consisting of nine member States (article 47 of the Constitution). Both on the federal level and the state level there is a division of powers between the legislative, executive and the judicial branches of government (article 50 of the Constitution).

At the federal level there are two federal houses: the House of Peoples' Representatives and the House of Federation (article 53 of the Constitution). The House of Peoples' Representatives is elected by the people and has the power to legislate on all matters assigned by the Constitution to the Federal Government (articles 54-60 of the Constitution). The House of Federation is composed of representatives of the nations, nationalities and peoples of Ethiopia and has, amongst other powers, the power to interpret the Constitution (articles 61-68 of the Constitution). The highest executive powers are vested in the Prime Minister and the Council of Ministers (articles 72-77 of the Constitution). The President of the Federal Republic is the head of state (article 69-71 of the Constitution). He has primarily a symbolic function and appears not to be a part of the Executive. The Supreme Federal Judicial Authority is vested in the Federal Supreme Court. Federal High First Instance Courts may be established by the House of People's Representatives where it is deemed necessary; otherwise the jurisdiction of those courts are delegated to the State Courts (articles 78-81 of the Constitution).

At the state/regional level there is a similar structure. The State Council is the highest organ of state authority and has the legislative power. The State Administration constitutes the highest organ of executive power and judicial power is vested in the State Courts (article 50 of the Constitution).

As regards the division of powers, it should be noted that all powers not expressly given to the Federal Government alone or concurrently to the

Federal Government and the States are reserved to the States (article 52 (1.) of the Constitution). Thus, the States have the residual powers.

9.1.1 The Constitutional framework of the law making process

What follows is a summary of the provisions of the Constitution which establish the overall legal framework for the power to initiate, prepare, and present draft legislation at a federal level.

Article 50 (1): The Federal Democratic Republic of Ethiopia comprises the Federal Government and the State Members.⁴

Article 51 (powers of the Federal Government): This provision does not give general power to the Federal Government but only jurisdiction over specific matters.

Article 52(1): (powers and functions of States): Gives the States residual constitutional powers. It provides that all powers not given expressly to the Federal Government alone or concurrently to the Federal Government and the States are reserved to the States.

Article 55 (1): Provides that the Federal House of Peoples' Representatives (*hereinafter* the House) shall have the power of legislation in all matters assigned to federal jurisdiction.

Article 55 (2): Sets out a number of specific matters whereon the House shall, in any case, enact specific laws.

Article 59 (1): States that unless otherwise provided in the Constitution, all decisions of the House shall be by a majority vote of the members present and voting.

Article 59 (2): Requires the House to adopt rules and procedures regarding the organisation of its work and of its legislative process.

Article 62 (1): Gives the House of Federation the power to interpret the Constitution.

⁴ It is emphasised that, in articles 50, 51 and 52 as well in other articles of the Constitution, the word "Government" is used to indicate the entire activity of the three branches of the state, the legislative, the executive and the judicial branch, and not only to indicate the executive branch, as is more commonly the practice.

Article 62 (8): Provides that the House of Federation shall determine civil matters requiring the enactment of laws by the House.

Article 72 (1): The highest executive powers of the Federal Government are vested in the Prime Minister and the Council of Ministers

Article 77 (1): The Council of Ministers is responsible to ensure the implementation of the laws and decisions adopted by the House.

Article 77 (2): The Council of Ministers shall decide on the organisational structure of ministries and other organs of government responsible to it.

Article 77 (6): The Council of Ministers shall formulate and implement economic, social, and development policies and strategies.

Article 77 (11): The Council of Ministers shall submit draft laws to the House of Peoples' Representatives on any matter falling within its competence.

Article 77 (13): The Council of Ministers shall enact regulations pursuant to powers vested in it by the House of Peoples' Representatives.

Article 89 (6): The Government shall at all times promote the participation of the People on the formulation of national development policies and programs; it shall also have the duty to support the initiatives of the People in their development endeavours.

From the provisions cited above it becomes clear that:

- *On the federal level, the legislative function is assigned to the House.*

However, article 55 sounds far more exclusive than it really is. In a modern state, the laws (the acts of parliament) do not constitute the only normative acts that are applicable and enforceable. This is also the case in Ethiopia, where other institutions have normative or regulatory competencies, for example, the Council of Ministers and its individual members, the Ministers. What article 55 of the Constitution does make clear is that there is only one agent of all this legislative activity. In Ethiopia, the House constitutes that agent on the federal level. No other institution will have an independent or autonomous authority to lay down normative provisions in laws, and no other institution is allowed to create normative rules without their first having a basis in some parliamentary law. This is made quite clear in the

provisions of article 77 (13) that provides that the Council of Ministers can only enact regulations pursuant to powers given to it by the House.

- *Although the legislative function is assigned to the House, the Council of Ministers and the individual Ministers play an important role in the rule making activity in two ways.* First, there is the regulatory power given to the Council of Ministers by article 77(13). Secondly, the Council of Ministers has often played a leading role in initiating draft legislation for consideration by the House. This role has explicitly been laid down in article 77 (11).
- *The House of Federation has a limited, although important role as regards legislation.* According to article 62 (1) of the Constitution, it has the power to interpret the Constitution. It is the only organ that can decide whether a law or regulation is in conflict with the Constitution and put that (part of the) law or regulation aside, forcing the House of Peoples' Representatives or the Government to revise the law or regulation in question. Furthermore, it can determine civil matters that require the enactment of laws by the House of Peoples' Representatives. The House of the Federation has rarely used this power. While it did determine that a federal law was required to regulate public notaries, it did so pursuant to its power under 62(8), when it was asked whether this matter was within federal or state jurisdiction.

9.1.2 Legislative work of the Council of Ministers and Ministries

A number of proclamations are important for understanding the legislative work of the Council of Ministers and the Ministries. What follows is a discussion and summary of the statutory provisions that constitute the legal framework for the preparation and presentation of draft laws. We will also discuss and highlight the most important provisions of the decision of the Council of Ministers, dated October 13, 2003, an unpublished document.

Definition of Powers and Duties of Executive Organs of the Federal Democratic Republic of Ethiopia. Proclamation No. 4/1995 defines the powers and duties of the federal executive organs, but does not give a general description of how the preparation of draft laws should be undertaken. It describes the role and main functions of the Prime Minister, the Deputy Prime Minister, and the Council of Ministers. It also describes the precise field of competence of each of the ministries.

Only the following provisions of this Proclamation directly address the issue of preparing legislation and are therefore of direct interest for our analysis:
Article 10: Provides that each Ministry, in its field of activity, shall:

- (a) Initiate policies and laws and upon approval implement them.
- (b) Ensure the enforcement of laws, regulations and directives of the Federal Government.

Article 11 (1): States that each Minister shall, as regard the execution of his or her responsibilities, be accountable to the Prime Minister and the Council of Ministers.

Article 23: Gives the Ministry of Justice the power to:

- (1) Be chief advisor to the Federal Government on matters of law.
- (11) Assist in the preparation of draft laws when so requested by Federal Government organs and Regional Governments.
- (15) Carry out the codification and consolidation of laws; collect laws of Regional Governments and consolidate same as necessary.

We did not find any provision indicating that draft bills prepared by ministries should go to the Council of Ministers first. Actually, it has happened that draft laws originating from the offices of the Executive were submitted directly to the House without first having passed through the Council of Ministers.

The establishment of the Justice and Legal System Research Institute Proclamation No. 22/1997. The following provisions of this proclamation are of interest:

Article 4: States that the objectives of the Justice and Legal System Research Institute (*hereinafter* the Institute) shall be to undertake studies and research with a view to strengthening and modernising the justice and legal system, with particular emphasis on:

- (1) Revising the laws of the country in order to guarantee the effective implementation of the Constitution; ensure the prevalence of the rule of law; promote economic and social development;
- (2) Building capacity and improving the efficiency of the organs involved in the administration of justice.

Article 5: The Institute shall have the powers and duties to:

- (1) Review the existing laws of the country and design law revision research programs;
- (2) undertake studies and research that would enable the revision of existing laws with a view to consolidating, updating and making them accessible to users;

- (3) undertake studies with a view to initiating the preparation of new laws necessary for the full-fledged development of the country's legal system;
- (4) publish and distribute legal information and research publications.

Proclamation No. 256/2001 on the reorganisation of the executive organs of the Republic of Ethiopia contains some provisions relevant to this discussion:

Article 5 (1) (f): Places the Justice and Legal System Research Institute under the Office for the Co-ordination of Capacity Building.

Article 15: Provides that the Ministry of Justice shall have the powers and duties given to it by Article 23 of *Proclamation 4/1995* and other laws.

The Decision of the Council of Ministers of October 13, 2003 is an extremely important document in this context. This unpublished decision⁵ creates a manual that describes the new working procedures for the Council of Ministers. It contains elements relating to the presentation of draft laws to the Council. It has not received full implementation yet. We believe that this decision represents an important step towards resolving a number of significant issues. The decision relates to the preparation of draft laws and regulation. It creates a new office of Minister of Cabinet Affairs which functions much like the Secretary General of the Government in other countries like France. In creating this new, much needed and useful office, it is clear that the authorities have taken into account the remarks and suggestions addressed to them by the donor community and various experts, and they should all be commended for having done so.

The thirty-six pages of the manual cannot be fully summarised here. It is nevertheless useful to list some of its most important provisions with regard to the preparation of draft laws and regulations.

Article 5 (1): The Council is the highest executive organ of Government and has the duty of issuing policies and following up their implementation.

Article 5 (3): Before tabling a matter for decision, a member of the Council shall consult with all concerned with the matter and hear their opinions and advice.

⁵ We have obtained a non-official translated copy of this document, which is attached to this report as Annex 3.

Article 5 (5): Proposals submitted to the Council shall be based on well-researched facts to enable the Council to take an informed decision.

Article 6 (2): Every member of the Council shall consult the Prime Minister or the Minister of Cabinet Affairs, when he or she is not certain that the recommendations are in line with the views of the Council.

Article 8 (1): The Minister of Cabinet Affairs shall prepare a minute of the contents of the discussion.

Article 9 (2) (e): New draft laws or amendments shall be submitted to the Council.

Article 9 (3): Documents submitted shall be of high standard in analysis, content and language. They shall be concise, precise and clear.

Article 9 (4): Any new proposed law or new policy or amendment that calls for fundamental change shall be discussed with the Prime Minister before the draft is prepared.

Article 9 (8): The Council or the Chairman may direct that an issue shall be studied first by the pertinent Standing Committee of the Council or by an ad hoc committee.

Article 10 (1) (a) Before submitting a matter to the Council of Ministers the Ministry shall first gather opinion from all relevant federal and state government bodies and from civic organisations on the issue.

Article 10 (4): The Council or the Prime Minister shall be informed and decide on how a green or white paper is going to be discussed with the public and the method of consultation to be conducted.

Article 13 (1): Special committees may be established by the Council to discuss and deliberate upon complex and technical issues.

Article 13 (3): The committees will be ad-hoc or permanent.

Article 13 (4): The committee may deliberate on matters referred to them by the Council through the Minister of Cabinet Affairs. They shall report to the Minister of Cabinet Affairs.

Article 14: The Minister of Cabinet Affairs shall be in charge of procedural, logistic and operational matters of the Council and is accountable to the Prime Minister.

Articles 36-46 deal with the initiation of laws by the Council.

Article 36 (1): Says that the Federal Government shall submit its plans on new policies and laws to the President of the State at the annual joint meeting of the Houses so that its plans will be announced in the schedule of legal matters.

Article 37 (1): Matters that need new legislation, in prioritised order, the drafting stage of the laws and the procedure of follow up shall be mentioned in the schedule of legal matters.

Article 38 (1): Every Minister shall submit matters that need legislation at the beginning of the year to the Minister of Cabinet Affairs.

Article 38 (2): The Minister of Cabinet Affairs shall prepare the schedule of legal matters.

Article 38 (6): Proposals for new legislation or proposals for change shall be studied, in order of priority by the Council's legal affairs consultative team.

Article 38 (8): The schedule of legal affairs shall be approved by the Council.

Article 40: The process of drafting shall follow the following procedure:

- Decide upon a policy issue that needs legislation.
- Design the policy.
- Conduct consultations.
- Prioritise the seriousness of the draft bill.
- Submit the proposed policy for approval to the Council.
- Draft additional directives for the draft, conduct additional consultations.
- Prepare the draft bill.
- Ensure that the draft is prepared in a manner that could be submitted to the Council.
- Submit the draft bill to the Council, the Council may discuss the bill article by article or may refer it to a pertinent committee on first reading.
- The committee shall study the draft and report to the Council.

- The Council shall discuss the draft and the report of the committee and may approve the bill.

Article 42 (3): Where a draft bill, that is prepared by a Ministry, affects matters that are within the competence of another Ministry there shall be joint consultations between these ministries.

Article 42 (5) (b): Where a draft bill contains provisions that entail punishments, or criminalists certain acts, or amends existing laws, consultation shall be conducted with the Ministry of Justice in order to ensure the compatibility of the provisions in question with the Penal Code.

Article 42 (6): Where a draft law is a public law, it shall be sent to the Legal Affairs Committee for its opinion before it is submitted to the Council.

Article 42 (8): The initiating Minister may conduct public debate and discussion on the draft with stakeholders or with the public at large before the draft is submitted to the Council.

Article 43 (1): Draft legislation is prepared by the experts in the initiating departments.

Article 43 (2): The main function of the drafters is to prepare drafts that reflect Government policy in clear and precise language.

Article 43 (3): The legal affairs consultative team shall ensure that the draft bill fulfils the requirements set under 43 (2).

Article 45 (1): Before a draft bill is submitted to the Council:

- the relevant committee shall approve the correctness of the policy content of the draft, and
- the legal affairs consultative team shall investigate the fulfilment of the required standard under article 9 (4).

Article 45 (2): The consultative team shall ensure that the draft is in conformity with the principle of legality.

Article 45 (3): After complying with (1) and (2), the consultative team shall submit the draft to the Council for its decision.

Article 46 (2): The Minister of Justice shall communicate with the Council where s/he finds that a draft possibly contradicts the Constitution.

9.1.3 The initiation of legislation

An important aspect of the legislative procedure is naturally the issue of which organs are entitled to initiate draft laws. As we have seen, article 77 (11) of the Constitution states that the Council of Ministers shall submit draft laws to the House. Apart from this article, the Constitution itself remains silent on the matter of the initiation of draft laws. Other proclamations provide that organs other than the Council of Ministers can initiate draft laws. In Article 4(2) of *Proclamation No. 271/2002* it states that the following may initiate and submit draft laws to the House:

- a) The Speaker and the Deputy Speaker of the House;
- b) Members of the House;
- c) Committees of the House;
- d) Executive bodies;
- e) The Judiciary, and
- f) Other governmental institutions accountable to the House.

According to paragraph (3) of that same article, the executive bodies, the Judiciary and the other governmental institutions may only initiate draft laws within the jurisdiction given to them by law. A legislative initiative of a member of the House needs the support of at least twenty members of the House (article 4 (4)).

9.2 The Judiciary

Article 50 (2) of the Constitution stipulates that “the Federal Government and the State members shall have legislative, executive and judicial powers”.

9.2.1 The Federal and State Courts’ Systems

Chapter nine of the Constitution (Articles 78 to 84) deals with the “structure and powers of the courts” on federal and state levels. It describes a “regular” (*our qualification*) three-tier Federal and State Court system. On the Federal level, the court system is comprised of Federal First Instance Courts, Federal High Courts and the Federal Supreme Court. On a state level, the system consists of State First Instance Courts (Woreda Courts), State High Courts (Zonal Courts) and the State Supreme Court.

The Constitution also allows for Religious and Customary Courts. In addition, courts known as Social Courts have been set up in a number of States. Some of those courts have a historic origin. Others have been legislated for by the States' Governments. Chapter nine of the Constitution, however, does not mention the Social Courts. This has led to a debate, in some quarters about whether such courts are constitutionally permissible.

a. Judicial Independence

Judicial independence is proclaimed in the Constitution of Ethiopia. Article 78 (1) stipulates that the "Judiciary is independent". The Constitution also explicitly provides for the principle of separation of powers on federal and state levels. Article 79 (2) provides that "courts of any level shall be free from any interference of influence of any governmental body, governmental official or from any other source". Paragraph 3 of that same article reads as follows "judges shall exercise their functions in full independence and shall be directed solely by the law".

b. Federal and State "Regular" Courts' System

Article 78 (2) vests the supreme federal judicial authority in the Federal Supreme Court. It also stipulates that the "House of Peoples' Representatives may establish nation-wide, or in some parts of the country only, the Federal High Court and First-Instance Courts it deems necessary. Unless decided in this manner, the jurisdiction of the Federal High Court and of the Federal First-Instance Courts is delegated to the State Courts".

As is evident in the *Federal Courts Proclamation No. 25/1996*, the Federal Supreme Court sits in Addis Ababa. The Federal High Courts and the Federal First Instance Courts sit in Addis Ababa, Dire Dawa and in such other places as may be determined in accordance with Article 78 (2) of the Constitution. Pursuant to the *Federal High Court Establishment Proclamation No. 322/2003*, Federal High Courts were established in the States of Afar, Benshangul, Gambella, Somali and Southern Nations Nationalities and Peoples.

Article 78 (3) of the Constitution stipulates that the "States shall establish State Supreme, High and First Instance Courts, and that particulars shall be determined by law".

The jurisdiction of the Federal Courts, as based on the Constitution, is provided for in the *Federal Courts Proclamation No. 25/1996*, as amended by

the *Federal Courts (Amendment) Proclamation No. 138/1998* and the *Federal Courts (Amendment) Proclamation No. 321/2003*.

The principle is that Federal Courts have jurisdiction over:

- Cases arising under the Constitution, federal laws and international treaties.
- Parties specified in federal laws.
- Places specified in the Constitution or in federal laws.

The Federal Courts have criminal jurisdiction over offences against the national state, offences against foreign states, offences against the fiscal and economic interests of the Federal Government, offences regarding counterfeit currency, offences against the safety of aviation, offences regarding illicit trafficking of dangerous drugs, offences falling under the jurisdiction of courts of different regions or under the jurisdiction of both the Federal and Regional Courts as well as concurrent offences.

In civil cases, the Federal Courts have jurisdiction over cases to which a Federal Government organ is party, suits between persons permanently residing in different Regional States, cases to which a foreign national is a party, suits relating to patent, literary and artistic ownership rights, suits regarding insurance and applications for *habeas corpus*.

Article 80 of the Constitution deals with the concurrent jurisdiction of Federal and State Courts:

- The Federal Supreme Court has the highest and final judicial power over federal matters.
- State Supreme Courts have the highest and final judicial power over state matters. They also exercise the jurisdiction of the Federal High Court.
- Notwithstanding these provisions the Federal Supreme Court has a power of cassation over any final court decision containing a basic error of law and the State Supreme Court has power of cassation over any final court decision on state matters which contains a basic error of law.
- State High Courts exercise, in addition to state jurisdiction, the jurisdiction of the Federal First-Instance Court.
- Decisions rendered by a State High Court, exercising the jurisdiction of a Federal First-Instance Court, are appealable to the State Supreme Court.
- Decisions rendered by a State Supreme Court on federal matters are appealable to the Federal Supreme Court.

c. Religious Courts

The “regular” court system does not encompass the whole judicial structure within Ethiopia. In fact, Religious (*Sharia*) Courts play a considerable role in the administration of justice. It is assumed that among the Muslim population (approximately 40% of the total population), a large number of cases end up before Religious Courts. The basis for those Religious Courts is not only cultural or historic. The Constitution allows for these courts to exist and to provide traditional justice. Article 34 (5) of the Constitution stipulates that the “Constitution shall not preclude the adjudication of disputes relating to *personal and family laws* in accordance with religious or customary laws, *with the consent of the parties* to the dispute. Particulars shall be determined by law”. Pursuant to this article and to article 78 (5) of the Constitution, the House of Peoples’ Representatives and State Councils can establish or give official recognition to Religious and Customary Courts. Religious and Customary Courts that had state recognition and functioned prior to the adoption of the Constitution shall be organised on the basis of recognition accorded to them by the Constitution. In accordance with those provisions, the *Federal Courts of Sharia Consolidation Proclamation No. 188/1999*, established the Federal First Instance Court of *Sharia*, the Federal High Court of *Sharia* and the Federal Supreme Court of *Sharia*. These courts are accountable to the Federal Judicial Administration Commission.

The Federal Courts of *Sharia* have common jurisdiction over the following matters:

- Any question regarding marriage, divorce, maintenance, guardianship of minors and family relationships, provided that the marriage to which the question relates was concluded in accordance with Islamic law, or the parties have consented to have the matter adjudicated in accordance with Islamic law.
- Any question regarding (succession or wills), *Wakf (gift)* or *Hiba* provided that the endowed or donor is a Muslim or the deceased was a Muslim at the time of his death.
- Any question regarding payment of costs incurred in any suit relating to the aforementioned matters.

The courts have jurisdiction over the aforementioned matters only where the parties thereof have expressly consented to be adjudicated under Islamic law.

The Federal Supreme Court of *Sharia* sits in Addis Ababa; the Federal High Court and the Federal First Instance Court of *Sharia* sit in Addis Ababa,

Dire Dawa and in such other places as may be determined under Article 78 (2) of the Constitution.

Except Addis Ababa City and Gambela, all other regions have Courts of *Sharia*. An example of the consolidation of *Sharia* Courts at the state level can be found in the *Oromia Regional State Courts of Sharia Consolidation Proclamation No. 53/94*.

On the level of first instance courts the State Religious Courts are called *Naiba*. The State Religious High Courts are called *Kadi*, and the State Religious Supreme Court is called the *Sharia* Court. The Islamic Council of the region recruits the judges of these religious courts and their names are transmitted to the Judicial Administrative Commission. The Commission accepts them on the basis of their qualifications. They are mostly involved in marital disputes.

d. Customary Courts

In accordance with Article 78 (5) of the Constitution, Customary Courts have been allowed to exist and to perform traditional tribal administration of justice. This is mainly the case in countryside areas as for example in the State of Somalia.

e. Social and Municipal Courts

Courts known as Social Courts also exist. They have been established in five States: Tigray, Amhara, Oromia, Southern Nations, Nationalities and Peoples and Harar. These courts are established at the *Kebele* (community) level in rural and urban areas. The number of Social Courts has not been determined but it is believed that they number thousands. In any case, their number is much higher than the Woreda Courts.

In 2003, Oromia adopted the *Municipal Administration Proclamation*. Pursuant to this Proclamation any city with a population of more than 10,000 citizens may establish a Municipal Administration, a Municipal First Instance Court and a Municipal Appellate Court.

The jurisdiction of the Municipal Courts includes:

- Issues relating to the plan of the city.
- Issues relating to tax, leases and fee of the city.
- Issues relating to usufruct of houses and municipal land.
- Issues relating to municipal services.
- Issues relating to city administration.

The decisions of the First Instance Municipal Court are open to appeal to the Appellate Municipal Court. If a decision of the First Instance Court is reversed on appeal, further appeal may be taken to the State High Court. If an error of law is committed, the case may be taken in cassation to the State Supreme Court.

In Addis Ababa City, *Kebele* Social Courts were established by the *Addis Ababa City Government Revised Charter Proclamation No. 311/2003*. According to Article 50 of this Proclamation, Addis Ababa City Courts have jurisdiction over cases regarding property and monetary claims where the amount involved does not exceed Birr 5,000. The jurisdiction of *Kebele* Social Courts over city hygiene and public health contraventions and other similar petty offences are to be determined by the law issued by the City Council. A party dissatisfied with a decision of a *Kebele* Social Court may appeal to the First Instance Court of the City. The decision rendered by the latter shall be final. Where a matter decided by a First Instance Court of the City on appeal contains a fundamental error of law, this may form the basis of an appeal in cassation before the Appellate Court of the City.

Articles 61 and 62 of the Tigray State Constitution provide in addition to the State Supreme Court, a High Court and Woreda Courts, that Social Courts are to be established by law. Article 62 (2) reads as follows: “There shall be Social Courts under the Woreda Courts in each *Tabia* and *Kebele*. Details shall be provided by law”. Article 89 (1) stipulates that “*Tabia* or *Kebele* Social Courts are part of the Judiciary”. The jurisdiction of Social Courts in Tigray includes both civil and criminal matters and they are thus empowered to deliver enforceable judgements in both cases. In civil matters, the jurisdiction of the Social Courts is confined to matters in which the amount in controversy does not exceed Birr 1,500. The case can be any civil matter related to contract, damage and compensation, property, lease agreement, and the like. The Social Courts have the jurisdiction to try the case, pass judgement and ensure its execution. In criminal matters, Social Courts are authorised to determine the guilt or innocence of a defendant charged with a petty offence that is determined by law to be within the jurisdiction of Social Courts. Either party to a dispute has the right to have the decree or judgement delivered by a Social Court reviewed by the Woreda Court. If the case appealed is fully confirmed by the Woreda Court, it becomes final. However, if the case is completely reversed or partially amended either party has the right to appeal to the High Court. The judgement rendered at this stage will be final.

f. Constitutional Review

Article 62 of the Constitution stipulates that the “House of the Federation has the power to interpret the Constitution”. Articles 82 and 84 of the Constitution provide for the establishment and composition of and the powers for the Council of Constitutional Inquiry. The latter has solely the powers in Ethiopia to investigate constitutional disputes and it submits its recommendations to the House of the Federation, which then decides on the matter within thirty days of receipt.

9.2.2 Organisation of the Judiciary

There are two proclamations that are highly important for the court structure and the administration of justice on the one hand, and the constitutionally guaranteed independence of the Judiciary on the other: The *Federal Courts Proclamation No. 25/1996*, as amended by the *Federal Courts (Amendment) Proclamation No. 138/1998* and the *Federal Courts (Amendment) Proclamation No. 254/2001*, as well as the *Federal Judicial Administration Commission Establishment Proclamation No. 24/1996*.

a. Federal Courts

The *Federal Courts Proclamation No. 25/1996*, as amended by the *Federal Courts (Amendment) Proclamation No. 138/1998* and the *Federal Courts (Amendment) Proclamation No. 254/2001* (*hereinafter* the Federal Courts Proclamation) contains in Part Six (Articles 19 – 30) provisions in respect of the Federal Court structure and the administration of justice. They provide for:

- Judges and other personnel of the Federal Supreme Court (The Federal Supreme Court shall have a President, a Vice-President, the necessary judges and the personnel necessary for its function).
- Divisions of the Federal Supreme Court (a Civil, a Criminal and a Labour Division).
- Division with not less than five judges (for example, cases falling under the first instance jurisdiction of the Federal Supreme Court; cases relating to a provision of law having caused a fundamental difference in interpretation amongst divisions of the Federal Supreme Court; and cassation of final decisions of the Federal High Court rendered in its appellate jurisdiction, of final decisions of the regular division of the Federal Supreme Court and of final decisions of the Regional Supreme Court rendered as a regular division or in its appellate jurisdiction).
- The application procedure for cassation.
- Divisions of the Federal High Court and First Instance Court.
- Place of sittings.

- Working Language of Federal Courts (Amharic).
- Open hearings.
- Withdrawal of judges.
- Application for removal of a judge.

a.1 Powers and Duties of the President of the Federal Supreme Court

Part Five (Articles 16 – 18) of the Federal Courts Proclamation deals with the Presidents of Federal Courts and contains provisions with regard to their powers and duties.

The President of the Federal Supreme Court is in general responsible for the administration of Federal Courts. He may, where it is deemed necessary, delegate part of his powers and duties to the President of the Federal High Court or of the Federal First Instance Court. The Vice-President of the Federal Supreme Court discharges duties assigned to him by the President and serves in the President's stead while he is absent. Without prejudice to the power and duty entrusted to the Federal Judicial Administration Commission, the President of the Federal Supreme Court places, as well as assigns and administers judges of Federal Courts. He employs personnel necessary for the operation of the Federal Courts. In exercising this power, he solicits and obtains the separate or joint views of the Presidents of the Federal High Court and the Federal First Instance Court, as concerns their respective court.

He prepares and submits to the House of Peoples' Representatives the work plan and budget of Federal Courts and implements the same upon approval. On request he forwards his opinion on requests for budgetary subsidy for Regional Courts exercising federal jurisdiction by delegation. He causes the publication of the law journal of the Federal Supreme Court, the preparation of statements regarding the activities of Federal Courts and the submission of reports on the activities of Regional Courts concerning federal cases supported by statistical data. He facilitates conditions for the education and training of judges and other personnel. In consultation with Regional Courts, he works out ways for improving the records' management and general practices of Regional Courts as relating to federal cases heard in Regional Courts. He submits researched reports on the judicial activities of Federal Courts to the House of Peoples' Representatives. He causes the selection and publication of instructive judgements and decisions of the year. He organises the public defence office and he performs such other duties as may be entrusted to him by law.

a.2 Powers and Duties of the Presidents and Vice-Presidents of the Federal High Court and First Instance Court

The President of each court represents the court. Without prejudice to the powers and duties entrusted to the Judicial Administration Commission, the President places as well as assigns and administers judges of the court pursuant to the delegation and in accordance with directives given by the President of the Federal Supreme Court. The President administers the personnel of the court, causes the preparation of statements, supported by statistical data, regarding activities of the court, prepares and submits to the president of the Supreme Court the work plan and budget of the court and implements the same upon approval. He causes the selection of instructive judgements and decisions of the year, and submission of the same, to the President of the Federal Supreme Court. He submits to the President of the Federal Supreme Court periodical reports on the activities of the court and performs such other duties as may be entrusted to him by law.

The Vice-President of each court serves in the President's stead in the absence of the President, and discharges other duties as may be assigned to him by the President.

The court structure and the administration of justice of the State Courts are more or less the same as at Federal level.

b. Federal Judicial Administration Commission

Article 81 of the Constitution deals with the appointment of judges. Paragraph (1) of this article stipulates that the House of Peoples' Representatives upon recommendation by the Prime Minister appoints the President and Vice President of the Federal Supreme Court. Paragraph (2) of this Article reads as follows "Regarding other Federal Judges, the Prime Minister submits to the House of Peoples' Representatives for appointment candidates selected by the Federal Judicial Administration Council".

The State Council appoints the President and Vice-President of the State Supreme Court upon recommendation by the Chief Executive of the State. The State Council upon recommendation by the State Judicial Administration Council appoints state Supreme and High Court judges. The State Judicial Administration Council, before submitting nominations to the State Council, has the responsibility to solicit and obtain the views of the Federal Judicial Administration Council on the nominees and to forward those views along with its recommendations. If the Federal Judicial Administration Council does not submit its views within three months, the

State Council may grant the appointments. Judges of State First-Instance Courts are, upon recommendation of the State Judicial Administration Council, appointed by the State Council. The concerned Judicial Administration Council shall determine matters of code of professional conduct and discipline as well as transfer of judges of any court.

The Federal Judicial Administration Commission (*hereinafter* the Commission) was established under *Proclamation No. 24/1996*, which came into force as of 15 February 1996. Article 4 of this proclamation describes the members of the Commission. They are:

- the President of the Federal Supreme Court, Chairman;
- the Vice-President of the Federal Supreme Court;
- three members of the House of Peoples' Representatives;
- the most senior judge of the Federal Supreme Court;
- the President of the Federal High Court;
- the most senior judge of the Federal High Court; and
- the President of the Federal First Instance Court.

Pursuant to Article 5, the Commission has the following powers and duties:

- To select those who qualify for judgeship in accordance from among candidates nominated by members of the Commission.
- To forward its opinion on the list of Regional Supreme and High Court candidate-judges, submitted to it by a Regional Judicial Administration Commission.
- To issue the Disciplinary and Code of Conduct Rules for federal judges.
- To decide on the transfer, salary, allowance, promotion, medical benefits and placement of federal judges.
- To examine and decide matters of discipline. (It may suspend a judge until the decision is approved by the House of Peoples' Representatives, subject to details to be determined in the Disciplinary and Code of Conduct Rules).

c. Criteria for judgeship

Article 8 of *Proclamation No. 24/1996* enumerates the criteria of selection for judgeship. Any Ethiopian who is loyal to the Constitution, has legal training or acquired adequate legal skill through experience, has a good reputation for his diligence, sense of justice and good conduct, consents to assuming judgeship, and is not under 25 years of age, may be appointed as a federal judge. No person may simultaneously assume judgeship while serving in the legislative or executive branches of government or while being a member of any political organisation.

d. Education and Training

Judges in Ethiopia are not required to take and/or pass a professional examination prior to assuming office. There is no vocational (initial) training for judges. Judges are trained on the spot in courts and they learn to apprehend the profession while working. There is no official judicial apprenticeship. Once they have assumed their judicial duties, Ethiopian judges are not offered continuous training or refreshment courses. There is no national strategy for training or re-training judges that is structured and streamlined and that falls within the scope of responsibilities of a national organ that is entrusted with training judges both initially and continuously.

However, there have been initiatives taken in this field in the last two years. Such is the training between September 2000 – December 2003 of all federal judges and Woreda Court judges. The judges in the Woreda Courts were trained using a train the trainers' approach. The trainers prepared the training papers. A Steering Committee consisting of the Vice-President of the Federal Supreme Court and the Presidents of the State Courts selected the training topics. USAID financed the training.

One of the most important recent initiatives in the field of training of judges is the establishment of a National Judicial Training Centre (*hereinafter* the NJTC or the JTC) on 15 November 2003. The JTC is not yet operational but it is planned to give initial and continuous training for judges and prosecutors.

e. Tenure

Article 79 (4) of the Constitution stipulates that “no judge shall be removed from his duties before he reaches the retirement age determined by law except under the following conditions:

- When the Judicial Administration Commission decides to remove him for violation of disciplinary rules or on grounds of gross incompetence or inefficiency; or
- When the Judicial Commission decides that a judge can no longer carry out his responsibilities on account of illness; and
- When the House of Peoples' Representatives of the concerned State Council approves by a majority vote the decisions of the Judicial Administration Commission.

Moreover, Article 79 (5) of the Constitution provides that “the retirement of judges may not be extended beyond the retirement age determined by law”.

Article 9 of *Proclamation No. 24/1996* deals with the termination of judicial tenure. It provides that the tenure of any federal judge may be terminated only on the following grounds:

- upon resignation;
- upon attaining the age of 60;
- incapacity due to illness;
- breach of discipline;
- manifest incompetence and inefficiency;
- breach of the Disciplinary and Code of Conduct Rules for judges.

f. The role of Precedent

Ethiopia has, on paper, a civil law tradition whereby the common law doctrine of *stare decisis* does not formally apply. During the last several years however, Federal Supreme Court decisions have been printed and published on an irregular basis. Only few copies of the published decisions were sent to each Justice Bureau in the regions. The selection and publication of decisions of other courts did not take place. Decisions of lower Federal Courts and those of Regional Supreme Courts in the regions have never been published.

9.2.3 Representation of the Judiciary/Association of Judges

There is no self-governing representation body of judges in Ethiopia.

9.2.4 Alternative Dispute Resolution (ADR)

The Ethiopian law on civil procedure provides for both conciliation⁶ and arbitration. In practice however, the use of conciliation/mediation in civil cases does not seem to be frequent. In family matters it seems that in certain States conciliation/mediation prior to filing a law suite is more or less compulsory. As a matter of fact, this category of disputes often falls within the jurisdiction of Religious Courts or of “family arbitrators”. Furthermore, many conflicts of a rural nature are solved by traditional, informal systems (compensation to victims, disputes regarding property of cattle, etc). In criminal cases, forms of restorative justice including things like victim offender mediation have not yet been discussed.

Arbitration indeed exists and is used for the settlement of commercial disputes. It has been organised by the Ethiopian Chamber of Commerce and/or by international lawyers. The main obstacle for a generalisation of arbitration is obviously the cost factor: only large companies can afford it.

⁶ Across the world the words conciliation and mediation mean the same thing. The words are used interchangeably in this report.

Mediation has often been mentioned by our interlocutors as one of the possible solutions for the backlog in civil law suits. The main obstacles to it are the lack of trained mediators (lawyers, judges or others) and the problem of costs (the existing system is not incentive at all). From the perspective of the debtor, mediation is too speedy and is more expensive than having the case brought to court. It is worth mentioning that “Social Courts”, operating at the level of *Kebele* actually play, to a certain extent, the role of a mediation system. No similar disposal exists at the federal level.

9.2.5 Relations with other Justice Institutions

This part of our discussion is limited to the relationships with the Bar and the Prosecution Service.

a. Relations with the Bar

The Constitution introduced the concept of legal aid, which made it possible for criminal suspects to have the assistance of counsel if they are unable to obtain one by their own efforts. So far, the government provides a defence counsel in criminal cases if the accused cannot afford to obtain one by his own effort. But there are a huge number of indigent litigants who will not be in a position to pay court fees in civil cases.

There are two legal aid clinics just taking root in Addis Ababa. The Ethiopian Bar Association runs one of the centres, the Alumni Association of the Faculty of Law of the Addis Ababa University runs the other. Both legal aid centres are funded by an NGO known as Action Professionals’ Association for the People (APAP). The Alumni Association’s legal aid centre focuses on educating people about their respective rights and duties (legal awareness) and on extending legal aid to poor litigants. Over a period of three years, the Bar’s legal aid centre entertained 867 cases, out of which only 138 were criminal cases. Unfortunately the activities of the Bar and the Alumni are limited to Addis Ababa City, although there is a plan to branch out to Regional States in the future.

The Bar Association exists only in Addis Ababa. It is very weak and has no real position in relation to the state. In the regions there are hardly any lawyers and they are not organised. The Bar is currently no real partner of the Judiciary and the Prosecution.

b. Relations with the Prosecution Service

For a detailed description of the relation between the Judiciary and the Prosecution Service, please refer to the section on law enforcement in this

report (particularly the sub-section on Public Prosecution Service). However, the following can be said at this level. On a policy level, the Judiciary and the Prosecution Service are said to have more or less regular contact with each other. It is not clear what they discuss when they meet or what is the follow-up on the outcomes of the joint meetings. Despite these high level meetings, at a working level there is a big distance between the Prosecution and the Judiciary. This may be due to their different roles and positions in the criminal justice system. While in principle, there is nothing against maintaining such a distance between both parties, it has had a negative impact on the efficient operation of the criminal justice system. It has contributed to the many shortcomings and problems that characterise daily practice and effect *inter alia* the planning of court sessions, the delivering of files, the summons of suspects, witnesses, and other practical matters. The Judiciary and the Prosecution blame each other for those shortcomings in the criminal procedures and for the huge backlogs these shortcomings contribute to.

9.3 Law Enforcement Institutions

9.3.1 The Public Prosecution Service

9.3.1.1 Status and structure of the Public Prosecution Service

In Ethiopia, the Public Prosecution Service (*hereinafter* PPS) is formally part of the executive branch of the government. This status is not mentioned as such in the Constitution. However, *Proclamation 4/1995* known as the *Proclamation on Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia* makes this clear.

The Ethiopian Public Prosecution Service has a federal and a regional or state structure.

a. Federal Structure

After the establishment of the People's Democratic Republic of Ethiopia the name of the former Ministry of Law and Justice was changed into the Ministry of Justice. The new structure gave autonomy to the Supreme Court and Procurator General Office, while High and First Instance Courts remained under the control of the Ministry. Immediately after the EPRDF came to power the Transitional Government (TG) found it appropriate to integrate the Office of the Procurator General with the Ministry of Justice. This was done to facilitate the formation of a powerful structure.

Accordingly, the Office of the Procurator General was made subordinate to the Ministry of Justice by *Proclamations 73/93 and 74/93*.

The Authority of Federal Prosecution is primarily vested in the Ministry of Justice. However, various other governmental offices do have prosecutorial authority i.e. the Customs Authority, the Inland Revenue Authority, the Special Prosecutors Office and the Federal Ethics and Anti-Corruption Commission.

a.1 Ministry of Justice

According to Article 23 of *Proclamation 4/1995*, the Minister of Justice is the Head of the Public Prosecution Service. Article 3 of *Proclamation 74/1993* provides for the same, that is, “the Minister shall be the head of Attorneys”. In article 2 “attorney” is defined to mean a prosecutor and includes a litigant in civil cases under the administration of the Ministry. The PPS is the primary representative of the Federal Government in criminal cases falling under the jurisdiction of the Federal Courts. Article 23 of *Proclamation 4/1995* further enumerates the powers and duties of the Ministry of Justice. The Federal Ministry of Justice:

- is chief advisor to the Federal Government on matters of law.
- represents the Federal Government in criminal cases falling under the jurisdiction of the Federal Courts.
- directs and supervises the Federal Police Force and prison administration.
- instructs investigation where it believes that a crime, falling under the jurisdiction of the Federal Courts, has been committed; orders the discontinuance of an investigation or instructs further investigation on good cause.
- studies the causes of and the methods of crime prevention.
- sees to it that witnesses to a criminal case are accorded protection, as necessary.
- assists victims in civil proceedings with the recovery of damages.
- institutes, intervenes in or causes proceedings to be instituted before the Federal and Regional Courts, any judicial body or arbitration tribunal when the rights and interests of the public and of the Federal Government so require.
- registers, in co-operation with other concerned organs, non profit making foreign organisations and trans-regional associations.
- follows up, as necessary, the handling of civil suits and claims to which the Federal Government or its organs are a party; causes reports to be submitted to it on same, where it finds it necessary, and ensures that competent manpower is assigned for the purpose.

- assists in the preparation of drafts laws when so requested by Federal Government organs and Regional Governments.
- issues, supervises and revokes licenses to advocates/lawyers for practice before Federal Courts.
- provides public legal education with a view to raising public legal consciousness.
- submits to the Head of State, together with an opinion, the record of any case involving death sentence with respect to which petition for pardon has been lodged.
- carries out the codification and consolidation of laws, collects regional laws and consolidates them as necessary.

In addition, Article 8 (2) of the *Criminal Procedure Code (hereinafter CPC)* provides that “the public prosecutor may in the discharge of duties give the necessary orders and instructions to the police and ensure that the police carry out their duties in accordance with the law”. However, in 2001, Article 6 of *Proclamation 256/2001* revoked *Proclamation 39/93* and made the Federal Police Commission and the Federal prison administration accountable to the Ministry of Federal Affairs instead of the Ministry of Justice.

The Federal Public Prosecutors are active in all three levels of court that is, the Federal First Instance Court, Federal High Court and the Federal Supreme Court. At present 44 (out of 144) Federal Prosecutors are working in the Ministry of Justice. Those prosecutors can be ordered by the Minister to handle criminal cases in any of the PPS offices falling under the responsibility of the Minister of Justice. Article 5 of *Proclamation 74/1993* and Article 10 of the *Council of Ministers Regulation 44/1998* deal with the accountability of Federal Prosecutors and stipulate that prosecutors shall be accountable to the Minister of Justice and also to their immediate or any superior. As the ultimate superior of all prosecutors, the Minister may thus initiate a specific criminal investigation or stop another. He also has the authority to reverse a decision of a prosecutor (being hierarchically subordinate to the Minister) or to dismiss a pending case.

Article 8 of *Proclamation 74/1993* provides for the Powers of Attorneys. It provides that without prejudice to the provisions of other laws, Attorneys have the power to represent the Federal Government in:

- criminal cases falling under the jurisdiction of the Federal Courts; and
- any civil and criminal cases concerning the Federal Government.

The Criminal Procedure Code as amended by *Legal Notice 17/1975* enumerates in its first schedule the crimes that fall within the jurisdiction of the First Instance or High Court. The appellate court for First Instance Court is the High Court and for the High Court it is the Supreme Court. Generally speaking, crimes which carry a maximum penalty of 5 years imprisonment fall under the jurisdiction of the First Instance Court, but there are exceptions like robbery (15 years) and rape (10 years) which are also tried by that same court.

Pursuant to Articles 44 and 45 of the CPC, a complainant is entitled to apply to the court for an order that the public prosecutor shall institute proceedings. This has however been changed by *Proclamation 11/87* that gives the complainant the right to lodge applications with the highest authority of the PPS, but not directly to the court. Article 9 of *Proclamation 74/93* provides for the right of petition and reads as follows “any person, who is not satisfied with the decision of a subordinate Attorney, shall have the right to submit petition to his superior Attorney”.

a.2 Customs Authority

Pursuant to articles 6 to 8 of *Proclamation 60/1997*, the Customs Authority investigates custom offences, institutes criminal proceedings, and pursues the case in Court under the supervision of the Ministry of Justice. The Ministry of Justice has delegated prosecution authority in these cases to the Customs Authority.

a.3 Federal Inland and Revenue Authority

According to articles 6 and 7 of *Proclamation 61/1997*, the Federal Inland and Revenue Authority is vested with the power to cause the investigation by police of crimes committed in contravention of tax laws and can appoint prosecutors to initiate and pursue the prosecution of those cases.

a.4 Special Prosecution Office

In conformity with article 6 of *Proclamation 22/1992*, the Special Prosecution Office (*hereinafter* SPO) has been given the power to conduct investigations and institute proceedings in respect of any person having committed, or responsible for the commission of, an offence by abusing his position in the party, the government or mass organisation under the Derg regime.

a.5 The Federal Ethics and Anti-corruption Commission

Proclamation 235/2001 established the Federal Ethics and Anti-corruption Commission. Article 6 of this Proclamation stipulates that one of the objectives of the Commission is to strive for, to create and promote integrity in public service by detecting, investigating and prosecuting alleged cases of corruption and other improprieties.

b. State Structure

On state level, the Head of the Justice Bureau has authority analogous to that of the Federal Minister of Justice. He is the Head of the Public Prosecution Service and at the same time the State Minister of Justice and member of the State Government.

The State Prosecution Office assigns prosecutors and deputy prosecutors to every court, including the State Supreme Court. The State General Prosecutor has authority with respect to police and prison administration. Unlike on the federal level, prison administration is still one of the responsibilities of the Head of Justice Bureau.

State Public Prosecutors are active in all three levels of State Courts, that is, State Supreme Court, State High Courts and State First Instance Courts.

Additionally, each of the nine States has its own regional zones. Examples from States that we visited include:

- Oromia is divided into 14 sub-regions. There are 224 Public Prosecution Offices, which are active at the Woreda (First Instance) level, and employing about 500 prosecutors. There are 14 High Courts and one Supreme Court.
- Bahir Dar, which has a population of about 17 million, has 142 First Instance Courts 10 High Courts a total of 542 prosecutors working out of 71 Public Prosecution Offices.

Addis Ababa and Dire Dawa have a different organisation. Those cities fall directly under the authority of the Federal Government and the Federal PPS, and thus under the authority of the Federal Minister of Justice. All cases in these two cities are first brought before the Federal First Instance Court or the Federal High Court. Addis Ababa is divided into 8 sub-regions. Each region has a First Instance Court. There is only one High Court. In total 77 prosecutors are serving at the PPS in Addis Ababa that is, 50 at the First Instance Courts, 26 at the Federal High Court and one at the Supreme Court.

In the field of justice, States are independent of the Federal Government. However, *Proclamation 25/1996 on Federal Courts* provides that the prosecution of specific crimes, *inter alia* treason and corruption in state companies, is a matter for the Federal Ministry of Justice.

9.3.1.2 Administration of Federal Prosecutors

The administration of Federal Prosecutors has been provided for in *Proclamation 74/1993* known as “*The Attorneys Proclamation*” and in the *Council of Ministers Regulation 44/1998* called “*Federal Prosecutor Administration Council of Minister Regulations 44/1998*”.

a. Selection and appointment of the prosecutors

According to Article 9 of the *Council of Ministers Regulation 44/1998*, the Minister of Justice has the competency to appoint Federal Prosecutors. The Minister, upon recommendation of the Vice-Minister, appoints high-ranking prosecutors. The Prosecutors’ Administration Higher and Lower Commissions (Articles 88 to 93 of this same Regulation) recommend to the Minister, directly or in the case of the Lower Commission through the Higher Commission, the employment, transfer or appointment of prosecutors. The Minister appoints members of the Higher Commission. Article 4 of the regulation requires candidates to:

- be an Ethiopian citizen.
- be loyal to the Constitution of the Federal Democratic Republic of Ethiopia.
- be a graduate in law with a degree or diploma from a recognised university.
- have distinguished himself by his diligence, loyalty and good moral character.
- be 18 years of age or above.

b. Education and training

According to the qualifications set forth above, a public prosecutor must have a law degree (or at least a diploma that proves that s/he has studied law for three years during a regular, or evening, course at a university).

Part Eight of the *Council of Ministers Regulation 44/1998* (Articles 52 to 54) deals with training of prosecutors. It specifies two types of training: orientation programs for new recruits and training programs for human resource development in order to enhance efficiency. As well, Article 13 provides for a one-year probation period for candidate prosecutors who

graduated from university and a six-month probation period for a person who has already served in another institution as a lawyer.

Out of the 144 Federal Prosecutors 100 have a first law degree or more and 39 have a law diploma. Five prosecutors do not meet minimum statutory requirements; instead they have certificates obtained after completing a three to nine month training course.

The situation in the States is rather grimmer. Most of the State Prosecutors, particularly those at Woreda level, only hold certificates, many having never studied law, and much less possessing a law degree. To be more precise, here are some examples from the States that we visited:

- In Oromia out of the about 500 prosecutors, only 150 have a diploma or higher education and 344 a certificate.
- In Amhara out of the 548 prosecutors 91 have a diploma and 417 a certificate.
- In Somali out of the 142 prosecutors 124 have only a certificate.

There seems to be no federal or state strategy for the training of prosecutors. However, there are some separate initiatives that have been taken aimed at upgrading the quality of the Public Prosecution Service at the federal and state levels. Examples of these initiatives include:

- In the summer of 2003, the Ministry of Justice organised two three-week courses for about 45 Federal Prosecutors each. The subjects of the courses included human rights, and technical aspects of the CPC, for example: prosecution techniques, problems of evidence, and the declination of prosecution. The lecturers/trainers were 14 senior prosecutors.
- Also at state level, there have been some initiatives that are worth mentioning. Teachers of Bahir Dar University organised a summer course to upgrade the level of the Woreda prosecutors in that State. Another example, is the initiative of the Head of the Justice Bureau of Oromia who has developed a program to improve the quality of the prosecutors. The plan call for all 401 Woreda prosecutors of Oromia to attend a thirty-day training course in human rights, the Constitution, criminal procedure, penal law and justice reform. Due to financial problems, the duration of the training has been reduced tenfold to only three days.
- Probably the most impressive initiative in the field of training is the one in Tigray. It is a joint effort of the new Mekele University Law Faculty

(*hereinafter* MULF), the Tigray Supreme Court (*hereinafter* TSC) and the Tigray Bureau of Justice (*hereinafter* TBJ). TBJ, which has the executive responsibility to ensure that Woreda judges and prosecutors receive legal training in Tigray, and the TSC, which has the day-to-day supervisory responsibilities of overseeing and improving the performance of the courts and the MULF have collaborated to create an improved MULF Summer Judicial Training Program. The Training Program will provide MULF regular degree program courses to qualified Woreda Court judges and prosecutors during the summer when the courts are closed. The goal of the Program over the coming eight years is to bring the education of about 220 Woreda Court and higher judges and prosecutors up to the LL B undergraduate degree level through a combination of on campus courses and on-the-job distance learning courses. The program has been initially designed in two phases: Phase 1: Two groups of about 50 and 45 students to be trained from sub-diploma level to LL B degree; the candidates and their academic credentials are already known. Phase 2: Up to 125 additional judges and prosecutors to be trained from the level of education they have when hired (for the most part probably diploma) to LL B degree level, in batches of about 45 per year, the candidates and their academic credentials are not yet known. During the first summer (2002) the performance of the students in a university academic setting was assessed. Fifty-eight Woreda court judges (23) and prosecutors (35) completed the first summer of the program. In general, the grades of the students were normally distributed, with only one student in serious academic trouble according to standard academic rules. Based on the first summer's experience, the program is currently undergoing review by the appropriate university committees.

An approach for training may, at least in the long run, be forthcoming. A proclamation establishing a Justice Training Centre had at the time of writing this report been accepted by Parliament. The main missions of the Centre are:

- to train “newly appointed judges, prosecutors, registrars, public defenders and other professionals, who join the federal and regional justice system”(art.5).
- provide in-service training to these same persons.
- undertake research and provide recommendations on how to ensure the predictability and uniformity of decisions.
- in co-operation with the concerned organs, undertake studies necessary for the promotion of the justice system.

Once it is established and functioning, the JTC can be very useful in solving the issue of initial and continuing training for prosecutors and upgrading their qualifications.

c. Tenure and dismissal of Prosecutors

Article 14 of the *Council of Ministers Regulation 44/1998* states that once a prosecutor successfully completes probation s/he will be permanently assigned a position s/he fits, having regard to her/his qualification and experience”.

Part Four (Article 55 to 60) of this deals with the termination of service of a prosecutor. It provides for resignation, retirement (due to sickness or cancellation of position) and dismissal on grounds of inefficiency or of criminal conviction. It is not explicitly said who has the right to dismiss a prosecutor. Most probably this right is vested in the Minister of Justice.

d. Ethics and Discipline of Prosecutors

Part Seven (Article 74 to 87) of the same regulation deals with the discipline of prosecutors. Article 75 enumerates serious and simple disciplinary offences. Taking or soliciting bribes, doing favours through intermediaries with the intent to obtain unlawful benefit for oneself or for another and the falsification of documents are the three first listed serious offences. “Rejecting or refusing to execute a clear and lawful order given orally or in writing by the Minister or the superior” is also considered a serious disciplinary offence. A most interesting simple disciplinary offence is “obstructing the smooth execution of work by not co-operating with colleagues”.

In July 2003 there was a three-day conference for Federal Prosecutors to consider a draft: “*Federal Prosecutors’ Code of Professional Ethics*”. It was expected that before the end of 2003 the code would come in force. It was intended that the new code be sent to the Heads of Justice Bureau of the Regional States, to quicken introduction of codes of ethics in all States. The draft code we reviewed sets out the basic principles of behaviour and prohibits actions contrary to public interests.

9.3.1.3 Criminal proceedings

According to articles 8 and 9 of the *Criminal Procedure Code*, the public prosecutor is responsible for criminal investigations. S/he is authorised to give the necessary orders and instructions to the police and must ensure that the police carry out their duties in accordance with the law.

The current procedure in criminal investigations can be summarised as follows: when a crime is reported, the police start an investigation. No report is made to the prosecutor, even if the case is a serious one. According to Article 29 of the CPC the police have the authority to keep the suspected person in detention for 48 hours. If the police are of the opinion that that same person should not be released, the police bring him/her before court. The judge can order the suspect to be held in custody for a period of 14 days. If the police investigation is not completed, the investigating police officer may apply to the court for another 14 days in order to enable the completion of the investigation. The police officer will then inform the judge about the development of the investigation conducted to date and explain the steps to be taken during the next 14 days. As long as the police have not completed their investigation, the defendant remains in custody being brought before the court every fourteen days.

Only after the police have completed the investigation, will they send the case file to the Office of the public prosecutor. It is at that moment that the prosecutor will be informed of the case and will become aware of the investigation. And it is at that very moment that the defendant is no longer brought before the court on a regular basis. The defendant must wait until the beginning of the trial for his or her next court appearance.

After receiving the investigation file from the police, the public prosecutor can take one of the following decisions:

- draw a charge and send it to court.
- order the police to undertake further investigation or obtain additional information.
- dismiss the case according to art. 42 of the CPC.

Where a charge is sent to the court: when the charge has been sent to the court, the judge fixes a date for a first hearing. The first hearing deals only with the issues of plea and with the selection of the witnesses that the prosecutor and the defendant want to summon to court. It is at this point of the proceeding that the defendant hears the charge for the very first time. Only the charge, no written statements, no results of the police investigation are given to the defendant. If the defendant does not have a lawyer of his own, the court will appoint defence counsel to represent him.

If the defendant pleads not guilty, the judge will order the prosecutor to bring forward the evidence. The court fixes a date for a new hearing (often more than six months later). A defendant has the right to be released on bail

when the offence s/he is charged of does not carry the death penalty or rigorous imprisonment for fifteen years (Article 63 CPC).

All witnesses who are important for the charge are summoned for the day of the hearing. If at the day of the hearing not all the summoned witnesses are present or if it is necessary to undertake additional investigation, the trial will be adjourned. Accordingly, a new date for a new hearing will be fixed and this, again, can take more than six months. If the critical witnesses are present, they shall be heard and they shall be subjected to the defendant's constitutional right to cross-examine them. The public prosecutor performs his/her requisition. The defendant may have his/her last word. There is no provision for the time in which the judge must reach a decision i.e. it may be immediate or take as long as a year.

If a defendant is free on bail and the judge finds the defendant guilty and imposes a prison sentence, the defendant is immediately re-arrested and returned to jail. If s/he appeals, s/he must ask the appellate court to set a new bail.

When the prosecutor orders the Police to undertake further investigation: the prosecutor may send the case back to the police for further investigation. The response of the police currently occurs only after a delay. We heard that on occasion it takes more than 5 years before the police complete the re-investigation and send the case back to the prosecutor. The prosecutor will then send the file to court.

In cases that are discontinued: if the prosecutor decides to discontinue a case, s/he is required to send a detailed report giving the reasons for this decision and s/he must receive a signed approval from the head of prosecutors. After giving the approval not to institute proceedings, the head of the public prosecutors also sends the file to the Minister of Justice or the Head of Justice Bureau, each of whom has the authority to reverse the decision.

9.3.1.4 Relations with other Justice Institutions

a. Relation between Public Prosecution Service and Judges

On federal level there is communication and consulting between the Minister of Justice and the Vice-president of the Supreme Court. But there are no known minutes of these meetings. At the High Court and First Instance Court levels, there are no formal communications about problems like backlogs and the summoning of witnesses. While communications and a

cordial relationship may exist between the Judiciary and the PPS at a high level, relations on the lower levels and in courts are often negative and in some cases even lack mutual respect and co-operation.

b. Relations between the Public Prosecution Service and the Police

As stated above, the Federal Police are accountable to the Ministry of Federal Affairs (Article 6 of *Proclamation 256/2001*) but the PPS still holds the power over police criminal investigation (Articles 8&9 CPC and Article 23 (4) of the *Proclamation 4/95*). However, in practice, there is a permanent lack of PPS supervision over the police during the investigative process.

c. Relations between the PPS and the Prison Administration

There is no relationship between the Federal PPS and the Federal Prison Administration since *Proclamation 39/93* has been revoked and the Federal Prison Administration has been made accountable to the Ministry of Federal Affairs. (Article 6 (b) of *Proclamation 256/2001*). According to Article 11 and 12 of *Proclamation 39/93* the prosecutor once had so important duties in the field of prison administration. These duties included:

- Supervising the legality of any imprisonment or detention.
- Ensuring that the rights of the persons in custody are respected.
- Visiting, at any convenient time, places of detention or imprisonment.
- Ordering the release of illegally detained or imprisoned persons.
- Ensuring the execution of sentences.
- Ensuring the regularity of prisoner's living conditions.
- Designing and implementing policies for the rehabilitation and social integration of prisoners.

9.3.1.5 The role of precedent

There is no jurisprudence in criminal cases whatsoever. A decision in a criminal matter is an individual opinion that only applies to the individual case and it can in no way create precedent for another criminal case. Sentences and arrests in criminal cases are not published and they do not become subject to academic and legal commentaries.

9.3.1.6 Case flow

The current management of files is described in the “*Project Document for the Reorganisation of manual filing System for the administration of the Prosecution offices of the Addis Ababa region*”. Currently, the administration manages their files in the following manner:

- When the first document comes from the police to the prosecution office, the registrar's office opens a case file with a unique case number.

- The case files are then sent to the Chief Public Prosecutor.
- The Chief Public Prosecutor assigns the case to a prosecutor and gives him or her the file.
- The assigned prosecutor will review the file and determine what further steps to take. If s/he decides to proceed with the case, s/he will prepare a hand-written charge (templates for this purpose are used in some PPS offices).
- The hand-written charges are then processed in the typing pool and sent, after obtaining the written consent of the Chief Public Prosecutor, to the court.
- During a first hearing the judge fixes a date for the trial and orders the prosecutor to summon the witnesses s/he wants to hear (see above for more detailed description of this process and related issues).
- The court sends a list with the names of the witnesses to be summoned to the police who, without prosecution input, locate the witnesses and serve the summonses. The defendant must call his or her defence witnesses.
- As soon as a court decision has been taken, the file is referred to the court archives. The PPS does not register the court decision. Neither is it involved in the execution thereof. The investigation file is sent back to the police.

A pilot project has been started in the Addis Ababa Administration, Lideta and Arada branches to create such a manual process. This is a necessary step for the eventual development of a computerised system.

Qualified administrative personnel are scarce and mostly lack training. The current administrative structure does not allow for a qualified manager who is entrusted solely with management. There is a lack of co-ordination between the branch offices. Besides, the current case flow is plagued with a huge backlog of cases.

9.3.1.7 Statistical data

There is little information about statistical data available from the PPS about criminal cases that occur at the federal or state levels. For example, the PPS lacks statistics and information about the following:

- The number of investigations by the police.
- The number of cases dealt with at all levels of court in the country.
- The number of cases dealt with weekly, monthly and yearly by each party in the criminal justice process.
- The number of persons held in custody.

On the federal level there is some information about the number of cases that is sent to the PPS by the police and some data available about the current status of each case. Even then, statistics from the different offices are not always defined in the same way. Such inconsistencies make the statistics difficult to use and limit their value in assessing the extent of criminal justice problems.

9.3.1.8 Working conditions

The working conditions of the PPS are appalling. The buildings and compounds are in disrepair. The offices are small, unventilated, dark and unpainted. The furniture is old and obsolete. Some examples from the branch offices that we visited follow.

- At the Federal PP Service in Addis Ababa the administrative staff works in one room that is also being used as “dead archive.” The walls are covered with a “second wall” of files, many of which are very old. On the floor, files of cases that have been closed and others that are still pending are piled high in a disorderly fashion in a way that makes them susceptible to rats and termites. There is simply no room available to store active files in a proper manner.
- The archives of the Paulos sub-branch are located in a container, which doesn’t have space for clerks to accomplish their day-to-day activities. The conditions in which the prosecutors have to work are comparable to those of their staff. Rooms that are too small for a single person are used for four persons by pushing tiny desks together.
- Working conditions in the States we visited are worse. Some Woreda prosecutors are said not to have chairs and thus to be required to work while standing up. Prosecution offices are often located at great distances from the courts necessitating prosecutors to lug a number of files under their arms while taking common buses to reach their destination.

It is hardly surprising that the morale is low and that the ability to attract prosecutors is even lower. Neither the Federal nor the State Governments seem to consider the PPS a priority. Shortage of funding for the PPS is clearly a fundamental problem.

9.3.1.9 Prosecutors’ access to legal materials

Like other legal professionals in Ethiopia, prosecutors have very little access, if any, to legal materials. Often, prosecutors do not have copies of the Penal or Criminal Procedure Codes. Also, very little academic or legal literature about both codes has been developed. As a matter of fact, the only literature

we could find was written in the mid-sixties: *Introduction to Ethiopian Penal Law* by P. H. Graven in 1965, and *Criminal Procedure Code* by Stanley Z. Ficher 1964-1968. Neither book is available to judges and prosecutors.

The Criminal Code goes back to 1957 and the Criminal Procedure Code is from 1961. Thus both Codes qualify as old. Both Codes are applicable in all the States of Ethiopia.

Two drafts of a new Criminal Procedure Code and two drafts of a Penal Code have been developed and submitted to the House of People's Representatives for discussion and adoption. The Federal Ministry of Justice has developed one draft and the Justice and Legal System Research Institute developed the other. In 2002, a 7-days workshop was organised by the House of People's Representatives. The House sent the drafts to local governments. After having received their advice, the House has asked a subcommittee to study them. A steering committee composed among others of the Minister of Justice and the Speaker of the House of People's Representatives is also involved in the discussion. No international experts have been involved so far. As of late 2003, the House of People's Representatives has not adopted a new Criminal Procedure Code or a new Penal code.

9.3.2 The Police

9.3.2.1 *Police structure*

The Ethiopian police system consists of a Federal Police Service, 9 Regional Police Forces and the Police Forces of Addis Ababa and Dire Dawa, which have a special position.

a. The Federal Police

The legal basis for the Federal Police is found in the "*Federal Police Commission Proclamation, 313/2003*". Article 6 of this Proclamation defines the objective of the Commission as maintaining the peace and security of the public by complying with and enforcing the Constitution and other laws of the country, and preventing crime. The Proclamation also describes the duties and powers of the police organisation. According to article 7 the Federal Police are responsible for crime control within designated areas of jurisdiction, all of which relate to state security. International affairs fall under their remit. They also have co-ordinating duties at the national level. For instance, the Federal Police provide training, professional and technical advice and support for Regional Police Commissions. The Proclamation

refers to the positions of the Commissioner and Deputy Commissioner. Broadly speaking, it also covers matters relating to the appointment and duties of police officers. These issues have been fleshed in the staff regulations. This Proclamation provided for the abandonment of military ranks within the police and ended thus the military past (Article 25(1)).

The Proclamation covers the relationship between the Federal and Regional Police. It provides for regular contact and meetings between the various police organisations (Article 23 (3)). When it deems necessary, the Federal Police Commission can delegate the powers given to it by the Proclamation to Regional Police Commissions (Article 7 (15)).

The Government appoints the Commissioner and Deputy Commissioner. The Commissioner of the Federal Police is accountable to the Minister of Federal Affairs (Article 4). This only applies, however, to aspects relating to management issues. The organisation operates independently when it comes to operational police work. There is a sound management set-up, with a plan and control cycle. The Federal Police is both a centralised and decentralised organisation. It operates from various locations in the country, although the focal point is naturally in the capital. The organisation chart reveals a line and staff organisation. All task areas have been classified under directorates and departments. The largest directorates are crime investigation and crime prevention. These sections of the organisation are responsible for carrying out executive police work.

b. The Regional Police

The Regional States are free to organise their police as they see fit. Nevertheless, all regional forces, broadly speaking, have a structure that is similar to that of the Federal Police. The respective state authorities appoint the Regional Commissioners. Regional forces are accountable to the Minister of State Affairs for their respective States. This accountability only relates to matters like policy making and financial matters. The regional services are also independent when it comes to administrating and implementing the actual police work. The Regional States are subdivided into a system of smaller administrative units. The police organisation mirrors these administrative divisions and operates in a decentralised way. The regional forces have less capacity than their federal colleagues. Therefore, they frequently request the assistance of the Federal Police when carrying out their regional duties. The co-operation between the regions and the Federal Police is good.

Article 23 (2) of *Proclamation 313/2003* provides that the “Regional Police Commissions shall be accountable to the Federal Commission when they prevent and investigate criminal cases falling under the jurisdiction of Federal Courts in accordance with the delegation given to them”.

c. Police of Addis Ababa and Dire Dawa

Pursuant to Article 5 (2) of *Proclamation 313/2003* the Police Commission of the Addis Ababa City Administration and the Police Commission of Dire Dawa City Administration are established under the Federal Police Commission. The Commissioners of Addis Ababa and Dire Dawa Police are not only accountable to the Minister of Federal Affairs but also to the Governors of those cities.

9.3.2.2 Police organisation

a. Recruitment, appointment and retirement of a Federal Police officer

Article 15 of *Proclamation 313/2003* stipulates that any Ethiopian citizen who is to be recruited as a member of the Federal Police must:

- be faithful to the Constitution of the Federal Democratic Republic of Ethiopia.
- fulfil the educational standard and physical fitness standard.
- be of good conduct.
- have no record of criminal conviction.
- not be under the age of 18 years.

A police officer is employed for a seven years obligatory service (Article 18). Retirement takes place pursuant to the pension laws for civil servants (Article 21).

b. Police training

Ethiopia’s police training system has three components:

- a training centre for Federal Police.
- a Police College where higher police functionaries of the whole country are trained.
- regional training centres where police staff are trained for primary police work.

The Police College is located near Addis Ababa. The complex includes a teaching building, sports facilities, a cafeteria and a residence section. A rather well equipped library forms part of the teaching building.

The College has an extensive training program. The initial two-year course is the most comprehensive. This course is delivered as a diploma and as a certificate program. The first program is usually followed by young people who want to become high ranked police officers. The latter program is for police officers that want to meet the criteria for promotion. The diploma course is valued higher than the certificate one. In addition, a selection of job-specific and other types of follow-up training are available. There is also know-how available when it comes to non-police-specific knowledge such as communication skills and management. The College develops training independently. The College also trains professionals who will assume duties within the prison system. These higher police functionaries enjoy the same training as the professionals who are employed within the police organisation.

Curricula are subject based. Subjects that are considered important are on the curriculum. Drilling is part of the curriculum.

While the housing and work conditions of the Police College at Sendafa and those of the Federal Police Training Centre at Kolfe are acceptable, the conditions and housing of the visited training centres in the regions are below any minimum standard.

c. Conduct of Police

Two provisions in *Proclamation 313/2003* are particularly important from the perspective of police conduct. Article 18 (d) provides for the termination of the employment of a police officer in a case where “the police officer is found guilty by a court of law and it is decided in accordance with the regulations that the conviction shall not make him fit for the job”. Article 27 provides that “any inhuman or degrading treatment or act is prohibited”.

Recently, efforts have been made to improve police conduct and integrity. Many Commissioners have taken steps to critically review their own organisation. This has led to a large number of dismissals of police officers that do not, or do not wish to, operate in compliance with the requirements of police integrity. An anti-corruption program has also been launched to respond to the corrupt and unfit practices of the police. Some police have been charged with corruption offences. During our meetings, we were not informed of the existence of a Code of Conduct/Ethics for Federal or Regional Police. Developing and enforcing a Code of Conduct for the police might usefully support efforts of the police to purge its ranks of unfit elements.

d. Police strength

The police force of Addis Ababa has 6500 police officers. The capital has a population of approximately 3.1 million. There is therefore one police officer for every 480 residents. It is very difficult to make a good comparison between countries in terms of police/population ratio. In Europe, this ration is approximately one police officer to 400 citizens. The comparison between countries is rather difficult because of differences within countries (urban area vs. rural area) and also because of differences in tasks (border control duties or not, including or excluding military police etc.). However, bearing in mind that the ratio in a western European country is about one police officer for every 400 residents, the ratio found in Addis Ababa is fairly good. The average in the regions is much lower. By way of example: the population of the Southern Nations, Nationalities and Peoples is 13 million people. 5000 police officers are employed, which means that there is only one police officer available for every 2600 residents. In the other regions, the ratios are similar.

Traffic police have not been studied separately.

Approximately 80% of the police budget is used for personnel costs. The remainder of the police budget is spent on equipment and resources.

e. Federal Police Rapid Reaction Force

The Federal police has a large group of police officers at the ready, who can be deployed at all times should large-scale riots break out somewhere in the country. The police officers of this division are employed on a full-time basis.

f. The Militias

The militia is a voluntary organisation, which is manned mainly by farm workers. The organisation provides general and preventive surveillance in local areas. The militia is run by a number of professional and paid executives. Both members of the executive and volunteers only receive limited training. Officially speaking, the militia does not form a part of the legal system. But given their big organisation and their role, one cannot ignore their existence. There are between 10 to 30 militia members for every police officer in the country. This figure varies from one state to another. The militia is generally under the jurisdiction of the *Kebele* in rural and urban areas. Some Regional States have legislation governing the militia.

g. Forensic Laboratory

Ethiopia has one Federal Forensic Laboratory. Only one or two experts are working at this laboratory. They have been covering the various areas of the needed forensic expertise. The infrastructure of the laboratory is limited and backward.

h. Equipment and resources

The resources and equipment of the police are limited. Information and Communication Technology (*hereinafter* ICT) seems not to be commonly used. Police lack the means to be able to communicate with each other. Vehicles at the disposal of the police are very limited.

9.3.2.3 Reform plan

The Justice System Reform Program is not the only program that touches on reforming and upgrading the police. The police itself started to modernise a few years ago. The managers of the Federal Police Service formulated three reform spearheads:

- construction of an ICT infrastructure;
- improving the quality of the training and strength of the Police College; and
- modernising the fleet of cars and reinforcing the forensic laboratory.

The police reform plan has recently been modified to reflect the government's decision that the police should also be responsible for guarding the borders of the Republic.

9.3.2.4 Relations with other Justice Institutions

Relations with the Federal Prosecution Service

Article 7 (9) of the Proclamation stipulates that the Federal Police “executes orders issued by the Federal Public Prosecutor in regard to investigation of crimes”. The relation between the Regional Police and the Federal Public Prosecution is not as clear.

Relations with the Prison Administration

The Federal Police provide the prison administration with prison police and assists the prison administration in training its high-ranking officials.

Relations with the Courts

Police have direct access to courts as they present suspects to courts and ask that they be kept in custody pending completion of the pre-trial investigation.

9.3.3 Penitentiary System

Compared with the Continental-European and Anglo-American systems, the Ethiopian prison system is relatively young. In 1944, a prison administration was established under the rule of Emperor Haile Selassie (*Proclamation relating to Prisons 45/1944*, is formally still in force). During the Derg regime, prisons were neglected. After the fall of that regime, reform of the prison system had no priority. But the current government is determined to reform the whole prison system.

9.3.3.1 Legal framework of the Federal and State Prison Services

a. Proclamation Relating to Prisons 45/1944

The *Prisons Proclamation 45/1944* is considered to be obsolete. Its thirteen articles cover only a few subjects: the establishment of prisons, prisoners' property, general provisions and discipline. Much was left to be regulated by rules of lower order. Some articles (for instance Art. 7 and Art. 9) lost their meaning when the Penal Code (*hereinafter* the PC), the Criminal Procedure Code (CPC) and the Constitution came into force. Other articles, for instance article 10 regarding discipline, may formally still be valid but are in practice overruled by *ad hoc* rules, made by the prison administrators.

b. Proclamation on the Federal Prison Commission (2003)

The Prisons Proclamation was to be replaced by a new '*Federal Prisons Commission Establishment Proclamation*', drafted in 2003. The preamble of this new Proclamation states clearly the functions of the penitentiary system: "...the custody, reformation and rehabilitation of prisoners in order to duly contribute their part in crime prevention".

c. Other sources

In addition to these two Proclamations, the legal framework of the penitentiary system can be derived from various other documents such as the Constitution, the Penal Code and the Criminal Procedure Code.

The Federal Constitution

Article 52 (2- g) of the Constitution gives Federal and State Governments the power to maintain a prison system as a means to "maintain public order

and peace”. Chapter Three of the Constitution on “Fundamental Rights and Freedoms” contains a number of articles that have special significance for prison administration particularly regarding the treatment of prisoners.

- Articles 14-16 guarantee the inviolable and inalienable right to life and to personal security of prisoners. Exception is made in respect of death penalty because of a serious criminal offence.
- Article 17 (2) stresses the need for strict control by the prison administration of the legality of imprisonment.
- Of utmost importance for the prison administration and prisoners alike is Article 18 that prohibits cruel treatment and inhuman or degrading treatment. Article 18 (3) prohibits forced or compulsory labour. However, Article 18 (4- a) allows for “any work or service normally required of a person who is under detention in consequence of a lawful order, or a person during conditional release from such detention”.
- Article 19 protects the rights of arrested persons.
- Article 20 protects the rights of accused persons and Article 21 protects the rights of persons held in custody and convicted prisoners. These provisions are more relevant to criminal procedure than the quality of the treatment of persons who are deprived of their liberty.
- Article 36 provides that juvenile offenders admitted to corrective or rehabilitative institutions shall be kept separately from adults.

The Penal Code

Pursuant to Article 52 of the Penal Code, criminal liability starts at the age of nine. Article 53 stipulates that “young persons shall not be kept in custody with adult offenders. Young persons are those between the ages of nine and fifteen”. The Penal Code provides for special penalties and measures for juvenile offenders (Articles 161-173). Offenders who are over the age of fifteen but under eighteen years old are tried under the ordinary provisions of the PC. In conformity with Article 56 however, courts may mitigate the penalties or apply the special penalties for young persons.

The criminal sanctions (penalties and measures) for adults are listed in Article 105 (simple imprisonment), Article 107 (rigorous imprisonment), and Article 128 (internment). Articles 108 to 111 contain instructions called “general provisions” to the prison administration regarding the execution of imprisonment. Article 108 requires the drafting of regulations regarding “the execution of sentences, the admission to prisons, the segregation of prisoners, the contact of prisoners with persons outside, the internal discipline in the prisons and regarding the education and spiritual welfare of the prisoners”. Article 109 requires *inter alia* that prisoners on remand be kept separate from

prisoners serving sentences. Article 110 limits the obligation to work to prisoners serving a sentence with deprivation of liberty and stipulates that such work shall be in accordance with the prisoners' ability and shall be of such a nature as to reform and educate him/her and to be conducive to his/her rehabilitation. Working prisoners are entitled to "commensurate remuneration" for their work. Article 112 offers the possibility to release sentenced prisoners on probation when two thirds of the sentence has been served or when a prisoner sentenced to life has served twenty years. The second paragraph of this article says that special laws and regulations relating to the conditions and the manner of putting into effect this probation have to be enacted. This possibility for early release is better known under the name *parole*. To be eligible for parole, the conduct of the prisoner must have been satisfactory and the conditions laid down in Article 207 must have been fulfilled. Articles 194-205 allow the courts to order conditional suspension of certain sentences and place the offender on *probation* for a certain period. Articles 206-215 PC provide for conditional release.

The Criminal Procedure Code

Book II of the Criminal Procedure Code contains a few articles concerning pre-trial detention. Article 59 gives the court the power to decide whether a suspect will be kept in custody or will be released on bail. A remand decision *may* be granted in writing; it can be granted for 14 days on each occasion. The law does not limit prolongation. Article 60 on conditions of remand requires that "any arrested person shall be detained on the conditions prescribed by the law relating to prisons".

Book VI of the CPC contains a few provisions for the execution of sentences. Articles 203 (1), 204 and 205 stipulate that no sentence may be executed without the necessary warrant issued by the court.

9.3.3.2 Structure and organisation of the Federal and State Prison Services

a. Federal level

Since 2001, the Ministry of Federal Affairs (The Minister of State for Regional Affairs) is responsible for the Federal Prisoner's Administration Service and Federal Police Commission. Specifically the Ministry's mission is to:

- provide policy directions and capacity building to enhance the effectiveness of the Federal Police and Prisons' Administrations;
- provide appropriate support to the States' Police and Prison Administrations and

- develop and strengthen co-ordination among the Federal and States Police and Prison Administrations.

The Democratisation Department of this Federal Ministry facilitates conditions that would help to modernise the organisational and working methods of the police, prison administrations and justice organs.⁷

From Articles 51 and 52 of the Constitution it seems to follow that every single state has the autonomous power to organise and administrate the prison system in its own way, provided this is compatible with the provisions in the Constitution. On state level, the administration of the police and prison services is as a rule the responsibility of the Ministry of Administration and Justice Affairs (Justice Bureau). It seems that the Federal Government has only the power and duty to develop and strengthen co-ordination among the States in this respect.

Federal Prisons are located at Addis Ababa and Dire Dawa. The Federal Prisons have branches in Zeway, Robbit and Kaliti (Addis Ababa). The number of prisoners in Federal Prisons is estimated at 6,600. Almost 600 of those prisoners are members of the former Derg regime. Women prisoners (170 women) are detained in separate units.

The estimated population in each of the Federal prisons is as follows:

- Addis Ababa: The formal capacity⁸ is 5000; the actual population is about 4000.
- Kaliti: The formal capacity is 1000; the actual population is 800.
- Zeway: The formal capacity is 3372; the actual population is 647.⁹
- Showa Robit: The formal capacity is 3089; the actual population is 694.¹⁰
- Dire Dawa: no data are available.

The ‘Organisational Chart’ of the Ethiopian Federal Police does not feature a Prison Police Department. The so-called prison police belong to the prison administration and are not a part of the regular police forces.

⁷ Federal Democratic Republic of Ethiopia, Ministry of Federal Affairs, *Brief Profile of the Ministry*, [Addis Ababa] November 2002.

⁸ It is not clear which factors determine the formal capacity of a prison or a police station.

⁹ The ‘under-population’ of this prison is caused by the problem of malaria in this area.

¹⁰ The ‘under-population’ of this prison is also caused by the problem of malaria in this area.

b. On state level

The States are responsible for their own state prisons. There are an estimated 112 state prisons. In February 2003, between 55,000 and 60,000 prisoners were held in those prisons.¹¹ It is not clear how many of them were in pre-trial detention. Allocation of prisoners to prison is said to be related to the phase of the criminal procedure of the case. Prisoners with cases pending before Woreda Courts are held in Woreda prisons. Prisoners with cases pending before High Courts are held in Zonal Prisons. Some figures of the visited States:

- *Southern Nations, Nationalities and Peoples* has 22 prisons. The population in those prisons is approximately 12,500. About 50% thereof are prisoners on remand. The Zonal prison of Awassa has a formal capacity for about 600 prisoners. At the time of the visit, 892 prisoners (23 female) were held. The staff consisted of 52 policemen and 16 civilians.
- *Amhara* has 30 prisons that are housing approximately 14,000 prisoners. The state prison system employs 1500 prison police and 700 civil staff. The population of the State Prison of Bahir Dar is currently over 1,000 prisoners (90 are former Derg officials). Amhara has a training centre for police constables at Debre Markos.
- *Oromia* has 32 prisons that is, 14 Zonal and 18 Woreda prison. The prison population is 24,761. Sentenced prisoners number 15,707.

State Prison Administration Offices are part of the State Justice Bureaux. The Prison Administration Offices direct the various prisons, which are led by Heads of Prisons/Chief Administrators. The Heads of Prisons manage the prison police service and the civil prison administration. In the future they will be responsible for rehabilitation services as well.

The Federal Prison Administration cannot make decisions, which bind the Regional States. Federal proclamations are not *per se* legally binding for the regions. However, in the prison administration Council federal and states' bodies meet and try to agree on prison-related issues in a spirit of co-operation. Regional States may copy Federal proclamations but are not obliged to do so. Every Regional State can adopt its own prison rules and

¹¹ The estimated number of prisoners in all State Prisons (55,000-57,000) provided by the Head of the Federal Prison Administration does not correspond with the data obtained from 3 states, whose prison population already equals this estimate (Southern Nations: 12,500; Oromia: 24,761 and Amhara: 14,000). These three States reportedly have a total of 84 prisons. Given this, it hardly seems possible that there are only 28 regional prisons in the remaining 6 regions.

regulations, provided they are in line with the Constitution. As far as is known only Amhara has adopted its own prison proclamation.

c. Special prison facilities

About 500 to 1000 officials of the former Derg regime who are accused of genocide are said to be detained in special prison facilities.

d. The training of civil prison staff and Prison Police

Outside 'on the job training' no special training facilities for *civil* prison staff are available. This is different for the prison police, who receive training.

Police are involved in the handling and treatment of persons that are deprived of their liberty in two ways. During the first stage of a police investigation suspects can be held in police stations until they are sent home or are transferred to a (remand) prison. Regular police constables guard those persons during their custody in police stations but they receive no special training to perform this task. The prison police, however, are specially trained to handle detainees.

Training of the prison police takes place in three modalities:

- On a state level police training schools recruit constables who will join the State Prison Police. They receive basic training and lower level specialisation programs;
- Recruit constables who will join the Federal Prison Police receive basic training at a special Federal Police Training Centre at Aleltu; and
- Training for commissioned and non-commissioned (federal and state) police officers, some of whom will join the Federal Prison Police, is given at the Ethiopian Police College just outside Addis Ababa.

Training of prison police officers

The Ethiopian Police College provides training for officers of the Federal and State Police, Federal and State Prisons, Customs and other security agents. It is not clear whether special courses are available for candidate police officers that are going to work with the Federal or State Prison Administration.

Training of candidate prison police constables at the Aleltu Training Centre

Prison police below the rank of officer receive their training at the Aleltu Prison Ward Training Centre, about 40 kilometres outside Addis. The recruit constables, who live on the site of the training centre, get a six month training in the following subjects (with in total 820 contract hours):

- Law: constitutional, criminal and civil law; rules and regulations regarding the position of prisoners and warders (51 hours);
- Administration of personnel;
- Crime investigation and prevention (170 hours);
- Physical fitness, personal safety and self-defence (274 hours);
- Handling of firearms;
- Social sciences: rehabilitation, psychology (38 hours);
- Counselling (34 hours);
- Narcotic substances;
- Fire prevention;
- Ethiopian history;
- Geography;
- Corruption and Code of Conduct (21 hours);
- First aid.

Until now the training emphasis has been upon safety problems. There is a lack of professional teachers of law, psychology and sociology.

e. Conditions of detention at police stations and in prisons

Detention at police stations

Although police stations formally do not belong to the prison administration, they house the same detainees as (remand) prisons do. The Ministry of Federal Affairs is responsible for prisons and the police and the way police treats people held in police custody. Given that during the first 48 hours, and often for 14 days after his/her arrest suspects are held in police custody, it is clear that a large number of suspects are being detained in police stations, pending completion of police investigations. Remand prisons are seriously overcrowded, this combined with the usual lengthy pre-charge police investigations (in the best case 3 to 6 months), means that suspects are often detained for a relatively long time at police stations that are materially not equipped to accommodate prisoners for more than a few days.

Conditions at prisons

The conditions of detention in Federal as well as in State Prisons do not meet international standards. The physical state and conditions of all visited locations are poor and sanitation and hygiene need improvement. The budget for food is 2 Birr a day for each prisoner, which allows only for one meal. Medical care is scarce.

Apart from female prisoners who are held separately, there is in practice no separation between prisoners.

f. Registration of prisoners at police stations and prisons

Registration at police stations

Based on the visits to police stations, registration at those stations can be described as follows. The registration of suspects that are taken into custody is done by hand in a ledger. The name, address, the alleged crime, day and time of arrest, a registration number, the name of the investigating police agent and the date and time of release or transferral to a prison are recorded. Recidivists are photographed. There is also a “report registration book” and a “daily registration book” in which special events regarding the prisoners can be written down as for example transferral to a hospital. Another file registration book is used to keep track of the investigation files.

Registration in prisons

We were told that prisoners are not accepted in prison without a court warrant providing the legal status for holding them. The warrant is kept in the file of every single prisoner. Basic data regarding the prisoner and his detention are registered on the cover of each personal file. One of the items registered is whether the prisoner is to be considered as a recidivist, which information is important for decisions related to parole. Biographical data like sex, age and family relations are registered as well. The file also contains physical data of the prisoner. The file does not contain information on the health status of the prisoners. These data are kept in the prison-clinic. Personal belongings of the prisoner kept for him during his detention (to be returned to him on release) are also mentioned in his prison file.

g. Inspection and supervision of jails and prisons

The station commander is responsible for the conditions of detention in the police stations. He is accountable to the Zone-commander. Until seven to nine years ago, prisons were regularly inspected by the prosecution service. In two of the visited prisons, a prosecutor is still fulfilling this role and inspecting the conditions of detention in the police stations and in prisons. The prosecutor has, however, no power over the station commander.

9.3.3.3 Federal and State Reform Plans

a. Federal Reform Plan

The Ministry of Federal Affairs has drafted a “Concept Paper to Reform the Federal and State Prisons of Ethiopia” (Addis Ababa, June 2003). Though the heading of this paper suggests it will handle the reform of Federal *and* State Prisons it concentrates on Federal Prisons only.

The Ministry of Federal Affairs is very clear about the present situation saying: ‘Ethiopia’s prison system has been one of the neglected areas in the civil service reform without a clear mandate enacted by law’. The first problem that is mentioned in this paper is the present state of the prison facilities “begging repair and renovation”. Secondly, the need for improvement of prison conditions is called for, with the emphasis on the upgrading of the hygiene, sanitation and health service. Prison conditions such as food (only 2 to 3.5 Birr a day per prisoner is spent on food) and educational facilities should be improved as well.

One of the propositions is to move the Addis Ababa prison out of the vicinity of the premises of the African Union. The plan is to have a modern and functional Federal Prison to serve federal prisoners and those of Addis Ababa as well as those referred to it from the States. This new prison is envisaged to house “thousands of prisoners” both from Addis Ababa and the existing prisons in Kaliti. It should be operational within three years, the paper says.

This federal paper emphasises the importance of developing “a human resource capacity that is multi-disciplinary, a) a police force that has specialised on prison policing and management, b) a management team at all levels and c) a service force (health, education, psychology, sociology, legal)”. All of this “commensurate to the needs of the prisoners within the limits and the means of the Ethiopian Government and people”.

The federal paper aims at developing electronic registration of penitentiary data of all prisoners, improving the conditions of detention, rehabilitation especially by offering skills training (vocational training) and education to prisoners.

The federal paper proposes to develop manuals for the prison administrators and a system of rules and guidelines comprehensive and detailed enough to manage a specific prison.

In a 'briefing-paper' the present needs of the prisons system are worded as follows:¹² financial and material resources are lacking; conditions of detention are precarious; there is a lack of interest for the profession of prison police; rules and regulations are not updated; prison administrators are improperly trained; food is insufficient; sanitary provisions and medical care (AIDS) are deficient; there is a problem of overcrowding and rehabilitation of inmates is impossible. This paper contains the following (slightly rephrased) list of needs of the prison administration: 1) a training centre for all regions; 2) computerising of the administration of prisons; 3) sending staff abroad to acquire knowledge of modern prison administration; 4) training materials; teaching aides, reference books); 5) research (abroad) on alternative prison sentences; 6) construction of a model prison; 7) materials for education, recreation and sports within prisons; 8) transport and communication equipment; 9) training of medical staff/nurses and construction of a prison hospital and 10) construction of a head office of the prison service.

The former Minister of State, Mr Gebreab Barnabas, has formulated the priorities for reform as follows:¹³ 1) The human resource capacity (management and administration) should be enhanced by training; 2) The present function of prison police must change into the function of warder 3) Prison conditions should become better (schools; skills and vocational training); 4) New prisons have to be built.

b. State Reform Plans

Two state initiatives have been mentioned during our missions:

The Oromia Project Proposal

The State of Oromia already has formulated its own prison reform plan called 'Project Proposal on Capacity Building of Justice Institutions', which among other items addresses the reform of the prison system.¹⁴ In this project proposal it is said that during the past governments less attention was given to the maintenance and reconstruction of penitentiary institutions. To improve this situation the Supreme Office of the Oromia Department of Administrative and Justice Affairs has designed a program for rehabilitation of the buildings, equipment of the offices, equipment of the emergency

¹² *A Short Briefing about the Federal Prison Administration*, paper [no author mentioned] [Addis-Ababa] 11 July 2003.

¹³ During a meeting on 11 July 2003.

¹⁴ Administration and Justice Affairs Supreme Office of Oromia, Project Proposal on Capacity building of Justice Institutions, Finfinne, October 2002.

police force with helmets, shields and police sticks and providing the prisons with various materials, medicine and insecticides, complete with an estimate of the total cost for future donors.

The Justice Reform Program of the State of Amhara

The State of Amhara is said to have developed or is developing its own Justice Reform Program.

9.3.3.4 *Relations of the Prison Administration with other Justice Institutions*

Relations with the Police

It is not clear whether there is a flow of information between police stations and remand prisons. This makes the situation of remand prisoners in police stations and the procedure of transfer from police stations to remand prisons ambiguous. Decision about and criteria for transfer to remand prisons are not clear. Article 59 of the CPC does not determine where a suspect should be held until the beginning of the trial. In the current practice, the suspects are held at police stations until the pre-trial investigation is completed.

Relations with the Prosecution Service

It is not clear whether prosecutors have the power to inspect prisons and police stations regularly. There is a lack of uniformity in practice, in some cases it is done and in most cases this duty is not fulfilled.

Relations with the Courts

The CPC provides that during police investigations remand prisoners have to be presented to court every 14 days for a hearing regarding the prolongation of the remand term. The transport of prisoners to and from courts seems to press heavily on the relation between the prison administration and courts and characterise this relation. Another important aspect of this relation is the backlogged cases of detainees.

9.3.3.5 *Legal aid to prisoners*

Article 20 (5) of the Constitution stipulates that “accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense”.

Ethiopia is estimated to count around 700 degree-holding lawyers. Currently, 434 thereof are members of the Ethiopian Bar. Only a small

number of those are able and willing to act as defence lawyers. In the visited prisons and police stations, a lack/absence of affordable legal aid was obvious. This is the case for all prisoners either sentenced, on remand or possibly eligible for parole.

Prisons where officials of the Derg regime are imprisoned were not visited. However, government-paid Federal Public Defenders are said to legally assist those prisoners.

The only form of legal advice available to prisoners is currently the one given by Prisoners Committee's that lack the power to represent suspects in courts.

9.4 Legal Education

9.4.1 Background

Modern legal education started in Ethiopia in the middle or end of the 1960s with the opening of the Addis Ababa University College Law Faculty in Addis Ababa. The Addis Ababa University College Law Faculty mainly started with foreign expatriates, especially American professors. Documents in the Faculty show that it had the objective of training administrators and lawyers, which was the demand of the public sector at that time. The Law School teaching staff at the time was mostly from the U.S.A. and there were also some Europeans. The teaching methods were mainly that of the American common law style. The Ethiopian laws, which are generally based on European civil law, were taught and developed by American common law lawyers in a more or less similar fashion to the common law legal education style.

There is evidence that the Law School had ambitious administrators and the Faculty had a good reputation at that time. It started to publish the Journal of Ethiopian Law and continued to publish it biannually until 1974. Moreover, the professors were engaged in research in Ethiopian law and managed to prepare a number of teaching materials for some of the courses. The library of the Faculty was also opened. Most of the books it collected were American law-related or common law and jurisprudence-based. That same trend has continued up to now.

When, in 1974, the Revolution occurred, almost all expatriates left and the Faculty had to fill the gaps with people who had under-graduate law degrees only. Since then, a number of undergraduates have been recruited and sent

for further education abroad, but most of them have not returned. So, the Faculty is still in an emergency situation, forced, as it is to fill its gaps with under-graduate and part-time staff. No research work is being conducted and material of the previous professors is still being referred to whenever applicable. The Faculty, since its establishment, has been graduating an average of 45 students annually.

After the overthrow of the military government in 1991, private law schools offering law certificates and diplomas started to emerge. The private schools copied the course outlines of the law courses provided at the Faculty of Law of the Addis Ababa University. These new law schools considered them as curricula in law and none of them had any idea of their own graduate profile.

In addition to private schools, the government established the Ethiopia Civil Service College Law Program. Regional universities (including law schools) were also established in the different States. The rationale for this has to be the need for more lawyers to be educated and the purpose of strengthening the regions with their own universities as a development mechanism. No law schools or law departments in the state universities have developed their own curriculum, but merely reproduced the Addis Ababa University Law School curriculum.

In present day Ethiopia, the Constitution gives jurisdiction over tertiary level education to the Federal Government.

At the time of writing, there were six universities in the country. These are Addis Ababa University, Alemaya University, Jimma University, Debu University, Mekele University and Bahir Dar University. Addis Ababa University was the only university with a law program until 1995 when the Ethiopian Civil Service College was established with a law faculty. Of the new universities, Mekele is in the best position. The others have just started their law faculties. All of the law faculties in the universities in the Regional States are suffering from an acute shortage of resources.

There are 5 private colleges having law programs, each of which is accredited to offer their programs at the sub-degree level. These are Unity University College, St. Mary's College, Admas College, Wisdom Global College of the Law and Royal College.

9.4.2 Structure of Tertiary Education Administration in Ethiopia

While the Ministry of Education has overall responsibility for legal education in Ethiopia, other ministries have a significant role to play in ensuring that

legal professionals receive relevant information and knowledge on the law and legal practice during their education so that they can fulfil their duties. An overall co-ordination of legal education must be developed.

The Ministry of Education has developed national education programs known as ENDP I, and ENDP II. These are very ambitious programs. In the part dealing with tertiary education, the program says the following: “the overall strategy followed is to provide good quality higher education to larger numbers. Equitably but with diminishing dependence on public resources on the longer term.”

In order to reach this goal, the program sets out a number of tasks:

- The undergraduate intake capacity of all Ministry of Education run higher education institutions will be expanded to 30,000 per annum.
- The intake by private and non-governmental higher education institutions will be over and above the 30,000.
- Two colleges will be upgraded to university level.
- On average, each of the six existing and possibly also yet to be created universities shall have a total enrolment capacity for 10,000 students.
- Expansion of the postgraduate admission capacity of the higher education institutions shall reach 6,000 students.
- The necessary additional infrastructure will be constructed.
- 500 academic staff will be trained in pedagogy and teaching materials preparation.
- Efforts will be made to recruit and employ expatriate teaching staff as necessary.
- Radical and comprehensive changes in management and administration of the higher education sub-sector shall be carried out.
- A Higher Education Act will be prepared.
- A Higher Education Strategy Institute and a Higher Education Quality Assurance Agency will be established.

One problem with the program is that it does not assign responsibility for these tasks. Another concern we have is whether the programs are based on needs assessments or other research. In the specific context of legal education we wonder whether the government is placing too much emphasis on bachelor and masters degree programs as the fix for the current manpower shortages. Perhaps more attention should be paid to developing life long learning, in service training programs, and summer school for existing professionals.

A key concern is that even if it is not always possible – in a political environment – to investigate all theoretically interesting and important issues, there ought to be a certain sequence in all these tasks. Taking care of staff development and facilities has to come first and then the expansion of the enrolment follows. Otherwise it could cause a lot of quality problems and frustration for all those with responsibilities in the system.

It seems that the planned budget increase for the next three years will not likely match the (relative) expansion of enrolment. This is particularly apparent when examining the budget for equipment and books, which surprisingly decreases dramatically in the year 2003/2004, when compared to 2002/2003.

Another question that must be asked is whether the need for more judges, prosecutors and lawyers is as high as suggested in the ENDP II. For example, in the workshop on Ethiopia's justice system reform, the question as to whether the existing manpower capacity is used properly and whether judges use their working time fully for carrying out their tasks efficiently was raised. Similarly when it comes to the need for instructors at the university law schools it is important to consider whether some staff-shortages – or part of them – could be solved by providing other supports (like expanded administrative resources) and exploring other ways of teaching and use of the working time for law instructors.

It seems that relevant staff members of one ministry aren't always aware of measures that have been taken by other ministries. The co-ordination in terms of regulation, administration and responsibilities for different parts of developing this area has to be clarified.

We also feel that the whole reform program 'Public Service Capacity Program' (*hereinafter* PSCAP) and its relation to JSRP needs some clarification. When studying PSCAP's working plans throughout the whole country, we felt that some of the activities are close to activities that could be a result of JSRP's work. Moreover, we found that the persons we interviewed at the universities and other institutes often did not know where certain measures and proclamations came from.

9.4.3 Existing Law Faculties and Law Departments

A brief description of some of the law schools follows.

Addis Ababa University, Law Faculty

The Law Faculty of the AAU is the oldest law faculty of the country. The new law faculties in the regions lean very much on the experiences of this faculty. Also, the majority of the teaching staff of the other law faculties was educated at AAU.

The Law Faculty of the AAU seems to be a traditional institute. The Dean of the Faculty did not have enough time to share information and program reform intentions at the Faculty when we visited the Faculty. In terms of “competition”, the Law Faculty of the AAU is far ahead of the other law schools. This is an important matter because the new universities and law schools need good relations with experienced universities. In our view it is important that AAU Faculty participate in the rapid development of projects for the new law schools.

The dean of the AAU Faculty is very dissatisfied by the forced appointments of Indian teachers. In his opinion they lack competence since they haven't any proper knowledge of the continental law system. Some other teachers were also concerned by the fact that the law schools were so heavily dependent on “guest-lecturers”.

Because the AAU Faculty, although strong, is no longer the only faculty in the country, it must take on the challenge of critically analysing its existing old and traditional curricula, building greater capacity, and creating a more efficient administration and organisation of the faculty. In this regard it will be important to strengthen the new regional law faculties in order to get “fair competition” between the faculties. Competition forces faculties to be open-minded and to continuously strive for improvement. It should therefore be encouraged.

Law Department of the Bahir Dar University

The Bahir Dar University has no law faculty but a Law Department as part of the Faculty of Business & Economics. The staff of the Law Department is young and rather inexperienced. The teachers are open and enthusiastic but they lack facilities, experience, competence and strong power to promote the interest of the Law Department (as they told us). They stressed the importance of becoming an independent law faculty. Because of the inexperience of the staff, the organisational structure of the Law Department

of the Bahir Dar University seems to need support to build a stronger leadership. The Bahir Dar Law Department needs an administrative development scheme to improve its leadership. Along with that it also needs support to improve facilities like books, office space, teaching and other staff.

It is in the interest of offering good legal education in the regions that the Bahir Dar Law Department eventually becomes a law faculty. Its current position as a department, rather than a faculty impedes its ability to promote the interests of the law school.

While the strategic plan from Bahir Dar Law Department says on page 5 that there are already 12 computers, 3 printers and 2 photocopy machines in place, this must be an error since when we visited they were not visible and the current physical space could not accommodate such equipment.

Law Faculty of the Jimma University

The Law Faculty of Jimma, like the Law Department of the Bahir Dar University, lacks almost all necessary facilities. Most severe is probably the lack of textbooks and staff. There are three full-time staff members at the Faculty - two expatriates and one local. The local staff will be on study leave for two years starting from September 2003. One of the expatriate staff was leaving during the time of our visit. The Faculty has recruited about three more local staff and was expecting them to report when we visited. However, the co-ordinator of the Faculty was very doubtful that all or even the majority of them would like to take up their teaching positions. This is because of the lack of incentives adequate enough to attract people from Addis Ababa or elsewhere. Another very regrettable element is that the Faculty does not have a library at all, and not a single general reference book, let alone teaching materials. The co-ordinator told us that they were expecting about 80 LL B students for the September 2003 session. It is difficult to imagine what this would mean in those circumstances.

Law Department of the Debub University in Awasa

Established in 2000, Debub University has a Department of Law within the Faculty of Social Sciences. A young LL B holder leads the Department. The Department has been offering a diploma program and in the current academic year will commence a LL B program. The future idea is to phase out the diploma program, focus on the LL B and establish a law faculty. They plan to admit about 120 students to the new LL B program. There is a high student dropout rate, particularly among female students in the existing diploma program. Though the first curriculum was taken from the Addis

Ababa University Law Faculty, it has been revised in consultation with other universities. In addition to the regular program, the Law Department has also started an LL B degree continuing education program in the same academic year as the regular LL B. program has started. The Law Department, vis-à-vis Debub University and the Southern Nation, Nationalities and People of the Supreme Court, has concluded a memorandum of understanding to work in co-ordination to give practice oriented legal education and to support sustainable justice system reform.

There is a serious shortage of qualified staff in the department and an attempt is being made to recruit additional staff locally and abroad. At present, all local staff has an LL B and expatriates hold a LL M. There is no PhD holder on staff. There are serious problems in terms of classrooms, offices for staff, student accommodation, teaching materials and textbooks and facilities in general. There is poor communication capacity (ICT, lack of computers and networking). No formal links with other universities have been created yet.

Law Faculty of University of Mekele

At Mekele University Law Faculty academic programs are based on a traditional LL B degree and diploma standards. It has been difficult to determine the number of students. This study took place just before the fall semester began and information on the number of expected students was still uncertain. Nonetheless it is clear that the Faculty has to face an increase in enrolment which will create difficulties in meeting student needs with adequate staff and facilities.

In addition to the regular program and in co-operation with governmental, non-governmental, and private organisations, the Law Faculty will design and implement continuing education programs - The Continuing Education Programs (*hereinafter* CEP) - including specialised training courses, aimed at improving the knowledge and skills of people working in law-related jobs.

Mekele University - within the concept of Practical Attachment (*hereinafter* PA) - has gained a great deal of experience by assigning students in their last year to work places to learn the practical aspects of law in their field. To the extent possible, students will be able to use the choice of PA site as a way to specialise their education. Many are likely to choose courts because many students want to become judges.

Environmental degradation is a serious problem in Tigray. Consequently, the Law Faculty deals with the legal sides of land, water and environmental use, through courses and also research.

Mekele University actively promotes the increased participation of women in academic programs. Good relations have been established with the Women's Association of Tigray (*hereinafter* WAT) that will support the implementation of the new family law in Tigray.

Mekele Law Faculty seems to be a law school with a lot of activities and support. The administration of teaching materials and the students' records seem very well organised. However, the shortages of textbooks and materials make it difficult for even a well functioning university to maintain high standards. Increases in student enrolment might aggravate this situation.

10

Observations and Major Shortcomings

10.1 Observations and Major Shortcomings Related to the Legislative Procedure (Law Making and Law Revision)

10.1.1 The law making procedure; diagnosis of the current situation

Almost all of the Ethiopian authorities and experts we met expressed a concern that the current procedure for drafting, adoption, and implementation of laws and other legal texts of a legislative or regulatory nature were leading to a fragmentation of the legal system, a severe lack of coherence between legal norms, and that the conflict of legal provisions and norms was creating a severe uncertainty. It has become very difficult, if not impossible in some cases to assess what the applicable legal norms are. Current procedures for legal work in Government and Parliament have led to a major decline in the quality of drafting.

These difficulties are being compounded by a well-known and well-described weakness in the current legal system, that is, the absence of consolidation and codification of laws and the lack of publication of thereof. It is very difficult to assess the precise stand of the law on a broad range of issues. This most serious weakness makes it impossible to ensure a proper information flow between all the actors of the justice system who have to accomplish their duties in accordance with applicable laws and regulations. To further compound the problem, international treaties ratified by Ethiopia are not published, their consistency with domestic legal norms is not checked systematically, and nobody knows for sure if they are indeed an integral “part of the law of the land”, as stated by article 9 (4) of the Constitution.

The lack of transparency and clarity about which legal norm should be applied by a court, and which a claimant or defendant could refer to, is of course a major impediment to the functioning of the legal system. It makes it simply impossible to move towards a society where relations between the

Federal Government, the Regional States, public authorities and entities, and private citizens or companies, are based on the rule of law. There is an absence of jurisprudence and case law in all legal areas, including civil and criminal cases whatsoever. Consequently, it is impossible to know about precedents, and no decision of a court can therefore set a precedent for another case. Judgements and sentences are not published and they do not become subject to academic and legal commentaries. In 2002, a private initiative published for the first time an edition of all new legislation adopted in 2002 and it included some Federal Supreme Court decisions dealing with civil and family law issues. The edition was limited to one thousand copies and it is unknown whether this initiative will be continued.

One should emphasise that all of the above constitute severe shortcomings and major stumbling blocks on the road of development and progress, and of course on the road towards a modern, market-oriented economy. These shortcomings should be addressed as urgently as possible by the authorities.

10.1.2 The initiative to legislation

It is implicit in the concept of democracy that the initiative in law making should rest with the elected Parliament, which is also the case in Ethiopia. At the same time it is widely recognised that this right is shared with the Executive. In most countries of the world the government has the right to initiate bills whether its Ministers are Members of Parliament or not. Actually, the executive branch of the state plays an important role in the initiation of legislation and that role is usually more important in this regard than that of Parliament itself.

Focusing on the Ethiopian rules in this respect, the provisions laid down in paragraph 2 of article 4 of the *House of Peoples' Representatives Legislative Procedure, Committees Structure and Working Proclamation No. 271/2002* give rise to some questions.

In the first place, the wording “executive bodies” and “other governmental institutions accountable to the House” is rather vague. Do bodies or institutions that are subordinate to the Council of Ministers have the possibility to submit a legislative proposal to the House without having it submitted for approval to the Council of Ministers first? Since the highest executive powers on the federal level are vested in the Prime Minister and in the Council of Ministers (article 72 (1) of the Constitution), legislative proposals originating from executive bodies should go to the House through the Council of Ministers in order to guarantee the coherence of

governmental policy. The existing possibility to bypass the Council of Ministers flies in the face of all other procedures aiming at improving the quality of the Executive's work.

In the second place, it is rather uncommon to give the right to initiate legislation to judicial bodies. Only in some former socialist states, such as Bulgaria, China, Cuba and the USSR, was this right given to the Supreme Court and/or the Chief Public Prosecutor. Article 4 (2) (d), speaks about "the Judiciary". This term is rather indefinite. Is it each and every court in the country that has the right to initiate a draft law? But apart from that, in view of the separation of powers and the constitutional requirement that the Judiciary shall execute its tasks independently and impartially, the right of legislative initiative should not be given to this branch of state power. The Judiciary has of course the right to consult and to advise the House and the Council of Ministers with respect to legislative matters, but drafting legislation and submitting it to the House must be considered as an encroachment on the powers of the legislative and executive branches of the State.

We strongly advise that this provision be revised. Besides the Members of Parliament, the (deputy) Speaker and the Committees of the House, the right to initiate new laws should be given to the Council of Ministers alone.

Furthermore, we read in article 57 of the *Consolidation of the House of the Federation and Definition of its Powers and Responsibilities Proclamation No. 251/2001* that the House of the Federation has the power to submit bills to the House of Peoples' Representatives on matters within its jurisdiction. In our opinion, this provision is unconstitutional, since it is the Constitution itself, in article 68, that has laid down the powers and functions of the House of the Federation. The Constitution has not given the House of the Federation the power to submit draft laws. An ordinary law cannot give other powers and functions to the House of the Federation in addition to those laid down in article 68 of the Constitution. An amendment to the Constitution is needed to grant new powers and functions to the House of the Federation, *in casu* the right to submit legislative proposals to the House of Peoples' Representatives.

One should bear in mind that the right to initiate draft laws is a formal right that implies the obligation of the House to consider and to discuss the draft according to the procedure laid down in *Proclamation No. 271/2002*. This right should be distinguished from the possibility, that each and everyone has

under the right to petition (article 30 (1) of the Constitution), to send a draft law to the House. This possibility does however not entail a duty for the House to consider and discuss it. Therefore it is necessary that the draft in question is being presented and defended by one of the initiators designated by the Constitution. It is then considered his (or their) proposal and not of the person(s) or group(s) that sent it. In the meantime, it may be advisable that Standing Committees informally consider drafts originating from, for example, lobby groups and other non-parliamentary groups, and present them to the House as their initiative when they think the drafts deserve discussion by the House in accordance with the procedural rules. This is possible within the framework of the present rules.

10.1.3 Observations and major problems relating to the legislative work of the Council of Ministers and the Ministries

a. The position of the Minister of Justice, the sector Ministers and the Minister of Cabinet Affairs

The provisions relating to law making and the involvement therein of the Council of Ministers and the individual Ministers do not call for particular comments except for one issue. This issue concerns the position of the Minister of Justice *vis-à-vis* the sector Ministers and the Minister of Cabinet Affairs. For the rest, these provisions do not contain serious impediments to a proper functioning of the law-making process as a whole. Difficulties with managing this process properly and creating a functioning legal system do not seem to stem directly from these provisions.

Until now, co-ordination and collaboration between the Ministry of Justice and sector ministries, and the Council of Ministers as a whole have not been satisfactory. It is striking to hear from officials of the Ministry of Justice themselves that they do not have regular working relations with their counterparts in the sector ministries. They recognise that they do not even know them, and *vice-versa*. In the Ministry of Finance too, we heard that there were no contacts with the law making staff of the Ministry of Justice. This mutual ignorance is severely detrimental to good legal drafting and efficient law making. It also reflects negatively on the diminished role of the Ministry of Justice among its peers.

This institutional behaviour does not result from legal provisions in particular. It might result from longstanding working habits in the Ethiopian bureaucracy, a heritage from the Marxist period. It is the hallmark of such bureaucratic systems that they are organised strictly on a vertical basis, with

no horizontal relations to other parts of the bureaucracy. In other words: the work of each office is always kept a secret, which needs to be safeguarded from other offices, even within the same ministry. This is of course highly detrimental to overall efficiency. This lack of co-operation results also from living habits developed by the bureaucracy, feeding on the strengths or weaknesses of individual Ministers and ministries.

The current difficulties result to a large extent from the fragmentation of the law-making power and processes between competing institutions subordinate to the Council of Ministers, all of them deprived of the necessary means to perform their tasks.

The above-mentioned provisions do not call for a single competent body of legal and professional experts to review all draft laws. Such a body, if it existed, could have had a very broad and complete overview of the legal system and could assess how draft bills submitted by ministries fit or do not fit in with the overall legal system, whether they generate distortions, conflicts of laws, unconstitutionality, or conflict of competencies between the various governmental institutions. It is the need for such a central body that has led the Council of Ministers to devise a new procedure centred on the Minister of Cabinet Affairs. The government is obviously taking steps to tackle the existing weaknesses, through its decision of October 2003. On the one hand, we think these new procedures have the potential to effectively address many issues in the lawmaking and drafting process. They do impose a strict discipline on ministries to improve their regulatory work. On the other hand however, the new procedures maintain and possibly aggravate the fragmentation of human and financial resources.

Indeed, the manual indicates that a Legal Affairs Committee will assist the Minister of Cabinet Affairs. It seems this Legal Affairs Committee will carry out the function of the chief legal adviser to the Council of Ministers on draft bills prepared by ministries. This of course shows that the Council of Ministers has decided to tie up the loose ends in the drafts prepared until now by the various ministries. The procedure is however centred on the new Minister of Cabinet Affairs, assisted by a team of legal experts (see above “the legal affairs consultative team shall ensure that the drafts fulfil all the requirements”). This Minister will be in charge of recruiting and directing a group of legal experts who would take over the review of the drafts. This would not be any longer an assignment of the Ministry of Justice, but for a set of exceptions listed in the Decision. The Ministry of Justice would focus more on all the other aspects of the legal system, including - but not only -

consolidation, codification, reform of the court system, etc. We were told that similar procedures to the ones introduced by the manual on working procedures of the Council of Ministers existed under the Derg regime. We cannot assess if the procedures were really similar. What is in fact probably meant is that the manual re-centralises the process of preparation of bills and regulations around the Council of Ministers, which is effectively the case. We understand that the new manual and procedures have been devised with the input of the Minister of Justice (this might indicate that he might not be interested in his Ministry taking the leading role in reviewing the drafts prepared by other ministries).

We understand that the Council of Ministers has adopted these new procedures with the firm intention of addressing current weaknesses. But unfortunately, the new procedure will perpetuate the division of resources between too many actors. The human resources allocated to overseeing the drafting of sector ministries remain divided between the Ministry of Cabinet Affairs and the Ministry of Justice (whose role is greatly diminished), instead of being centralised in one single administrative body.

Moreover, it is doubtful whether this new procedure is entirely in conformity with article 23 of *Proclamation No. 4/1995* which states that the Ministry of Justice shall be chief advisor to the Federal Government on matters of law, assist in the preparation of draft laws when so requested by Federal Government organs and Regional Governments; carry out the codification and consolidation of laws, collect laws of Regional Governments and consolidate them as necessary. The Decision of the Council of Ministers has to be in conformity with *Proclamation No. 4/1995*. In any case, the Decision should be executed in a way that does justice to the role of the Minister of Justice as been given in *Proclamation No. 4/1995*.

Ideally, draft bills originating from any Ministry or any public body under their control should be first reviewed in great detail by a set of competent lawyers organised in one department in the Ministry of Justice. This is common practice in numerous countries (e.g. France, Germany and the Netherlands). Legal experts in these departments review thoroughly all elements relating to the particular draft (rationale, clarity of the objectives, internal coherence of the draft, legality, constitutionality, efficiency, and process of implementation by the relevant public body). When necessary, these experts enter into an in-depth dialogue with the experts of the sector ministries involved in the drafting of the bill or regulation. They have the right to even strongly criticise any weaknesses of a legal or structural nature

they identify in the draft. They can express their critical views on any point, including the inefficiency of the law or the regulation, if they think the stated objectives will not be achieved by the Ministry because of lack of implementing abilities or inadequate design of the policy. They can suggest a full or partial redrafting of the law or regulation, and their observations and reports are shared with the representatives of the relevant Ministry. The sector ministries usually take into account these constructive remarks. Accordingly, revised drafts are sent to the Council of Ministers for its approval and further transmission to the Parliament. The Parliament retains of course its own right to its own review, assessment, and amendments to the draft bill.

The rationale for this system of review is simple: draft bills of ministries are usually prepared to facilitate implementing a policy or solve specific problems in one particular field. Although the staff members involved in this type of law making are commonly lawyers by profession, they usually focus on the issues that are important for their Ministry and they often miss the overall view to ensure that the draft law they have prepared fits in with the legal system as a whole. To give an example, it rarely happens that the staff working in a technical Ministry thinks in terms of conformity with the Constitution.

The new system set by the manual of the Council of Ministers relies entirely on the ability of the new Minister of Cabinet Affairs to recruit a solid team of professional legal experts, able to rewrite draft bills and ensuring that clean drafts only are being submitted to the Council of Ministers, and further to the Parliament. It remains to be seen if the new Minister will succeed with this task, and how long it will take. We can only hope that the difficulties, which made it impossible for the Ministry of Justice to constitute a strong team of legal experts and drafters, will not repeat themselves with the new Ministry of Cabinet Affairs.

We strongly feel that the technical assistance of the Ministry of Justice should be compulsory at all stages of the drafting, before drafts are being sent by the sector ministries to the Ministry of Cabinet Affairs. The role of the Minister of Justice as defined in *Proclamation No. 4/1995* has to be maintained.

Before passing final judgement, one will have to wait for the new procedure to receive full implementation prior to making new recommendations to the Council of Ministers. It would not be realistic to suggest that the Council of

Ministers change a procedure adopted only months ago. Despite a few uncertain points in the new procedure, we acknowledge that it aims at tying up many loose ends in the drafting process in sector ministries and the review of their compliance to policy objectives and legal norms. It has therefore the potential to lead to an improved situation in the short and medium terms. But the strategy rests with the ability of the Ministry of Cabinet Affairs to constitute a strong team of legal experts and their own ability to work in a good and close co-ordination with the Ministry of Justice and the sector ministries.

b. Unclear role and place of the Justice and Legal System Research Institute

The weaknesses of the Ministry of Justice in the past led to the creation of the Justice and Legal System Research Institute (*hereinafter* the Institute). We have been told that some of the reasons leading to a diminution of the role of the Ministry of Justice were of a political nature. This Ministry had played a negative role during the period of the Derg regime. Furthermore, the Council of Ministers wanted to create a flexible tool circumventing the constraints of the law on the civil service, to attract senior experts. While we cannot verify this information, we have no reason whatsoever to believe that the government has been working towards weakening the role of the Ministry of Justice.

We understand that the Institute has played a very important role in drafting new Codes and Laws, and in fact took over work that the Ministry of Justice could not or did not want to conduct. In this regard, one should stress that the Institute has achieved a lot as regards the improvement of the existing legal instruments. Unfortunately, today, it is not clear what the future role of this Institute will be and how it can contribute overall to better lawmaking. What remains, is a fragmentation of legal competencies within the executive branch, and the diversion of a significant amount of human and financial resources from the Ministry of Justice. The competition between the two institutions has however also led to the duplication of tasks and work in some cases.

What must be prevented are a fragmentation of legal competencies within the executive branch, and the diversion of a significant amount of human and financial resources from the Ministry of Justice. It is the legal duty of the Ministry of Justice to consolidate laws of the country and to proceed with their codification. So, the future role of the Institute should be considered and it should be thought about how it can contribute overall to better lawmaking.

We would like to suggest that the authorities give some consideration to joining the Institute's resources to those of the Ministry of Justice. Members of the Addis Ababa Law Faculty could also be brought in, as this task requires the energy, skills, experience and powers of many stakeholders for this essential purpose. But they need to be harnessed under one single authority.

It has been suggested to us that after the completion of its law making work the Institute will become a justice oriented "think tank", which will focus on problems in the next five to fifteen years. The Ministry of Justice would then focus on operational issues. In our view, if this were to happen and the Institute became a think tank focussed upon justice related problems, it would be best placed under the authority of the Minister of Justice. If the future task of the Institute is going to have a broader strategic scope, it might be placed under the authority of the Prime Minister.

Article 5 (1) (f) of *Proclamation No. 256/2001* on the reorganisation of the executive organs of the Republic of Ethiopia, places the Institute under the office for the co-ordination of Capacity Building. It might be that the Institute could indeed serve as a legal advisor to this Ministry. But in the end, we think the Institute belongs in fact more to the Ministry of Justice, and all resources should be pulled under that single roof.

c. Lack of a consultative and participatory approach in the drafting process

Let us emphasise first that none of the above quoted proclamations and provisions contain dispositions allowing for a participative approach with relevant stakeholders in the society. As a direct result, and also the result of bureaucratic habits inherited from the past, draft laws do not incorporate views, observations, and suggestions from these stakeholders. The new manual introduces the publication of "green and white papers," in a move to address this issue. It also creates a possibility for the initiating Minister to conduct a public debate with stakeholders or the public at large before the draft is submitted to the Council of Ministers.

Currently, but for a few limited exceptions, the only possibility for the public or relevant stakeholders to express their views is during the public hearings organised by the House before a draft law is being submitted to the plenary session of the House for final adoption. This lack of a pre-drafting consultation process by the ministries is drawing heavy criticism from all sides, including from governmental officials themselves. Officials believe that a number of bills could have been better drafted, and would be easier to

implement today if a participative approach had taken place. It has been argued that the lack of preliminary consultation with the relevant stakeholders leads to a lack of comprehension and even unnecessary conflicts between stakeholders and governmental officials working on draft legislation, creating distrust and disappointment.

The new manual on the working procedures of the Council of Ministries of October 2003 takes a step forward to force sector ministries to engage into a dialogue with interested stakeholders. It is not clear from the English translation how far the consultation process should go, and in fact will go. It might be that it will remain limited, because the manual institutes tight controls on how Ministers should proceed before going public on issues within their competence. So, it seems there will still be a tight political control from the Prime Minister and the Council of Ministers on any communication and consultation exercise. But at least, the subject has been mentioned, and a procedure for consultation is provided for. As said, article 42 (8) provides more specifically that “the initiating Minister may conduct public debate and discussion on the draft with stakeholders or with the public at large before the draft is submitted to the Council.” This constitutes an important first step.

We think that the Council of Ministers should consider encouraging the sector Ministers to organise this dialogue regularly and openly. A wider consultative approach would give the Council of Ministers, that is, the relevant Ministry, with the opportunity to present their policies and plans for the future to these stakeholders ahead of the legislative process itself. It would of course enable the Ministry to obtain feedback from these groups and build upon their own analysis to improve the proposed bills. By providing a “fair hearing of their case” to the stakeholders, the Council of Ministers would gain great benefits.

Many approaches could be devised for this purpose. But a simple approach could be envisaged: the creation of a working group consisting of Ministry officials and a sufficient number of representatives of the relevant stakeholders for the purpose of drafting a particular bill. Lawyers from the private sector could also be invited, as their expertise could be of help in defining the best possible drafting for the bill, and also the relevance of the project. Weekly or bi-monthly working meetings could take place until the working group and the Ministry’s officials are satisfied that the draft law is satisfactory and can be submitted for further legal review to the Ministry of Cabinet Affairs (in line with provisions of the new manual). If the Ministry

of Cabinet Affairs comes up with objections of a legal nature, and proposes an alternative drafting, then these proposals should be presented to the working group to gather their final view. The Ministry of Cabinet Affairs would then finalise the draft and submit it to the Council of Ministers with a report describing the consultative process and a detailed summary of the views expressed by the stakeholders.

It is important to note that this proposal does not aim at dispossessing the Council of Ministers and the Ministers and their staff of their prerogatives in defining policies, bills and regulations. In the end, it will always be the personal and political responsibility of the individual Minister and the Council of Ministers in its entirety to decide which course of action to take (the manual sets this principle in very clear terms). But by allowing a consultative approach along the course of the drafting, individual Ministers, and the Council of Ministers as a whole would better present their policies to stakeholders, incorporate whatever views can or should be incorporated, and gain in transparency and credibility.

10.1.4 Observations and problems relating to the lawmaking process in the House

Only a few outlines concerning the organisation and the functioning of the House are to be found in the Constitution itself. Article 59 (2) stipulates that the House shall adopt rules and procedures regarding the organisation of the work and of its legislative process. These rules and procedures have been laid down in:

- *House of Peoples' Representatives Regulation of Working Meeting Procedure No. 1/1995.*
- *House of Peoples' Representatives Legislative Procedure, Committees Structure and Working Proclamation No. 271/2002.*

10.1.4.1 Provisions relating to the legislative work of the House

Proclamation No. 271/2002 deals partly with the same issues that have been laid down in *Regulation No. 1/1995*. The status of *Regulation 1/1995* is unclear. Article 34 of *Proclamation No. 271/2002* does not provide explicitly for its repeal. There, it has only been laid down that the *House of Peoples' Representatives Legislative Procedure Proclamation No. 14/1995*¹⁵ (Article 34 (1)) and the *House of Peoples' Representatives Legislative Procedure Proclamation No. 33/1996* (Article 34 (2)) have been repealed. From Article

¹⁵ In the Official Gazette it has been printed that Proclamation No. 14/1996 has been repealed. We assume that this is a printer's error and that Proclamation No. 14/1995 has actually been repealed.

34 (3), it can be concluded that the provisions in *Regulation 1/1995* that run counter to those laid down in *Proclamation No. 271/2002*, are null and void.

In many proclamations we read the rather general provision that laws contrary to the proclamation in question are thereby repealed. Such a general provision will undoubtedly lead to legal uncertainty.

We list here only the most important provisions relating to the law making process in the House. We start with *Proclamation No. 271/2002 on the House legislative procedure* being the more important of the two in this connection:

Article 4 (2): Lists the bodies which may initiate and submit draft bills to the House.

Article 4 (6): Any draft bill shall be submitted to the House through the Speaker.

Article 4 (7): The House shall directly receive and open discussion on a draft bill submitted to it.

Article 4 (9) (first reading): “(a) a person delegated by the Speaker shall openly read out the bill; (c) upon completion of the reading, the Speaker shall open the floor for deliberations on the spirit of the draft bill in general; (d) upon winding-up of the deliberations, the draft bill shall be referred to the concerned Standing Committee; (e) where two thirds of the members of the House decide that the House ought to directly consider the matter at its regular meeting, the matter shall not be referred to a Committee...”

Article 4 (10): “the Pertinent Committee inspecting the draft shall require at least 20 working days to submit its proposal, unless the bill to be passed is urging for an immediate enactment.”

Article 4 (11) (second reading): (a) the Standing Committee read the report on the bill with its recommendations; (b) the Speaker opens the floor for discussions on the recommendations made; (c) where the draft bill is not deliberated exhaustively it shall be re-referred to the Pertinent Committee for further review; if the deliberation is completed satisfactorily, it shall be enacted as a law.

Article 4 (12) (third reading): (a) the Committee shall read out the amended version and its final decision to the House; (b) the House shall pass the bill after a thorough discussion on the final proposal.

Article 15 (1): The House shall have the following Standing Committees:

- a) The Capacity Building Affairs Standing Committee;
- b) The Trade and Industry Affairs Standing Committee;
- c) The Rural Development Affairs Standing Committee;
- d) The Natural Resources and Environmental Protection Affairs Standing Committee;
- e) The Infrastructure Development Affairs Standing Committee;
- f) The Budget and Finance Affairs Standing Committee;
- g) The Legal and Administrative Affairs Standing Committee;
- h) The Foreign, Defence and Security Affairs Standing Committee;
- i) The Women's Affairs Standing Committee;
- j) The Information and Culture Affairs Standing Committee;
- k) The Social Affairs Standing Committee;
- l) The Pastoralists Affairs Standing Committee.

Article 15 (3): each Standing Committee has thirteen members, including the chairperson and the deputy chairperson.

Article 15 (4): a member of the House cannot be a member of more than one Standing Committee.

Article 16: (powers and functions of the Standing Committees): (1) submit recommendations and suggestions to the House on the bills referred to them.

Article 19 (general working procedures of the Standing Committees): (1) a Committee that has received a draft bill shall put the matter on its agenda and (a) give notice; (b) invite persons and bodies directly concerned with the matter; (c) arrange public opinion collecting forums and submit to the House a report consisting of its investigation, recommendations and suggestions on the matter.

Article 20 (procedures of Standing Committees): (2) members of the House and invited guests may take part in the meeting of the Standing Committee.

Article 27 (the Legal and Administrative Affairs Standing Committee): (1) its main objective is to supervise the organisation and implementation of the Judiciary and administrative working mechanisms of the Federal

Government in accordance with the Constitution as well as to study the basic problems in the sector and to submit recommendations; (2) it has the task to supervise a number of government offices, such as the Ministry of Justice, the Federal Supreme Court, the Special Prosecutor, the Ministry of Federal Affairs, the Federal Police Commission, the Federal Prison Administration and the office of the Ombudsman; (3) in connection with the bodies just mentioned, the Committee shall prepare bills and submit them to the House, check and investigate whenever deemed necessary; (4) it has the task to investigate the legal content of bills referred by the House to any Committee where deemed necessary; (8) it has the task to investigate international agreements from the legal point of view.

Proclamation 271/2002 is - remarkably enough - silent on certain matters that are important aspects of the legislative process. We refer to the right of proposing amendments and the voting procedure. Some provisions on these issues have been found in the *House of Peoples' Representatives Regulation of Working Meeting Procedure Regulation No. 1/1995*.

Article 16 (proposing amendments): (1) during discussions held on a report presented by any Committee, any member may propose amendments to the suggestions made by the Committee; however, amendment proposals may not be made by the Committee unless the House so decides by a two thirds majority; (2) discussion on amendment proposals is made subsequent to putting it in writing; (3) any member may propose an amendment to the amendment proposal already submitted; however discussion on this amendment of amendment may be initiated only where the member who first made the amendment proposal accepts the amendment of the amendment; (4) any amendment proposal is made only where the proposals are relevant to the case under consideration.

Article 20 (voting procedure): (1) the House shall pass a decision on any issue by consensus; where it has become impossible to decide a case by consensus, decision is made by majority vote; (2) the House may decide, as necessary, whether voting shall be by raising of hands or by secret ballot or by calling the name of each member; (5) the House may by majority vote hold another debate on a case which was already put to vote; however, the resolution adopted previously may be altered only by a two thirds majority vote of the members.

We would also like to draw attention to another proclamation i.e. *Proclamation No. 253/2001 on the Secretariat of the House of Peoples' Representatives*.

Article 3: Establishes the Secretariat of the House. It is only accountable to the Speaker.

Article 4: Describes its powers and duties. The Secretariat does not have any role in the drafting of laws.

Article 5 (1): Determines that the Secretariat has a head recommended by the Speaker, from among the members of the House and approved by it.

The current provisions do not entirely allow for a precise and effective lawmaking process. We consider it necessary to highlight the following issues:

a. Submittal of a draft law to the Standing Committee

First, no general provision has been laid down for a compulsory and preliminary review of the draft bills by one of the Standing Committees.

In article 4 (9) (e) of *Proclamation No. 271/2002* mentioned above, we read that a first reading is held where the spirit of the draft bill in general is being discussed and that, next, the bill is referred to the relevant Standing Committee, unless two thirds of the members of the House decides that the House ought to directly consider the matter at its regular meeting, and not to refer it to a Committee.¹⁶ On this issue we would like to make some remarks.

It can be useful to have limited presentation and discussion on the spirit and objectives of bills newly submitted to the House. It can otherwise be very dangerous if it is meant to escape the full review and in-depth analysis of the competent Standing Committee. In no case should it become a substitute for serious groundwork on the draft, or a duplication of the further work that is going to be done by the relevant Standing Committee. As the procedure works as it does now, it seems to be just a duplication of work, and possibly a waste of time.

We have been told that “short and simple” bills, such as grants, loans, economic agreements, ratification bills and technical draft laws are usually

¹⁶ We will discuss the two-thirds majority requirement in section f of this paragraph.

decided on immediately without being referred to a Standing Committee. In our opinion, such a provision could be helpful in very urgent situations. But, its use should be limited to extreme cases, for example when the security of the State is at stake. Otherwise, a great number of laws would be passed without thorough examination, certainly adding to confusion and to the lack of quality of lawmaking. Some bills may seem “short and simple”, but this does not imply that they actually are “short and simple”. Bills concerning grants or loans can have serious consequences and those consequences should certainly be studied seriously. The same can be said about ratification bills. Accession to international treaties can have all kinds of consequences for the country and for its national law. This kind of bills too should be reviewed in-depth.

b. The preparatory work of the Standing Committees

We strongly recommend that the Speaker in all cases sends a draft bill received from the Council of Ministers to the competent Standing Committee. The president of this Committee should designate a member of this Committee to prepare a fully-fledged report on the bill, and its recommendations for changes and amendments. The committee should discuss the findings of this member, and agree on changes and amendments to be made to the law. These recommendations should be made in a written report to the Speaker. This written report from the Standing Committee would then be sent to all members of the House in anticipation of the full reading, discussion, and approval of the law.

c. The public hearing

As provided for in Article 19 (1.c) of *Proclamation No. 271/2002*, the Standing Committee should arrange public opinion collecting forums and submit to the House a report of its investigation and recommendations on the matter. It seems that this article is the only provision relating to the legislative procedure of the House that introduces public hearings, designated under the term of “public opinion collecting forums”. Standing Committees are supposed to take into account the views expressed and to submit a report on their findings to the House. Because these findings’ reports and recommendations are not being published, it is not possible to assess how efficient this procedure has been up to now. In practice, it seems that these public hearings do not have the expected impact and effect, possibly because of the lack of a precise organisation. The procedure could be improved, certainly by a better organisation of the overall process; second by having the reports published with the law (and made available on the web site of the House). For example, copies of the draft law in question should be made

available to those who are present at the hearing or should be made available on the internet so that persons or groups that are interested in the matter can prepare themselves. Another possibility is to invite lobby groups and other non-governmental bodies, which are active in the area concerned, to attend the meeting and to send them the draft beforehand. They could also be asked to send their comments in writing before the hearing in order to discuss these comments during the hearing. We consider it important that, in its report, the Standing Committee gives account of what it has done with the proposals, suggestions and recommendations made during a public hearing.

d. The right to amend legislative proposals

It goes without saying that in a democracy the right to amend legislative proposals is an important right for the Members of Parliament. This is in particular the case when the draft laws come from the Executive. We consider it therefore remarkable that nothing has been said about this major right in *Proclamation No. 271/2002*.

As we have seen above, in *Proclamation No. 1/1995* only, a few provisions on this issue have been laid down. However, these provisions only speak of amendments to the report of a Standing Committee but are silent on the matter of amendments to the draft law itself that is being discussed. During our meetings, we did not receive clarity on this subject. It did not become clear to us at which stage of the legislative process a member of the House can propose an amendment, how amendments are being handled and how they are decided on. We are of the opinion that the rules on this important right should be laid down in *Proclamation No. 271/2002*. There it should be made clear that the members of the House have the right to propose an amendment to a draft law in discussion and there the procedural rules should be laid down.

e. The plenary discussions and the voting

It is of utmost importance that the second and third readings of a draft law be done article by article. Indeed, only such a detailed examination enables the members of the House to identify during the discussion, issues that could have escaped the attention of the Ministry and of the various drafters involved. As we understand it, minutes of the plenary sessions are being made but are not public. We think that it is important to make the minutes of the plenary sessions accessible to the public, for example by making them available on the web site of the House. The work of the House, the representation of the Ethiopian people, must be done in all openness and transparency.

Proclamation No. 271/2002 also remains silent on the important issue of the voting on draft laws. In this case too, we find some provisions in *Regulation No. 1/1995*. These provisions do however not serve the purpose when the voting on draft laws and amendments are concerned. Precise rules are needed then, particularly when amendments have been proposed. Such rules should be laid down in *Proclamation No. 271/2002*. If voting is necessary, a certain order must be taken into account: first, the voting on the individual articles of the draft and finally on the draft in its entirety. When amendments to a certain article have been proposed, the order of voting is as follows: amendment to an amendment, if there is one, amendment and finally the article itself.

f. Majority requirements

According to Article 59 (1), of the Constitution, all decisions of the House shall be made by a majority vote of the members present and voting, unless otherwise provided in the Constitution. This means that a simple majority is the rule and that only the Constitution itself can require other majority rules for the adoption of a proposal.¹⁷ The Constitution does not give room to the ordinary lawmaker to require stricter majority rules. The two-thirds majority rules laid down in Articles 20 (5), and 27 of *Regulation No 1/1995* and in Article 4 (9)(e), of *Proclamation No. 271/2002* are at variance with article 59 (1) of the Constitution and must therefore be considered unconstitutional. These articles, and possibly other ones, should be revised as soon as possible.

g. The accessibility for the public to the meetings of the House

The plenary debates in the House should be open to the public at large, as is the case in other democratic countries. This is not the case at present. In the meeting hall where the plenary meetings take place there is a gallery with 250 seats for diplomats, journalists and other invited people. If an individual not belonging to these categories of persons wants to be present at a plenary meeting of the House, s/he has to ask permission. In our opinion this restricted accessibility of the plenary sessions to the public at large is not in conformity with the constitutional requirement that the meetings of the House shall be public (Article 58 (5) of the Constitution). This situation should be corrected as early as possible.

¹⁷ See for example article 105 of the Constitution where other majority requirements have been laid down for amending the Constitution.

b. The Secretariat of the House

The House, its Committees and Members are supported by a Secretariat, which is headed by a secretary-general. The rules on this Secretariat have been laid down in the *Establishment of the House of Peoples' Representatives Proclamation No. 253/2001*, mentioned above. The secretariat has amongst others the task to prepare all documents for the members and the Standing Committees and to take care of the minutes, as well to deal with all kinds of services for the House, its Members and the Standing Committees.

At present, the Secretariat has 160 full-time equivalents, but only 48 posts have actually been filled up. The Secretariat has an enormous personnel problem and there are certainly not enough skilled people. The Secretariat comprises seven departments. One of these, the research centre, is the basic information centre for the House and its Members. This centre in particular has personnel problems. It consists of three sub-departments, including the legal and law-drafting department. The centre has fourteen staff members of which only one is a lawyer¹⁸. The Secretariat is ill equipped and not able to review the drafting process and to assist the Members of the House and the Standing Committees.

A proper lawmaking process in the House implies that the Secretariat of the House is equipped with an office of senior legal experts whose mission is to provide adequate technical assistance to the House, its Members and the Standing Committees. This is all the more important since the House has only a few experienced lawyers in its ranks and, for example only two of the present members of the Legal and Administrative Affairs Standing Committee are lawyers by profession.

10.1.5 Lack of integration of International Treaties into national law

Here we summarise some provisions that are of importance for the issue relating to the integration of international treaties into domestic law.

The Constitution

Article 9 (4): All international agreements ratified by Ethiopia are an integral part of the law of the land.

Article 51 (8): The government shall formulate and implement foreign policy; it shall negotiate and ratify international agreements.

¹⁸ Furthermore, the Secretariat consists of the public relations which is neither fully equipped with skilled personnel nor supportive departments, such as the financial department, the administrative department, the general services department and the manpower section.

Article 55 (12): The House shall ratify international agreements concluded by the executive.

Proclamation 25/1988

This Proclamation, which provides for treaty-making procedures, dates back to the Derg period, and has not been updated to take account of the new constitutional organs. The power to negotiate and conclude treaties was in the hands of the President of the Republic, who could delegate this power into the hands of the Prime Minister and the Ministry of Foreign Affairs. The Proclamation makes also a distinction between treaties requiring ratification by the defunct Council of State (basic political and economic treaties), and those that do not require ratification (mutual co-operation of a technical nature falling within the competence of government bodies). Article 10 of this Proclamation disposes that the Ministry of Foreign Affairs shall be responsible for the follow-up of the execution of treaties other than those concerning the execution of economic treaties, for which implementation and follow-up lies in the hands of the National Committee for Foreign Economic Relations.

In our opinion, the law on this matter should be brought into conformity with the Constitution as soon as possible.

Although the international agreements ratified by Ethiopia are an integral part of the law of the land, it appears that they are not published, nor made available outside the concerned ministries. The vast majority of them, if not all of them, are not translated into the official language of the country, Amharic. Only the instruments of ratification are being published in the *Negarit Gazeta*.

It is a well-established principle of law that any legal instrument, including international agreements, must be published first before it can enter into force and can be implemented. Any international instrument that has not been published cannot enter into force. Publication of international agreements is therefore necessary to give them binding force in domestic law.

Furthermore, no efforts have been made in the past to incorporate the provisions and guiding principles of these treaties into the Codes and other laws of the country. This lack of awareness and efforts on the part of the authorities over the past 40 years has created an enormous legal gap between the effective law in the country and the international commitments undersigned by the authorities.

The lack of implementation, translation and publication makes it impossible for officials of other ministries, judges, lawyers, economic agents, and even members of the House and their staff to know the legal norms resulting precisely from these international commitments, and how current legal norms and practices should be amended in order to be in conformity with these commitments. Numerous conflicts of law are bound to result from this lack of transposition and publication.

De facto, these agreements have not been implemented in the country. One example, among numerous ones, concerns the lack of implementation of international treaties into the Penal Code and the Criminal Procedure Code. Various experts have worked at length on this subject. But, whereas a lot of international instruments were approved, signed and ratified during the last 40 years, very few changes were brought by the existing Criminal Procedure Code (1961) and the Penal Code (1957). The international instruments were not inserted into these Codes upon ratification. The ongoing rewriting of the codes is a unique opportunity to fill this gap, and incorporate the principles contained in these international instruments. Again, proposals are being submitted to the authorities by a group of experts on this subject in particular on how to implement the international agreements into the Codes, and how to create a table of contents to ease the drafter's work.

The new manual of the Council of Ministers shows that the authorities have decided to tackle this issue. Article 46 (1) of the manual provides for Ministers to “express that the matter he is proposing conforms to the Constitution, the principle of legality, and international treaties and obligations”. Unfortunately, the new manual is not explicit on how ministries should work together with the Ministry of Foreign Affairs and the Ministry of Justice to ensure that this objective will be indeed achieved.

10.1.6 Observations relating to the cancellation of past proclamations

It is imperative that the drafters of laws and other documents do list precisely all provisions of proclamations (or regulations) that are being annulled or amended by the new law (or regulation). The use of blanket provisions in new laws and regulations to repeal past laws and provisions, instead of the precise and explicit listing of the provisions cancelled, or amended, is highly unsatisfactory. It adds further uncertainty as to which provisions and procedures are really applicable or not. We would like to strongly recommend that drafters should be instructed to list precisely which provisions of prior proclamations or regulations are being cancelled by the new proclamation or regulation. A blanket provision can still be used at the end of the law or regulation, but only after the precise list has been done. It

cannot, and should not, be a substitute for the precise list of provisions cancelled.

10.1.7 Observations on the lack of consolidation, lack of codification, lack of publication, and the difficulties to assess precisely the stand of the law

Under *Proclamation No. 4/1995* the Ministry of Justice has an obligation to consolidate the federal and regional laws of the country. Consolidation of laws is simply a systematic presentation of the texts of all laws to provide a useful source and reference to the existing laws. Laws have been consolidated as of September 10, 1969, but the effort has not been kept up and the practice has been discontinued in the last thirty-five years. The lack of consolidated laws and practical and comprehensive tables of contents makes the practice of law extremely difficult. The lack of permanent consolidation, codification when so requested, lack of publication of legal documents and of the case law, is a most serious issue. As already mentioned earlier, officials in the ministries and judges do not know what the applicable law is. “Grey literature” is said to be circulated between services, but it is not available to outsiders, including other governmental officials.

A consolidation project started two years ago and is about to be finished. The Ministry of Justice will probably publish these consolidations as early as possible.

10.1.8 Overall issue of lack of publication of laws and other documents

There is a general complaint that laws passed by the House and judgements made by courts, are not published, or at least not widely distributed and made available. This creates a serious shortage of legal documentation not only in the Regional States, but also in Addis Ababa, where officials themselves are often deprived of legal instruments needed for their work. Also, the House does not publish any of the preparatory documents relating to the adoption of a law. We discussed this particular point above.

The various conversations held with the officials we have met with indicate that the issue is not one of technical capacity of the printing house itself, or of lack of organisation on their part. We would make the following observations.

It is not an issue *per se* of the Federal Negarit Gazeta. A government-printing house prints the Gazeta, under the supervision of the secretariat of the House. This printing house has the technical possibility to print more copies.

According to some sources, the *Gazeta* is in fact not receiving precise guidance from the secretariat of the House on how many copies to print and how to make them available to the ministries and the courts.

The issue of circulation seems to be a matter for the ministries and other government bodies themselves. They are supposed to buy a sufficient number of copies for their staff, but they do not do it. The *Gazeta* is indeed sold to cover costs, and it is not made available without charge. The Ministry of Justice is supposed to buy a sufficient number of the *Gazeta* and make them available to the courts. But this is not done, most probably because of cost reasons. Also, it seems that nobody is addressing the issue of making the *Gazeta* available in sufficient numbers to the administrations in the Regional States. *Negarit Gazeta* and the Ministry of Justice should both devise a subscription system in order to determine the precise number of copies to be printed and circulated.

The publication of judgements of the courts is an issue of a different nature. There are no financial resources available to set in place a system of publication of these decisions.

These issues have been persisting for a long time, and will continue to do so. Again, there does not seem to be a quick fix because of the financial costs involved. Alternative approaches are needed. Two avenues should be envisaged: going the electronic route first and granting the right for private companies to publish laws and court decisions.

The electronic route: To address the issue of circulation, the House is setting up a database with the laws passed in the past five years. As far as we understood, this database should be accessible on the internet site of the House. This would of course be a major step into the right direction. Yet, the internet cannot be the practical solution in the short term because of the severe lack of telecommunication infrastructure throughout the country, including Addis Ababa. But it is most probable that the long-term solution to the issue of access to the *Negarit Gazeta* lays in electronic databases and in easy access to them.

The authorities are considering taking this route of electronic data management. The Ministry of Justice has presented in November 2003 a proposal to establish a National Justice Information Center. One of the elements of this system refers to a management system of coded laws and proclamations. It does not seem to include a specific module on the

recording of judgements of the courts, but this could probably be added to it. It seems nevertheless that a great part of this project is devoted to criminal justice. The project would preferably be divided into different modules, one of them focusing exclusively on setting up a database of consolidated laws and codes. The division into different modules, and the definition of one specific module for the creation of a database of laws and regulations would make it possible to put in place a database in a relatively short period of time, probably for reasonable costs. Delays or technical difficulties coming up for the other modules would not affect this particular module. Another module could be implemented in parallel to create a database of court judgements.

We are aware that there is a legal issue and debate about the lack of legal value of laws and other documents presented in electronic format. The paper format, that is, the relevant copy of the *Negarit Gazeta*, is deemed to be the only one that can be used for legal purposes. Nevertheless, this does not, and should not preclude the urgent need for a database that would contain all federal laws and regulations. At some point in time, similar databases should also be set up for the legislation of the Regional States. We are also fully aware that the current internet infrastructure in the country cannot support the use of the internet as a tool to provide information. But again, this should not be used as an excuse to prevent the authorities from setting up as urgently as possible the two proposed databases, possibly in partnership with private companies. Access to these databases would be made possible in the medium and long term as a result of future improvements in telecommunication infrastructures.

Granting the right to private companies to publish legal documents and laws, and collect judgements from courts: we recommend that the Council of Ministers grants a license to one or two private companies to collect, print, and sell, both in paper and in electronic format all legal documents, laws, regulations and public decisions, and provide them with the right to collect and publish judgements from courts. This would very quickly allow for the creation of extended databases accessible to the legal profession. In exchange for the license these databases could be made available for free to the ministries and to the courts. The private operator and the Ministry granting the license could agree upon a precise list of beneficiaries. This list would need to be broad to satisfy the needs of all Federal and Regional Courts in the country. But of course, a balance will need to be found to avoid putting too strong a financial stress on the licensee. Such private operators are common in various countries and they provide a fundamental service to the entire legal profession and the public bodies: cf. the All England Law Report,

the All India Reporter, the Dalloz collections in France or the Kluwer editions in the Netherlands. For example, Dalloz and Kluwer, both private publishing companies, have been publishing for decades yearly consolidations of all codes and other laws respectively in France and the Netherlands. They also publish various law journals, where decisions of various courts are collected, published, and for the most interesting ones, commented by senior academics and legal experts. Officials and judges are using these high-quality publications in their daily work.

The authorities should urgently study the possibility of setting up a licensing agreement with one of the above-mentioned companies. We recommend that the system being considered for licensing should be compatible with the Ethiopian tradition of a Code system. Otherwise, serious difficulties could arise from any non-compatible system.

10.1.9 The implementation of laws

Officials and other people do complain that laws are not being properly implemented in the country, either at the federal or regional level. These officials wonder what mechanism should be put into place to ensure full implementation. They also wonder if the legislative body, that is, respectively the House and the Regional Councils, could use proper oversight mechanisms to bring the Federal Executive or the administrations of the Regional States to their task. Some laws passed by Parliament have merely remained on paper for several years.

The issue of law implementation by Regional States is a technical and political issue at the same time. It can only be resolved with the political commitment of Regional States to implement federal laws and abide by them, under the condition that they receive sufficient financial and human resources to address this issue. There are no quick fixes or tricks that could solve this issue.

The lack of implementation of laws by federal ministries is of a different nature and is in the reach of senior policy makers. It is a matter for civil servants and senior policyholders to ensure that laws are being abided by their own agencies. The new manual on the working procedure of the Council of Ministers makes it clear that Ministers are responsible for their work to the Council. Article 3 (1) (b) provides that the Council shall have the power to evaluate and approve the annual work plan of ministries, to evaluate their performance in light of their plans and to give the necessary directives. It is now a matter of the practice that will develop to see if this

provision will be used to engage Ministers in supervising precisely the implementation of laws in their domain.

Impetus towards greater accountability could come from the House. It seems at present that is the only institution in the country, which could help make a major foray in this direction. It is equipped with all needed procedures, powers, and mandate to supervise the work of the executive agencies. It is only regrettable that the House is not making full use of its powers to exert pressure on the Ministers to that effect.

Yet, the procedures for greater control on the Ministers and their ministries do exist. Of particular interest are the following provisions of *Proclamation 271/2002*:

Article (3): States that the House shall have the following general functions: (2) call for questioning where deemed necessary; (3) investigate the operations of the Federal Government bodies.

Article (5) (examining the performance of the Federal Government bodies): (2) any member of the Federal Government shall present his reports to the Pertinent Committees; (3) the Standing Committee shall summon a public debate on the report after its own hearing. The committee shall invite pertinent bodies of the society and the mass media to attend the discussions.

These and other provisions do effectively provide the House and its Committees with the means to exert control on the Ministers and their ministries, their activities, their efficiency, and their results or lack thereof.

The perceived lack of activity of the House in its supervising function of the Government and ministerial work does not result from the procedures set forth in the proclamations themselves. It is clearly the result of political habits, and the will of the majority party not to criticise publicly the Council of Ministers or its individual members. It also results from the lack of technical, human, and financial resources within the House to conduct in-depth reviews of how ministries do implement public policies.

This situation can only be improved if the Council of Ministers, being the head of the executive branch, sends the signal to lawmakers that they should be more assertive, and that they can engage into a strong dialogue with the individual Ministers as well as with the Council of Ministers as a whole. One can certainly express the wish that the Members of the House become more

active with regard to the results achieved by the Ministers and their ministries in the implementation of public policies.

10.1.10 Lack of technical skills in drafting

The lack of technical skills in drafting seems to be a structural issue. All officials do complain about the lack of experts with strong legal education and drafting skills. Indeed, the issue of drafting clear, effective laws, in conformity with the Constitution and international treaties, and fitting well into the existing legal and administrative system will not go away for a long time. This issue is addressed more in details in the section dealing with Legal Education, including proposing the elements of basic drafting methodologies. We will therefore limit our observations to a few thoughts.

The main problems to be addressed seem to be the following ones: improve basic legal education of lawyers at the universities; provide strong legal training to lawyers recruited into the government's service; significantly improve the pay given in order to retain the best staff in the government's service, create a specific training course adapted to the local legal system; and recruit more experienced staff.

We have learned that courses in drafting were given to staff of the House in July 2003 by experts from the University of London (Mr. Koradjan). This is only a first step in the direction of strengthening legal and drafting skills for the technical staff of the House. Further courses and seminars should be continued, on a yearly basis, for staff of the ministries, in particular staff of the Ministry of Justice, and the legal staff of the future Ministry of Cabinet Affairs. But, we insist that this is only a first step, and by itself, will not be sufficient to address the issue of good drafting and preparing for good and efficient laws. Such seminars and courses can improve the basic training received in Academia, and are most useful as such. But they cannot compensate for the lack of good and experienced legal minds.

Specialised courses in consolidation and codification should also be given to the staff mentioned above. It is clear that most staff involved in the drafting process do not have guidance on how to proceed with the partial modification of Codes, the numbering of articles, the consolidation of laws, and eventually the indexing of all changes in the law for the stand-alone laws.

But above all, we would like to stress that the issue of good drafting goes far beyond the basic training provided to young or senior academics or civil servants in drafting techniques. Good drafting requires first and foremost

academics, civil servants or judges with a very good legal mind, and a long experience of justice and public administration. Young and relatively inexperienced civil servants or academics cannot be good drafters because they lack the experience and legal authority that one acquires only with years of work and solving legal difficulties.

In other countries, draft laws are being prepared or revised by senior experts, with very long and strong legal experience, and in some countries, drafters have very strong judicial experience as well. In the case of France for example, senior drafters are drawn mostly (but not exclusively) from the ranks of the administrative judges of the Supreme Court for Public Administrative and Tax Law (the Council of State), with many years of judicial and litigation experience. The idea behind this is that judges who have handled hundreds of cases and written hundreds of legal opinions and judgements have a mind well-trained to assess if a draft bill or regulation makes sense or not, what its legal and technical weaknesses are, and how it fits within the existing legal and administrative system. Drafters will also be drawn from the ranks of tenured university professors when it comes to very technical issues outside the domain of administrative law. Independent experts in technical fields will also be consulted to incorporate their analysis and opinions in the most important and difficult cases.

In the Netherlands, the most experienced senior counsels in the Legislation Directorate of the Ministry of Justice are being paid according to a salary scale that is substantially higher than that of senior policy advisers and that is on the same level as the salary scale of many directors within the ministries. This is being done in order to attract people with the required skills and to keep them. A limited number of young people with great potential are given the opportunity to follow during two years courses in the Academy for Legislation, established by the ministries, and to work in one of the legislation directorates of the ministries. They will be sure of a function as a junior lawmaker after having passed the examinations of the Academy and under the condition that they did their work satisfactorily.

10.1.11 The law making process in the Regional States

From visits to representatives of the Oromia Regional State Council, the Southern Nations Nationalities and People's Regional Council and the Amhara Regional Council we got a good impression of the legislative procedure in these Regional States and of the problems one has to deal with. It is not surprising that the legislative procedure, which has been laid down in the respective State Constitutions and laws, is more or less similar to the

procedure on the federal level. The Regional Administration usually initiates legislative proposals and submits them for approval to the Regional Council. A major difference is that the Regional Councils only convene during a very limited number of days in the year. For example, apart from possible extraordinary sessions, the Oromia Regional Council comes together twice a year for its ordinary sessions, each of them taking six days at the most. The Southern Nations Nationalities and People's Regional Council holds two ordinary seasons of two days each. Its Standing Committees meet quarterly. These circumstances constitute an extra handicap for the legislative and supervising work the Regional Councils are charged with. Also the problems the Regional Councils are confronted with are comparable with those that are encountered on the federal level. For example, everywhere there is a severe lack of skilled staff.

It is advisable that in the near future the issue of law making in the Regional States is studied in more depth and that, wherever possible, solutions for the existing problems are found.

10.1.12 Customary law, Religious and Social Courts

Given the various initiatives in this field, we will limit ourselves here to providing the summary of the main indications and opinions received from officials on this issue, and also to suggest a possible avenue for studying this issue further.

Conflicts between modern federal positive law and customary and religious law do abound. The potential for the persistence of such conflicts will remain high for the foreseeable future, more specifically with regard to the status of women, and also with regard to criminal law.

According to most officials, the current system, whereby federal law is not forcefully implemented against customary and religious law, is working well. People at the grass-root level are said to be satisfied with it, and not to require any changes. Officials and former judges we have spoken with all express the strong view that nothing should be attempted against religious or customary law at this stage. This would most probably be extremely counterproductive and fire back on the government. Customary law is indeed deeply entrenched in peoples' minds, and has been enforced for centuries. The central powers in the past never attempted to force and implement effectively central government's laws on people abiding by customary law.

This reality has been fully recognised by the Constitution, which provides the overall legal framework for its continuation. Article 34 (5) of the Constitution stipulates that the Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law. Further, Article 78 (5) provides that the House and the State Councils can establish or give official recognition to Religious and Customary Courts. Religious and Customary Courts that had state recognition and functioned prior to the adoption of the Constitution shall be organised on the basis of recognition accorded to them by the Constitution.

Those courts do represent a fundamental and irreplaceable tool for quick and affordable dispute settlement in Ethiopia. This system of Religious, Customary and Social Courts will remain the only effective tool for justice in the country for as long as the Federal Court system remains in such dire straits and disarray. Under such conditions in the “regular” Federal Court system, it is neither reasonable, nor justified, to seek a rapid submission of religious and customary law to the federal system of courts. This could only but fail.

Nevertheless, another more flexible approach could be tried: assessing in greater detail which positive aspects and norms of customary law could be accepted into positive law, and which ones should be forbidden because they violate constitutional and other legal norms (cf. resulting from international treaties), and discriminate against various groups of the population. Also, ways should be devised to enable a party aggrieved by a discriminatory decision of one Customary Court to seek appeal in front of Local Court or a Federal Court.

Such an approach could probably receive government’s support. It requires that an in-depth study of customary law be conducted by a strong team of local experts very well versed in the local languages, traditions, and dispute settlement systems in the various regions of the country. This study should present a detailed list of customary norms and practices, which should be either accepted into positive law or declared illegal.

10.2 Observations and Major Shortcomings Related to the Judicial System

The Ethiopian administration of justice has three *core* problems:

Firstly, the judicial system is neither accessible by nor responsive to the needs of the poor. The indigent and powerless simply do not see courts as an institution that serves their interests. This is the reason for seeking alternative “justice”. Secondly, serious steps to tackle corruption, abuse of power and political interference within the administration of justice have yet to be taken. Thirdly, the inadequate funding of the justice institutions aggravates most deficiencies of the administration of justice.

The *specific* problems of the Judiciary are the following: low professional competence of judges and court staff, lack of initial and continuous training of judges and staff, limited independence of judges, lack of systems for holding judges accountable for misconduct, poor systems for case management and other aspects of court management, limited access by courts to legal information, limited access of the public to court judgements and court information, little knowledge of the justice system by the general public, little access of the public to justice and, hence, very limited confidence of the general public in courts and other institutions of the administration of justice.

We observed several major shortcomings and problems in the judicial system.

10.2.1 Independence of the Judiciary

a. From an institutional perspective

It must be a matter of constant concern that the public perception of the independence of the Judiciary in Ethiopia is very low. While we were not able to conduct a random sample survey on public perception of the Judiciary, we did discuss the issue with all persons who we met with while in Ethiopia. From our discussions and our review of materials, including assessment reports of Ethiopia, and our own observations while in the country, we found that generally, people have a low perception of the judicial independence.

The Netherlands, like in some other countries in the world, has developed sound ways to measure public perception. Every year, the National Bureau of Statistics executes an enquiry about the public perception of the

independence of the Judiciary. Furthermore, every court conducts once in a while a survey of the quality of the work of that specific court, including its independence. Finally people can complain about lack of independence in their own cases to the president of each court, a special bureau of the Supreme Court or to the Office of the Ombudsman. These procedures are surrounded with extra securities. The number of complaints and the way they are dealt with are published in the yearly reports of those different institutions.

Lack of public and political trust can have serious consequences for judicial independence, as it undermines support for needed reforms and can encourage incursions into judicial prerogatives. One of the most prominent threats to the consolidation of a fully independent Judiciary is the continuing influence of the executive and/or the legislative in the administration of the Judiciary and in the selection, promotion, and disciplining of judges. Even where there have been, as is the case in Ethiopia, legislative changes increasing the formal independence of the Judiciary, there is an observable tendency for the executive and/or the legislative to try to retain or reclaim powers through appointments, influence on the composition of judicial oversight bodies and new legislation. As a matter of fact, article 81 of the Constitution, that deals with the appointment of judges, serves as a poignant example. The continuing assumption that executive involvement in judicial administration is both necessary (because the Judiciary is ill-prepared to administer itself) and desirable must be confronted and rejected. Politicians must publicly affirm the importance of an independent Judiciary, enact legislation supporting it, and refrain from making inroads in the Judiciary's prerogatives. Judges must refute political criticisms, not by censuring them, but by demonstrating that they are prepared to administer themselves with professionalism and restraint, and to make themselves accountable to society.

b. From an internal (Judiciary) perspective

The *Federal Courts Proclamation No. 25/1996*, as amended, gives in Articles 16 to 18 the President of the Federal Supreme Court big power.¹⁹ The day – to – day operation of the courts is supervised and managed by court presidents, who therefore act both as judges and as administration officials with responsibilities and obligations towards the President of the Supreme Court. Potentially, this position compromises their independence. In fact, the position of the President of the Supreme Court is comparable to the position of the Minister of Justice in countries where the Minister of Justice

¹⁹ The same goes for the Presidents of State Supreme Courts.

is the principal administrator of and controller over the Judiciary. This model allows indirectly affecting core judicial decision-making through control of what should be purely administrative decisions. To avoid such undue influence many countries governed by the rule of law, have chosen to establish a completely independent body, known as the Judicial Council. The Judicial Council ensures administrative independence and thus avoids investing the responsibility for the administration of the courts in one person. Such a solution gives more guarantees against undue influence or interference and does more justice also to the internal independence of the Judiciary. In Ethiopia, the Federal Judicial Administration Commission and the State Judicial Administration Commission could possibly play such a role.

10.2.2 Selection and promotion, accountability of judges, training of judges and mechanisms of disciplinary measures

One of the foundations for a capable and legitimate Judiciary is the professional competence of individual judges. Access to professionally competent adjudication is considered a human right of court service users.²⁰ The most relevant tools to ensure that competent judges serve in the Judiciary are those addressing judges' career path and acquisition of skills – that is, the systems for selection and promotion, performance evaluation and training. If poorly designed, these systems may allow unskilled, incompetent and unmotivated individuals to invade the bench and may discourage the development of professional standards. By contrast, rationally designed methods and procedures promote merit and stimulate the continual renewal and development of a professional and motivated cadre of judges, which in turn will ensure that society has access to more efficient and timely adjudication of its disputes.

a. Selection and promotion

The quality of individuals selected and appointed to perform judicial functions is crucial for the capacity of the Judiciary to deliver high quality services. International standards recognise the vital importance of *objective criteria for selection and promotion*²¹, (see Annex 4) and pay significant

²⁰ International Covenant on Civil and Political Rights, Art. 14 (declaring the right to a competent, independent and impartial tribunal).

²¹ Council of Europe Recommendation No. (94) 12 on the Independence, Efficiency and Role of Judges (declaring that selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency); Universal Charter of the Judge, Art. 9 (declaring that selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification).

attention to the procedures employed, including what body controls the process and how it is composed.²²

The quality of justice directly depends on the quality of the individuals chosen to be judges; organisational systems can only do so much to improve the skill and capacity of the individuals initially chosen and promoted. The importance of the quality of judges for the overall strength of the Judiciary requires that applicable criteria and procedural rules be crafted and applied in a manner that ensures clear, rational and objective selection and promotion so as to prevent cronyism or other unmerited preferences in admission to the profession or in subsequent promotion.

The criteria for judicial selection and promotion in Ethiopia are overly general. Article 8 of the *Federal Judicial Administration Commission Establishment Proclamation No. 24/1996* enumerates the criteria of election for judgeship. The requirements indicated in that Article are too minimal to guide officials and the body responsible for making decisions about who is an adequate candidate. Many details about the opening of and search procedure for candidates, the selection and evaluation of candidates, screening and final decisions about individual candidates are not made public. Besides, there is no outside input or involvement into the selection whatsoever. Nor other legal professionals such as the Bar or law professors, or the civil society or citizens participate in a way or another in the selection procedure. One can thus conclude that the process of selection and promotion of judges in Ethiopia is *insufficiently* transparent and lacking in opportunities for outside input. Besides, a less transparent selection procedure combined with such open and general criteria simply allow for overly broad discretion unrelated to candidates' merit.

The eventual appointment of a new Ethiopian judge by the Parliament might be seen as a sign of transparency. In reality, however, the

²² Council of Europe, Recommendation No. (94) 12 on the Independence, Efficiency and Role of Judges, Principle I, Art. 2c., is perhaps the most specific:

The authority taking decision on the selection and career of judge should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the Judiciary and that the authority decides itself on its procedural rules. However, where the constitutional or legal provisions and traditions allow judges appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria... These guarantees could be, for example one or more of the following:

- i A special independent and competent body to give the government advice which it follows in practice;
or
- ii The right for an individual to appeal against a decision to an independent authority; or
- iii The authority, which makes the decision safeguards against undue or improper influence.

parliamentary appointment of a judge is a mere formality that can be compared with the appointment of judges by Parliament or heads of states in many rule of law countries. In those countries, however, the real selection of new judges takes place in the framework of a selection system that is based on qualities, skills and experience and whereby specialists perform the selection independently of the other state powers.

The promotion of Ethiopian judges seems to be *insufficiently* transparent as well. Various interlocutors, including judges, complained about arbitrariness of the promotion decisions indicating that they are not often based on merits.

b. Accountability of judges

Even as judges are independent, they need to be accountable to society. There is no contradiction between accountability and independence, because independence is actually limited, extending only to judges' core decision-making function within their courts and to such further areas as are necessary to ensure that there is no improper influence on that function. Unless judges are somehow accountable, society will likely view their independence as a danger and seek to curtail it.

As a practical matter, without clear mechanisms for establishing accountability, the Judiciary will ultimately fail to secure public confidence in its ability to deliver effective justice and safeguard social, economic and democratic values.

Some of these mechanisms include ensuring transparency and creating channels of non-controlling communication between judges, the other branches, media and the public; these mechanisms will obviously enhance the Judiciary's professional capacity as well by providing feedback concerning judges' performance. In particular, judicial accountability requires that reasonably transparent mechanisms for selection of judges and for assessment of their performance be introduced, and that the Judiciary's internal operations be conducted in accordance with per-established rules subject to some measure of non-controlling external scrutiny. In the first instance, therefore, judicial accountability requires transparency and answerability, rather than formal legal liability and sanctions which always carry with them risks to judges' adjudicative independence.

Accountability has everything to do with independence and impartiality, professional competence and efficiency. These four notions are closely

interrelated and even overlapping. For example, the methods and standards for judicial selection and promotion are crucial both to protecting judges' independence and to ensuring the quality of the corps of judges. Training increases judges' range of knowledge and skills-essential to their professional competence - and in the process gives them the means to be more independent, both through their increased knowledge and through autonomous management. Judges' performance evaluation in turn is a form of professional accountability, but also a means to encourage enhancement of professional skills and knowledge, and thus independence.

Periodic evaluations are especially important to ensure performance-based promotion. Systematic assessment of individual judges' performance in accordance with pre-established standards is a form of individual accountability. Because assessment also provides a form of periodic feedback about the quality and efficiency of their work, it assists in further professional development and can also be a valuable tool in improving judges' overall capacity, especially when integrated with training programs.

As a result of the drive for greater institutional independence, the trend has been to assign responsibility for evaluating judges' performance to the Judiciary itself. Thus, responsibility for evaluation has been variously assigned to court presidents, special commissions composed of or controlled by judges, court personnel councils, or to judges of higher courts. Commonly other individual judges - usually at the appellate level - and bodies within the judiciaries such as Court Councils participate in the process. The Federal and State Judicial Administration Commissions could possibly play a role.

An additional way in which society's legitimate interest in ensuring judges' accountability can be assured is to provide the general public with opportunities - even if only indirectly - to express its opinions about judges' performance and to have legitimate remedies for judicial misconduct. Mechanisms to encourage public input are especially important in societies that do not have a tradition of public scrutiny of the Judiciary through civil society organisations.

Clearly, there is a need for effective mechanisms to deal with public complaints against judges besides the appeal systems and systems for monitoring and periodic evaluation of judges' performance. It should be considered to give an Ombudsman the power to receive public complaints concerning judges. It is not clear whether Article 7(2) of *Proclamation No.*

211/2000 on the Establishment of the Institution of the Ombudsman, which so far has not been carried out, prohibits such power. It only stipulates that the Institution of the Ombudsman has no power to investigate cases pending in courts of law.

As for the content of evaluation, meaningful criteria should include at least three elements: the quality of decision-making, the efficiency of case processing, and professionalism in conduct; in addition, measurement criteria should be selected to avoid encroaching on judges' independence.

Often, one relies heavily on quantitative measurements of judges' efficiency, analysing objective data such as numbers of cases received and disposed of, or length of proceedings. However, although it may provide incentives that decrease court delays, rigidly numerical measurements may not be reliable indicators of judicial performance; for example, a judge who completes ten highly complex cases in a month may in fact be working more efficiently than one who completes twenty simple cases. The incentives that a numerical system create for reducing delays may in fact lower the quality of adjudication; when not complemented by qualitative criteria, purely quantitative evaluation encourages judges to focus on completing cases quickly rather than deciding them well.

Where possible, evaluation should in the first instance be routine and integrated into training rather than employed as an extraordinary disciplining mechanism. Judges should be given an opportunity to participate in the process of evaluation and get feedback, so that they see it as an opportunity for improvement and willingly participate.

c. Training

Effective training for judicial candidates and judges is the most direct way to enhance their capacity for impartial, competent and efficient adjudication. Lack of adequate training may lead to poor performance and may even make judges vulnerable to influence. On the other hand, well-designed training not only increases judges' core adjudicative skills, it can also help make judges more responsive and accountable by reinforcing a proper understanding of the judge's role in society.

Notwithstanding the recent efforts in the field of continuous training of judges, lack of training remains one of the most important problems of the Ethiopian Judiciary. This is even more the case taking into consideration the said weak legal education in the country which is at this moment the only

education basis for the legal profession. There is still no comprehensive and widespread strategy or program for training development. There is no initial professional training for judges. The continuous training of judges is still not structured nor strategically planned and conducted. Refreshment training depends heavily on funds from foreign donors and is thus not structural. Finally, there is an enormous lack of training of court staff that does not seem to have received any attention so far.

The above-mentioned extract of the existing training situation for judges might be too short, but it is an accurate description. Happily, one sees the development of training activities for judges in Ethiopia, but it is still not well structured. For example USAID in co-operation with the Federal Supreme Court has started with a long-term-training program on several areas of law. When talking with judges, only part of the federal judges seemed to be aware of the existence of such a program. When one thinks about a well-structured system of training, one should think about the training of federal and state judges. The population cannot see difference in both groups. All judges together form the Ethiopian Judiciary and are the third pillar of democracy.

There are various circumstances which are the reason for the absence of a well structured training system: the starting level of education of judges differs, a big difference between federal and state judges, no initial education, no well structured continuous education, a training centre that is developing and that will need much time and support before it could be responsible for the complete training of judges²³.

²³ This report covers the period from June 2003 to December 2003. The Justice Sector Personnel Training Centre (JTC), established pursuant to Proclamation No. 364/2003, became operational after this period. Comments upon the functioning of the JTC are in fact beyond the scope of this report. But naturally the developments have continued, and they have continued to a substantial extent.

The JTC has its own premises with a capacity of 400 trainees. It has a core team of 16 trainers and a comprehensive initial training program has been developed for newly appointed judges and public prosecutors. The training period lasts two years. During these two years a group of 200 newly appointed judges and public prosecutors - but also candidate-judges or candidate-public prosecutors - can be trainees. Trainees receive two different types of training:

- One month training in constitutional law, the administration of the criminal justice system, the civil justice system and the justice system in general, e.g. the protection of human rights, professional responsibility and ethical standards, independence and accountability and efficiency.
- A six month training, during which the subjects of the one month training are discussed in depth and much attention is given to judicial skills like how to collect and weigh evidence, case flow management and writing of judgments.

Table 1: Number of participants in education standards

Education Standard	Tigray and			Total
	Oromia	Addis Ababa	Somali	
Second Degree and above in Law	7	–	–	7
First Degree in Law	48	40	3	91
Diploma in Law	22	23	12	57
Certificate in Law	10	15	3	28
Degree in other Fields	4	2	–	6
Diploma in other Fields	15	3	–	18
Certificate in other Fields	16	15	2	33
Secondary Education	–	2	10	12
Other Different Type of Education	5	–	–	5

Source: Case Study Report on Continuing On-Job-Training Needs for Judges, Federal Supreme Court, Ethiopia, 2003

When one places all observations in line, one should come to the following general observations that have to be worked out in a project. In such a project, co-operation can be established with countries that have a rich tradition in initial and continuous training for judges, like France and The Netherlands.

The first observations are:

Recruitment and selection

- one does not know of an uniform system for recruitment and selection of judges and prosecutors.
- there are no uniform selection criteria for those groups; this is important because the education is of a low level; not all judges have a law degree at university; the Judiciary has to develop its own judicial selection criteria and additional training.

These two training periods are alternated with internships at a court or a Public Prosecutor's Office. During these internships judges are, among other things, familiarised with the work of the public prosecutor and visa versa. In August 2004 a first group of 158 trainees started with this new training. In August 2005 a second group will follow.

In addition to this newly developed initial training program, in-service training programs and specialist training programs have been developed or are being developed. These new developments, for which the JTC has made use of the experience of the Ecole Nationale de la Magistrature in Bordeaux, France, are undeniably important steps forward in the right direction.

Initial training

- initial training, for candidate judges as well as for newly appointed judges, does not exist.
- despite the efforts of the Ethiopian Judiciary and recent programs, the training of trainee judges does not seem to be very well structured and systematic.

Strategic planning and business plan

- there is no overall strategy for continuous training.
- the Judicial Training Centre (JTC) has no business plan.
- the existing training centre has a program, that is for about 100% subsidised by foreign donors.
- no sustainability.
- a long-term training plan for regular and specific training does not exist.
- the French Government has supplied a French judge to the Ministry of Justice to support the initial and continuous training; this is still in the starting phase.
- the JTC seems not to have a communication plan for communicating with the target groups; even presidents of courts do not seem to be well informed.

Continuous training and various levels

- the continuous training of judges seems to be not very coherent.
- the continuous training of judges seems to be donor-directed and donor-controlled and is merely an ad hoc planning.
- the JTC seems to work with a needs assessment methodology to develop their programs.
- the JTC does not offer training on various levels like basic, advantaged and specialist.
- the offered continuous training is still very poor and *ad hoc*.

Trainers

- the JTC has a more or less permanent group of trainers (capacity building).
- the JTC has no program to train the trainers.
- trainers are not paid.
- there is no didactical program within the JTC.

d. Discipline

When a judge acts in a manner inconsistent with judicial office, accountability requires disciplinary action or removal; independence only

requires that this be done in a way, which, over time, does not discourage other judges in the free exercise of their judicial function.

The laws on judicial conduct generally oblige judges to refrain from conduct that compromises the dignity of the judicial office. Undue delay is one of the most common causes of disciplinary proceedings. In general, there are no enforceable codes of judicial ethics, which would lay out precisely the grounds for disciplinary action. Usually, norms regulating behaviour on and off the bench are framed by the legislature in general terms and leave room for discretion, the exercise of which, has not raised serious concerns. All international standards seek to ensure that judges decide cases impartially, relying only on the facts and the law. Most States have provisions against bribing or intimidating judges, and also against judges administering justice in exchange for money; nonetheless in Ethiopia corruption and the threat it poses to judges' impartiality are considered serious problems.

Where disciplinary measures, sanctions or significant professional consequences do attach to the outcome of evaluation, then allowing the executive to retain the power routinely to sanction judges through evaluative or disciplinary processes unnecessarily introduces serious risks to independence; the requirements of judicial independence strongly suggest that in such cases discretionary or determinative authority should reside with the Judiciary or with a truly independent body within which the Judiciary has meaningful participation.

The question has been raised how to ensure that the Judicial Administration Commission has an effective judicial inspection and control department. This premise is mistaken. Certainly, the Federal and State Judicial Administration Commissions can possibly play a role in the assessment of individual judges' performances, but a judicial inspection and control department is dangerous. The appellate procedure has to control the work of the judge. Within the Judiciary you have to develop a sort of social control. A judicial inspection and control department is directly contrary to the independence of the individual judge.

Corruption on the bench is always difficult to get a finger behind. For that reason it is very important to build into the judicial system so many control and disciplinary mechanism that there is no possibility left for corruption, e.g. disclosure of assets and clear rules on procurement, as well as transparent procedures for tracking cases to prevent delays (a common cause of bribes). This is the only way to fight against corruption. It starts again with the right

candidates for judicial office, who have independence between their ears. In a surrounding with judges who have a high ethical standard, corruption does not stand a chance.

The question has been raised whether judges should be given immunity from civil and criminal prosecution. The answer must be no. In a system of transparency a judge must be elevated above any suspicion. That means that immunity can have the opposite effect. When a judge is suspected of something, a direct investigation must be started. This is in the interest of the whole Judiciary. Immunity will give the impression that there is class justice and that ruins the belief and trust in good justice.

10.2.3 Court administration and case management

If one wants to strengthen the Judiciary in Ethiopia, it is absolutely necessary to deal with the court administration. A good court administration is the basis for an efficient Judiciary. They are inextricably connected with each other. Various kinds of management models can be used. The model has to be discussed with the Ethiopian actors in this field.

Court administration in Ethiopia is weak . First of all there is a big distance between the Judiciary and the court administration. It is important to make both parties aware of their joint responsibility for the efficiency of the courts. A good court administration ameliorates the whole level and status of the Judiciary. In good co-operation between the Judiciary and the Ministry of Justice, as facilitator, the court administration has to be taken a close look at.

Secondly, something has to be done about the quality of administrative staffing of the courts. The administrative departments of the courts are overstaffed, but very much under-qualified. As a result, the administrative staff does not handle much of the work. Administrative operations take much more time than is necessary because the administration does not know how to act. This is the reason why a lot of administrative operations end on the table of the judge himself. There is a real “bottom to top” delegation of administrative tasks taking place. In some cases, it is even said that judges could do with half the current staff if the latter would be well qualified. Due to the inadequate staff support, court procedures are poor. Cases are not properly monitored, recorded or transcribed; record keeping requires improvement; court congestion and delays happen very frequently. Finally it is important to make a better description of the administrative procedures, to make a clear distribution of work, to develop administrative working models, to make instructions of document handling, job descriptions, etc. All those

are currently lacking or are not being used. At the moment, it is the judge who is responsible for the court administration.

While, for prosecutors, judges and parties, an efficient case management is the only means to track cases, files coming from police to prosecutors offices and from the latter to courts or civil cases coming to courts are registered by hand in books. Without the file number, it is impossible to find them out. Because of an enormous backlog, an important amount of cases are lost every year, mainly because of misplacements. This is a blatant situation of mismanagement and an open door to bribery, which may help to retrieve a file and to schedule it in a timelier manner.

The caseload of the average judge appears to have increased substantially over the last years. The quality of staff, material resources and the introduction of technology has not kept pace with the immense increase of the number of cases to be handled by courts. These heavy caseloads and the resulting backlogs appear to contribute to routine violations of procedural guarantees, weakening public support for the work of the Judiciary.²⁴

10.2.4 Judges' access to legal materials

Access to legal information in general is a big problem in Ethiopia. Almost all legal professionals complained about the lack or the non-existence of legal information. The lack of information has various facets and thus various causes/reasons. Some of those reasons could be blamed on the lack of financial means. Most of them are, however, due to the lack of a national strategy as to the accessibility of legal information and to the current legislative procedure.

²⁴ The main reasons why judges do not fully apply the provisions of the Civil Procedure Code of 1965 are reportedly:

- Pre-code practice: Although the Civil Procedure Code of 1965 repeals prior procedural rules and practices, which are inconsistent with the provisions of the code, judges continue to apply the pre-code practices, because by the time the code came into force, most judges had no formal legal education, making them able to understand and apply the new code.
- Backlogs: despite the fact that later some qualified judges took the bench, due to the influence of long established practice and workload they could not avoid and correct the non-compliance and irregularities. Due to a heavy workload, judges do not have time and legal materials to read, so that they can know whether they are working in accordance with the law.

In criminal cases the court usually grants adjournment for reasons other than prescribed in the criminal procedure code. This is due either to workload or failure on the part of the public prosecutor or the police to discharge their duties. The main reasons for not applying strictly the criminal procedure rules are reportedly the inefficiency of police and Public Prosecution institutions and the workload of judges.

a. Limited access to the Federal Negarit Gazeta (Official Gazette)

One of the most important sources and references of newly adopted federal laws, proclamations, is the Federal Negarit Gazeta. One would expect this Gazeta to be spread and made available to all judges on a permanent basis. This is however not the case. Issues of the Federal Negarit Gazeta containing new federal laws are not sent either to courts or to other legal officers. Those issues are available only in the Berhanena Selam Printing Enterprise's shops (one in Addis Ababa and another one in Awasa). Consequently, courts must send someone to buy the appropriate issues of the Official Gazette. As a result, especially in the regions, it can happen that, sometimes during a whole year, judges working in lower courts apply old laws, which are no longer in force.

b. Legislative procedure

This issue has been treated in detail elsewhere in this report. Yet, it is important to underpin this aspect in respect of the accessibility of legal information for judges as well. According to the legislative procedure used in Ethiopia, new proclamations containing new legal provisions do not repeal previous ones. In general, new proclamations only state at the end that the new provisions supersede any other ones. As a result, existing codes are not properly upgraded or consolidated and it is impossible to get a unique document that is comprehensively containing the applicable laws. The current legal procedure needlessly complicates lives of judges and other legal professionals seeking legal texts.

c. Court Libraries

Because of the lack of funds, court libraries are poor and often do not exist at all.

d. Stare decisis

While the judicial Ethiopian system does not follow the precedents system, which is in use in common law countries, it is important for judges to have access to decisions made by other courts, in particular higher ones, in similar cases. However, for the last several years, only Federal Supreme Court decisions were printed and published, but not on a regular basis. Few copies only were sent to each Justice Bureau in the regions. Such selection and printing has not been made for other court decisions, either regarding lower Federal Courts or Supreme Courts in the regions.

We do not recommend adoption of the “precedent” system, but the “jurisprudence” system. In countries with old civil law traditions, decisions

are never binding, even those coming from the highest court. However, judges have the sound habit of considering decisions pronounced by colleagues in identical cases as being very useful for their own reasoning and decision. In France for example, a Resource Centre has been created in the Court of Cassation (“Service de Documentation et d’Etudes”). Each first instance court can select interesting decisions and send them to this Centre. Each court of appeal gives a copy of all its decisions on civil, commercial and labour law matters to the Law Faculty; a committee made up of students and law professors selects the interesting decisions and sends them to academics for commentaries and to the Court of Cassation’s Resource Centre.

Every two weeks, the Centre develops a publication and sends it to each judge and prosecutor throughout the country (7,200), with selected summaries of decisions made by the Court of Cassation, and by some courts of appeal or first instance courts.

Every week, three main private legal editors publish issues with theoretical articles and comments on judicial decisions made by academics. Each court receives them through a subscription system. Others specialised legal editors publish different issues.

On a yearly basis, the Court of Cassation publishes books containing its decisions, plus a report analysing them, underlining evolution of the jurisprudence, solutions given to new problems or shortcomings in legislation.

This information is available on web sites, in particular a legal one freely accessible (“Legifrance”), which contains all updated codes, laws and regulations and all the main decisions of the Court of Cassation.

In a single case, judges don’t mention this information as such in their decision, but use it as an element of reflection, which is extremely important in the daily practice.

e. Access to court decisions

While, in theory, court decisions are public, the courts refuse to deliver copies to lawyers or to anybody else, unless they are a party in the case. As a result, lawyers are unable to get and to use important decisions as an example in another similar case unless s/he is party to the case.

Article 184 of the Ethiopian Civil Procedure Code dealing with copies of judgement and decree reads as follows: (1) “Certified copies of the judgement or decree or both shall be furnished to the parties on the application to the registry of the court which passed it and the date when such copy was furnished shall be mentioned thereon”. (2) A certified copy of the judgement and decree passed by an appellate court shall be sent to the court which passed the decree appealed from and shall be filed with the original proceedings in the suit, ...”.

The refusal of court registrars to provide copies of court judgements to an interested individual asking for such documents appears thus to be a matter of practice rather than a provision of the law disallowing it. It seems that in some cases “exceptions” are granted to the benefit of the press or universities for research purpose.

f. Transparency

In this report one can read on several pages about the importance of transparency. The Ombudsman’s procedure can be one solution. The media can be another mechanism for transparency.

Like the rest of a democratic society, the organisation of justice has to be more open and transparent. In the society, there is a justified call for transparency in the court actions and decisions. Openness of the administration of justice is very important. It is a tool of control of an independent Judiciary and an essential element of a democratic state. Openness is an essential condition for general prevention; a public trial can inform the public about the content of cases and so take away unrest in the society.

Publicity of the administration of justice functions on three levels. Firstly, it is an element of a democratic society whereby citizens are involved in exercising their public duty. Take for example the Dutch judicial system. This system does not use a jury system. Publicity is therefore very important and used as optimally as possible. Secondly, publicity also relates to some aims of the criminal justice system, for example general deterrence cannot be realised without any form of publicity. Finally, criminal procedure has a special public function. In a public trial the public is informed about the reaction of the Judiciary. It can be informed about the background of the crime and receive insight into the suspect. Also the trial can be a public forum for discussion about methods of investigation and prosecution by the government.

More openness has its other sides and creates greater demands. According to international standards everyone has the right to a “fair and public hearing”. Publicity can cause danger for the fairness of hearings in two ways. An preliminary publicity can have as a consequence that an open-minded conduct of a case cannot take place anymore. Another aspect of fair trial is misbehaviour of the public during the process through which a well-balanced treatment can be brought in danger. In these situations limitation of publicity as a guarantee for a fair trial is fully legitimised.

The judge is responsible for making publicity possible; the journalist is and remains responsible for the publicity afterwards. On the basis of international standards of ethics for the press, one can expect from the press a well-balanced and independent gathering of news.

Since the beginning of the 1970s, the press judge was introduced in all courts in the Netherlands. This function has since developed to a more professional level. The press judge is the face of the court to the outside world. The press judge is the contact person for the media within the court. S/he is also the contact person for all judges about media matters. This means that all kinds of information that flow from inside to outside and from outside to inside pass through the press judge. At the same time s/he is involved in all kinds of internal and external public relations of the court. The success of the press judge in the Netherlands has induced many countries in Western Europe to consider using this idea as well. Courts in the Netherlands have been frequently visited for this purpose.

10.2.5 Information flow for the public

While ignorance of the law is no excuse in Ethiopia, almost no information on laws and regulations, nor on basic rights is targeted towards the public in a systematic and widespread manner. Very disparate initiatives have been taken here and there by the Federal Government and some NGOs mainly concerning issues of human rights, gender equity, and the rights of women and children.

There are preparations underway to conduct civic education classes in all secondary schools and colleges in Ethiopia, both public and private, in the coming academic year.

The media, although the majority of it is state owned, have no systematic program designed at enhancing public awareness on legal and judicial issues. As regards media, one has to bear in mind that radio covers only almost 70% of the population of the country. TV reaches only the population of the

main cities and newspaper is probably the medium that has the less impact on the masses. The number of programs/articles dealing with legal issues is very limited and often concerns some spectacular criminal cases. There are no systematic vulgarisation programs.

The variety of languages throughout Ethiopia, as well as the multiple local traditions makes it very difficult if not impossible to conceive a global program.

The House of the Federation made certain efforts to create awareness on constitutional issues. Series of workshops and seminars were organised over the past eight years on constitutional topics. The text of the Constitution has been translated into 16 Ethiopian vernaculars. But the accessibility of the publications and the seminar papers and other materials are limited to people who request them from the House. As a result, the public's knowledge of its constitutional and other rights is very limited. No commentaries so far have been made available to the public through proper communication channels. Regardless of the efforts made to cause the relevant laws of the country to be available to the public, there are limitations as to their distribution and knowledge of their existence on the part of the public. There is no established mechanism for the announcement of the promulgation of new laws.

It is believed that the public has a general knowledge that courts are the appropriate organs of dispute resolution. Regarding the procedural functioning of courts, it is only those who have cases at courts who can learn by their experience. Many people do not know about the jurisdictions of courts or their procedures. One must admit that the complexity of the procedural system due to the combination of State Courts and a Federal one does not contribute to a fair visibility. There were attempts at the Federal First Instance Court to assist litigants by providing them with forms for certain applications to be lodged to the court. Here and there similar initiatives are taken at the Woreda level. Although there are efforts by the Supreme Court to publish all its decisions and posting some of them on the web site, the majority of the people do not have a chance to get access to them.

We do not deny that there are "natural" obstacles before a good access to courts such as the high rate of illiteracy and the big physical distances between the courts and regional, but many impediments are just of a behavioural nature or are performance-related. This has resulted in little

public confidence in “regular” courts and a continuing confidence in traditional “justice” that seems to be much more easily accessible for the poor and the rich and the illiterate and literate alike.

10.2.6 Access to courts and documents thereof

While interesting efforts have been made at the Federal First Instance Court which is one of the pilot sites of the Court Administration Reform program supported by CIDA and in the other pilot sites, it seems that no real attention has been given yet to facilitating access to court for the public and for the attorneys. There are no information desks²⁵ and citizens have almost no chance to get information whatsoever as to the way to submit their case to justice, nor as to the current situation of their file. The above-mentioned situation on access to court decisions in respect of attorneys applies even more to the public at large. In addition, it seems that no effort has been made so far in order to ease access to courts through information documents or through availability of standard forms. In the neighbourhood of court premises, public writers hold small shops where they may help litigants to draft claims and other relevant documents. It is not known if they possess adequate skills.

10.2.7 Lack of reliable statistics on the judicial performance

Reliable *statistics* are crucial to have a precise scope of the judicial activity, to know the evolution of criminality as well as to take appropriate decisions regarding the management of the Judiciary (working organisation, recruitment and transfer of judges, prosecutors and court staff).

However, the Ministry of Justice collects only data coming from federal prosecutors offices, regarding major federal criminal offences. These data are compiled manually. Because of the federal structure of the country, no data come to the Ministry from regional prosecutors' offices, which, moreover, use different statistical formats.

Statistics coming from courts are collected by the higher courts, and not by the Ministry of Justice, which does not have supervision of courts. No cross-checking can be done with statistics coming from police offices, which are collected at the federal level by another ministry (Federal Affairs) and by another organ in the regions, and are not produced, in a compatible format. As a result, there is no way to find, in a comprehensive manner, statistics regarding the judicial activity of the country.

²⁵ Except in pilot sites.

10.2.8 Working conditions

International standards call for courts to have sufficient funding to ensure their smooth operation (see Annex 5).²⁶ It is evident that well-trained, knowledgeable and skilful judges who are not overworked are in a better position to resist undue influence than their less competent colleagues. Poor working conditions can threaten judicial independence; in some cases, the standards may be so low as to dramatically reduce the efficiency of the courts, increase the incentives for corruption as a means of circumventing inefficient and overworked courts, and therefore increase public and political support for closer control of the Judiciary's operations. In addition poor working conditions can limit judges' ability to defend their independence by forcing them to devote excessive effort to basic issues of administrative upkeep, and can threaten their impartiality by making them reliant on assistance from outside parties.

The conditions under which judges in Ethiopia must perform their duties are in general very poor. Many judges work in dilapidated offices with no or minimal equipment.

Salaries of judges are in Ethiopia in general not up to international standards.

10.2.9 Donor activities

During our stay in Ethiopia we received a list of on-going bilateral donors' activities in the justice sector. The list shows a variety of activities that are either already implemented or are now being implemented. Though we have spoken with the people involved in these projects, we find it difficult to assess their activities with a view to determining success, results, gaps and new areas that need intervention. Such an assessment would need an in-depth study of each individual project i.e. studying the documentation available about the various activities, visiting the location of activities and interviewing the beneficiaries and stakeholders.

However, we would exceptionally like to highlight a number of projects which impact has been visible to us or which were particularly named by the Ethiopian stakeholders. Such is the CIDA Court Administration Reform project whose results were visible in the visited courts in the form of coloured filing system, computers, data-based systems, trained persons and libraries. Furthermore, we were informed about the support of USAID to the Judicial

²⁶ Art. 7 of the UN Basic Principles on the Independence of the Judiciary stipulates that it is the duty of each Member State to provide adequate resources to enable the Judiciary to properly perform its function.

Training Program for the period September 2000 through September 2003, the nation-wide strengthening of the professional capacity of judges and other court officers and the established organisation to implement the training program, the Project Train the Trainers and a post graduate staff development program in law at the Ministry of Justice of the Ethiopian Government. Other programs on the annexed list were said to be still in the inception period. Such is the program of the EU with additional allocation to be programmed in accordance with the upcoming Justice System Reform Programme and the French program about support to the initial training curriculum of judges and prosecutors.

10.3 Observations and Major Shortcomings Related to the Law Enforcement Institutions

10.3.1 The Public Prosecution

The shortage of prosecutors in the Ethiopian PPS, the failure of those that do exist to meet minimum qualifications, the lack of training, the appalling conditions in which they work, the backlogs which they face and other circumstances create a worrisome and alarming situation. A democratic federation requires a well-functioning criminal justice system without a weak link. In Ethiopia, the justice system has enormous shortcomings. The PPS, however, seems to suffer most of the bad situation of the entire system.

10.3.1.1 Status and structure of the Public Prosecution Service (PPS)

a. Combination of executive and judicial powers

To our understanding the Federal Minister of Justice and the Heads of Justice Bureaux combine judicial and executive (political) capacities and tasks. Immediately after the EPRDF came to power the Transitional Government found it appropriate to integrate the Office of the Procurator General with the Ministry of Justice. This was done to facilitate the formation of a powerful structure. It is our understanding that the present situation has been rather transitional. In the light of the division of powers, the present situation might be harmful for the independence of the Public Prosecution Service, both in terms of reality i.e. the potential for political influence on the criminal justice system and in appearance i.e. the confidence of the public in the PPS.

b. Denied complainant application to courts

According to articles. 44 and 45 of the CPC a complainant is entitled to apply to the court for an order that the public prosecutor shall institute proceedings, when the prosecutor refuses to do so. This was changed by *Proclamation 11/87*. In that Proclamation and in both Drafts Criminal Procedure Code of the Ministry of Justice and of the Justice and Legal System Institute, the private complainant may lodge applications up to the highest authority of the PPS but no longer to court. Even though some other countries have taken that approach, it should be a matter of concern that Ethiopia has abolished such a fundamental right for complainants and no longer allows access to court for a complainant seeking an order to institute proceedings.

c. Fragmented Prosecution Authority

The competence to bring a case to court is currently too fragmented. This weakens the authority of the PPS to withstand political interference. The PPS should be the only organ that is competent to institute criminal proceedings and to have access to courts. An extra complicating element at this moment is that the different governmental offices with prosecutorial authority are accountable to their different related ministries but not to the Ministry of Justice.

d. Missing legal documents on the powers and duties of the State Prosecutor

Despite continuous request by the international experts to get copies of the legal documents on powers and duties of the regional prosecution of the visited States, no such documents were provided. Besides, no general information about those documents seems to be available. This leads to the conclusion that some States may not have any proclamation for that purpose. This is not a breach of state or federal laws. However, proclamations normally provide for the guidelines and provisions as to the structure and functioning of such a service. The absence of such a proclamation should be interpreted as a lack of a framework.

10.3.1.2 Administration of Federal Prosecutors

a. Selection and appointment of the prosecutors

The selection and appointment of prosecutors is legally based on *Council of Ministers Regulation 44/1998*. This Regulation provides the procedure and qualification for employment and the mechanism of selection and appointment. In theory, there could be no shortcomings whatsoever. In practice, however, the following aspects can be qualified as problems. Firstly,

the selection committee is composed solely of members of the Ministry of Justice. No outside expertise, for example, from the Judiciary is involved. Psychological testing is not used. This makes the procedure less transparent. Secondly, the most important qualification criteria of a diploma in law from a recognised university, is often not respected. Having said that, the situation on federal level seems to be better than that in the States. However, the number of Federal Prosecutors who appear to possess the requisite qualifications is misleading. We have been informed that anyone who works in the Ministry of Justice and who meets the qualifications is appointed as a prosecutor, whether or not he or she actually performs prosecution functions.

b. Education and Training

Part Eight of the *Council of Ministers Regulation 44/1998* (Articles 52 to 54) deals with training of prosecutors. It specifies two types of training i.e. orientation programs for new recruits and training programs for human resource development in order to enhance efficiency. Without prejudice to initiatives developed by the Ministry of Justice, universities and States, the daily practice in the country is rather different from the provisions of the Regulation. In fact, there is no structured or streamlined continuous training of prosecutors taking place in Ethiopia. There is no federal or state comprehensive and widespread strategy (program) or guidelines for training prosecutors. And there is no initial (vocational) training for prosecutors either on federal or on state level. The Ministry of Justice has been conducting major human rights and legal training activities. Still it has not fulfilled its task in proclaiming *guidelines* and *programs* for training prosecutors as described in Article 52 of the *Council of Ministers Regulation 44/1998*.

The need for training of prosecutors both on federal as well as on state levels is enormous. An immediate and short-term intervention in this field is absolutely a *sine qua non* to put an end to the current situation. Training is even more vital against an educational background of the prosecutors that often does not seem to meet the requirements for the profession provided for by the law.

In the absence of federal or state co-ordination of training programs, each state has been developing courses independently. There is apparently no exchange of ideas and experiences between States, no transfer of “best practices,” no common use of experienced teachers. The Ministry of Justice could have fulfilled this role taking profit of the different experiences. Unfortunately, this is not the case.

Next to the absence of a strategy of training, two other problems have obstructed the many ideas and plans from leading to fruition i.e. lack of financial means and the lack of qualified trainers. Often, experienced prosecutors who are called upon to conduct the training courses are themselves not trained for this pivotal and vital task.

c. Shortage of Public Prosecutors

There is a big shortage of prosecutors both on federal as well as on state levels. During meetings with various authorities, the shortage was described as being “tens to hundreds of prosecutors” in each state. The shortage is highest at the Woreda level. The following is a striking but not exclusive example of the visited States. Oromia currently has only about 500 working prosecutors at the Woreda level. Under the existing structure, however, 1350 prosecutors are required.

Out of the 50 to 60 yearly graduates of the University of Addis Ababa only 5 or 6 choose to join the PPS. The others opt for the Judiciary or for private companies. This is a big problem that impedes any remedy to the shortage of public prosecutors and aggravates the scarcity of qualified candidates for the profession.

Salary doesn't seem to be a problem at the federal level i.e. a federal prosecutor's pay compares favourably to that of a judge. We have no information about salaries in the regions.

Perhaps the deplorable working conditions of the prosecutors resulting in a low morale are the most significant reason behind this shortage and the scarcity of university alumni wanting to join the PPS.

10.3.1.3 Criminal proceedings

a. Power of the PPS over police investigation

The legal basis for the Public Prosecution Service responsibility and power (“orders and instructions” according to Articles 8&9 of the CPC) over criminal investigation performed by the police is clear. The Criminal Procedure Code, *Proclamation 4/95* and the *Federal Police Commission Proclamation 313/2003* all provide for this power. The problem, however, is the daily practice. In fact, the Public Prosecution Service does not exercise this power and the diverse tasks and responsibilities thereof.

The police independently start an investigation. The police are allowed under Article 29 of the CPC to hold a suspect in detention for 48 hours. The police bring a suspect for the first time before court. The police bring a suspect before court every 14 days to prolong the investigation period as long as the investigating police agent has not completed his work.

The *very first time* that a prosecutor comes into the picture occurs after the police have completed the pre-trial investigation. The *only time* that a prosecutor is involved in the investigative process is when s/he sends a case back to the police for further investigation.

Indeed, the PPS plays a minimal role in the criminal investigation performed by the police. This is a blatant breach of Ethiopian laws and a faulty practice that made the police an autonomous institution that is independently operating in criminal investigation without a competent criminal authority (by law it is the PPS) executing control and supervision over it. It is very worrisome that in such a case, the police may perform activities that could be inconsistent with the rule of law without being corrected. It is also a big concern that the PPS and the police do not work with each other but rather *next to each other*. Sometimes they even work *instead of each other*. Such is particularly the case with the Federal Police filling in the vacuum left by the PPS in respect of leading the pre-trial investigation.

It is very important to identify the problems behind the failure of the PPS to fulfil its role in controlling and supervising police investigation. Some of the possible problems we could think of are:

- Notwithstanding the clear legal basis, daily practice makes it easy to be confused when the police are accountable to the Ministry of Federal Affairs and at the same time it should perform investigation under direction of the Ministry of Justice. This creates a loyalty and accountability problem on the one side and passivity and negligence on the other.
- Aware of their shortcomings and lack of qualifications, prosecutors have chosen the easiest way and accepted this minimal role because their education and their training do not allow for a leading role in police investigation.
- Chief Public Prosecutors or other superiors directly or indirectly restrict an acting prosecutor from exercising a supervisory role for fear that his lack of education and training makes such a prosecutor incapable of adequately performing his function. Probably, the superiors think that compared with a bad performance, passivity has a rather limited damage

to the reputation of the PPS and the relations of the Ministry with other justice institutions and with the Ministry of Federal Affairs.

- A bad habit that has become practice and prosecutors got used to it.

Obviously, there could be other reasons or problems behind this practice that we did not enumerate or think of.

b. Lengthy police re-investigation

Prosecutors may deem it necessary to send a case back to the police for further investigation. We have been told that police response to the prosecutors' requests may occur only after an unnecessary and undesirable delay. In fact, on occasion it takes more than 5 years before the police complete the re-investigation and send the case back to the prosecutor. The prosecutor will then send the file to court. Thus the case may take years before it is concluded. In the meantime, a suspect is being held in custody. This is an unacceptable practice and a breach of constitutionally and internationally recognised standards of human rights.

c. Lack of guidelines for requesting re-investigation

According to information obtained from the Addis Ababa Office regarding Addis Ababa and the eight branches, 63,424 investigation files were received from the police in 2002. A total number of 5,219 files have been sent back to the police for re-investigation in that same year. The daily practices regarding prosecutors' requests for police re-investigation differ from one PPS office to another. There is a lack of appropriate guidelines that are understandable for and used by all prosecutors. Some figures which illustrate this point:

- In the Addis Ababa branch office 1,223 files were sent back to the police while 4,509 were received (app. 30%).
- In the Yeka branch office 1,500 files were sent back to the police while 4,991 were received (app. 30%).
- In the Akaki branch office 386 files were sent back to the police while 3,213 were received (app. 12%).
- In the Paulos branch office 58 files were sent back to the police while 6,004 were received (only 1%).

It is improbable that the quality of police investigations can be solely responsible for these dramatic differences in percentage. Here again, had the prosecution fulfilled its role in supervising the investigation, the legality of the investigation could have been guaranteed *ab initio* and the delay due to re-investigation could have been avoided or at least limited.

d. Investigation of crimes of federal nature in a State

Pursuant to *Federal Courts Proclamation 25/1996*, the prosecution of specific crimes, *inter alia*, treason and corruption in state companies, is a matter for the Federal Ministry of Justice. State police are bound by law (Article 23 (2) of *Proclamation 313/2003* to account to the Federal Police “when they prevent and investigate criminal cases falling under the jurisdiction of the Federal Courts in accordance with the delegation given to them”. However, the Ministry of Justice has *a fortiori* no power to give orders and directives to State Police Commissions vis-à-vis investigation of crimes of federal nature. This leads to a serious anomaly in practice. There is a legal nexus missing. And the practice should be improved, as important federal interests are involved.

10.3.1.4 Criminal policy/backlogs

a. “Better limitation than discontinuation of a case”

When a case is discontinued, the public prosecutor must report on the decision and seek confirmation not only with the superior but also with the Minister of Justice or the Head of Justice Bureau. As so much effort and so many layers are involved in dismissing a case, prosecutors often find it easier and more efficient to wait until the case reaches limitation rather than reporting to their superiors on their decision. This is a “smart trick” that a prosecutor uses to solve his or her problem dealing with an individual case s/he wants to discontinue. But seen from the system, this habit has aggravated the backlog problem that weighs heavily on the administration of the PPS.

b. “Justice delayed is justice denied”

Article 109 (1) of the CPC stipulates that “the public prosecutor shall within fifteen days of the receipt of the police report or the record of a preliminary inquiry frame such charge as he thinks fit, having regard to the police investigation or preliminary inquiry, and shall file it in the court having jurisdiction”. A prosecutor is thus bound by the law to prepare a summons and send it to court within 15 days after receiving the investigation file from the police. However, the reality is different even in cases related to persons held in custody. A huge backlog has been created at the PPS due to delayed summons. There is no information whatsoever about how long it actually takes to prepare a summons. Currently, there is no sanction for the failure of prosecutors to fulfil the above-mentioned obligation under Article 109 of the CPC. Courts, which have their own backlogs, have no incentive to complain about this particular PPS shortcoming.

A striking example of the backlogs caused by delayed summons is the situation in the Addis Ababa administration. The number of pending cases that have never been looked at by a prosecutor in the High Court Prosecution Office or at one of the 8 branches during the last five years was recently estimated at 140,000. The details of this backlog are as follows (Please note that the years reflect the Ethiopian calendar):

- 1991: 27,790 cases,
- 1992: 28,629 cases,
- 1993: 27,649 cases,
- 1994: 27,177 cases, and
- 1995: 29,442 cases.

In the last few months about 70,000 cases of the backlogged 140,000 cases have been discontinued because of expired limitation periods. It seems reasonable to suggest that if no policy is developed concerning the backlog of delayed summons, the same will happen with respect to the remaining 70,000. In fact the backlogs are increasing. An example: In the Paulos branch the PPS is able to handle about 3,500 files a year while it receives 6,000 to 10,000 from the police leading to at least 2,500 backlogged cases every year.

Article 226 of the Penal Code gives a summary of the limitation periods. These periods vary from 25 years for the most serious crimes to 3 years for the minor offences.

c. Lack of guidelines to deal with cases

Given the huge backlog at the PPS and the many delayed summons, one would expect the Ministry of Justice to prepare guidelines that set priorities in dealing with the different cases aiming at overcoming this problem. Yet, such guidelines do not exist. The only two possible indicators for a “Criminal Policy” are at this moment: a) the defendant is in custody on remand and b) complaints have been made to the PPS about the length of the investigation or the delay in completing the judicial process.

At this moment, there are 4,400 prisoners in the prison of Addis Ababa. About 2,800 thereof are in custody on remand. No data are available about the seriousness of the crimes they have committed. But it is highly unlikely that they all have committed crimes for which bail is not permitted. That means that many have committed less serious crimes but are in custody because they are poor and thus unable to pay for bail. Their cases have some priority and are being dealt with by the court before the cases of the

defendants who are released on bail. Nevertheless, that means that the poverty of the defendant is a greater determinant of what goes to trial than the seriousness of the crime alleged to have been committed.

d. Release on bail

Pursuant to Article 63 (1) of the CPC, a defendant has the right to be released on bail “when the offence with which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more...”. Thus, someone who committed a crime may ask for bail when he can afford to pay a bail or when there is a guarantor. No data concerning rates of release on bail are available.

Another aspect of the release on bail that we believe must be highlighted is the following. In case a defendant is free on bail and the judge finds him guilty and imposes a prison sentence, the defendant is immediately re-arrested and returned to jail. If the defendant appeals, he must ask the appellate court to set a new bail. The re-jailing and the requirement for a new bail are to our understanding contrary to the constitutionally guaranteed principle of presumption of innocence. As long as the decision of a judge is revocable (either in appeal or in cassation), a prisoner has the benefit of doubt and should be considered innocent until irrevocably proven guilty by means of a fair trial. It is the practice in Europe that once someone has been on bail prior to conviction; s/he can be at large till the court decision in his case is irrevocable (*res judicata*).

10.3.1.5 Relations with other Justice Institutions

a. Relations between the PPS and the Judiciary

Without prejudice to the communication and cordial relationship between the Judiciary and the PPS on high level, relations on the lower levels on the floor and in courts are rather negative and in some cases even lacking mutual respect and co-operation.

Anecdotal evidence of prosecutors being treated unprofessionally and discourteously abounds. Some examples: Judges shout at the prosecutor, have threatened prosecutors with arrest if all witnesses did not appear on the scheduled day or if the submitted dossier was not complete. Indeed, judges have found such instances to be contempt of court and, in some cases, carried through with their threats and jailed the prosecutors. Prosecutors whose interpretation of the law differed from that of the judge have been accused of misleading the court. Courts do not countenance criticism from

the prosecution. However, the poor prosecutor - court relationship is not solely the responsibility of judges. The failure of the prosecutor to attend court sessions because time is too valuable to be spent in court, not only curtails respect and mutual understanding between judges and prosecutors, but detracts from the prosecutor's professional standing, image, and reputation with the public.

To our understanding the poor relations between judges and prosecutors on the floor are too important to be waved away as being anecdotal exceptions. The disrespect that they manifest is latent and permanently present in those relations.

b. Relations between the PPS and the Police

The present lack of PPS supervision over the police during the investigative process has been repeatedly set forth above (please refer to relevant sections).

c. Relations between the PPS and the Prison Administration

Since *Proclamation 256/2001* severed the accountability of Federal Prison Administration to Federal PPS, a gap between the legal powers and duties of the PPS on the federal and state level has been created. Unlike at the federal level, the supervision of State Prison Administration is still one of the responsibilities of the Head of Justice Bureau. This creates a vacuum at federal level.

Despite the provided opportunity, things are not any better at the state level. In fact, state prosecutors rarely go to a police station where suspects are detained or to a prison where they are incarcerated. In short, even though no other authority is competent to do so, the state Minister has not performed this important duty.

10.3.2 The Police

10.3.2.1 Police organisation

a. The image of the police

It is common knowledge in Ethiopia that the police wrestle with a poor image. Despite doing much to change this image, it remains very poor. The reasons for this poor image have not been researched. One can think of history. Until 1991, the police was a means for the former regime to realise its objectives, which were often not in the interests of individual citizens.

Although the police have embraced the concept of community policing, and already operate to some extent on the basis of policing by consent, it will simply take a long time before this is actually acknowledged and recognised by the public. Nonetheless, the reasons for the public image should be looked at in the public's evaluation of and opinion on the services provided by the police as experienced by the public.

In law, the police have been demilitarised and military ranking has been abandoned. The mentality of police agents is however still not completely demilitarised. An example hereof is that the police manifestly and excessively carry heavy weapons, even when on ordinary patrol. This maintains the negative image of the police as a service of power and oppression rather than a public service-oriented body.

b. Police training

The housing and work conditions in the visited regional training centres are much below any acceptable minimum standard. It would almost be cynical to expect teachers, students and supporting staff to work in such conditions and reach the needed educational level and innovation. The conditions in the regions that were not visited are said to be worse.

The work and housing conditions of the Police College in Sandafa are decent. However, the College has only a very limited number of trainers whose qualifications do not seem to be satisfactory, although many of them hold university degrees. The training method at the College is traditional and it is based on lecturing. Drilling is part of the curriculum and aims at "helping the trainees to become police officers instead of civilians". This method is not really compatible with the hope and the vision of the Ethiopian police to shortly introduce community policing. The curriculum was not specifically studied. However we did note that human rights do not seem to be an integral and important part of the current curriculum, rather they are dealt with as a separate topic.

c. Police strength

On average, the ratio of police density in comparison to specific populations is not satisfactory especially when taking into consideration the severe lack of technical backup for police work. In addition, police provide security personnel for prisons, i.e. prison police. The ration is too low and sometimes even worrying in the regions.

If the new national decision on entrusting police with the guarding of the national boundaries would be implemented, much more pressure would be put on a police service that is already lacking capacity.

The salaries of police officers in Ethiopia are low not only in absolute, but also in relative terms. Generally speaking, average staff in shops, factories or other sections of society earns more than police officers. As far as salaries are concerned, police officers are almost at the bottom of the scale.

d. Equipment and resources

The resources available to the Ethiopian police are completely inadequate to be able to execute its duties in a proper way. There is little or no use of Information and Communication Technology. Without applying this technology, it is almost impossible to build up reliable data files which can serve as a guide, or at least be helpful, when performing the duties for which the organisation is responsible. Data processing is one of the pillars of police work. There is no registration system in which various data on the security situation of a neighbourhood can be recorded, nor is there any way of processing police reports electronically. Without decent data processing, police work never develops. It is limited to 'hit and run' operations. It is not possible to spot patterns in the security situation or changes in it. This makes it difficult to establish a strategic prevention policy. In-depth and wide-ranging criminal investigations are almost impossible, particularly when criminals can access such resources themselves.

In addition, the police have no communication technology. A police official on duty cannot rely on colleagues. Nor can the organisation manage the scanty police deployment effectively. Forces can barely communicate (if at all) amongst themselves about operational and, hence, often urgent matters.

A third problematic area is the mobility of the police organisation. The police have a limited number of cars, which means that a police officer can only operate within a very limited area. Police might have coped with the problem regarding limited mobility by providing reasonably close-knit, area-bound police care, but the limited sphere of action remains a problem within this carefully chosen concept.

Accommodation is a problem in as far as the quality and quantity of many office premises are inadequate and this is more the case if they are to house ICT facilities in the future.

e. The forensic laboratory

The providing of proof in criminal cases is largely based on verbal witness statements. At present, there are hardly any possibilities for gathering additional evidence. It is said that quite a big number of witness statements should be considered unreliable. Investigative activities are frequently hindered by the lack of forensic investigation. This is because police officers simply overlook forensic evidence or deal with it incorrectly or because there is no forensic equipment available. The fact that there is only one laboratory for the whole country is also an obstacle. Forensic evidence reaches the laboratory by mail. The quality of this evidence, particularly biological evidence, deteriorates considerably during a lengthy journey. The furnishing of proof needs to be improved.

The forensic laboratory definitely has know-how and it should be praised for doing such an important work with very limited resources. However, the laboratory is vulnerable. Only one or two experts are employed in most forensic areas and the resources used and available at the laboratory are backward. This is a weak basis for such an important facility. The laboratory is usually unable to respond immediately to a request. There is a waiting time. Compared with the backlog in other institutions of the justice system such as the prosecution or the courts, the backlog at the forensic laboratory is rather small. Still, one should not take this for granted and get used to arrears in such a vital facility.

There is a severe capacity shortage in the dactylographic department. The fingerprints file can hardly remain reliable as it is administered manually. Classification and enquiries are also dealt with manually. Electronic processing of fingerprints would not only be much more efficient, but would also considerably increase the number of hits.

10.3.2.2 The Militia

A very unusual phenomenon when it comes to security in Ethiopia is the informal system of militias. Militias are a huge organisation. The number of militia varies from one state to another. However, there are 10 to 30 militia members for every police officer. These figures support the impression that the police organisation is no more than a second line organisation when it comes to preventive surveillance. To a certain extent, militias can be seen as a form of community policing.

Members of this voluntary organisation can carry weapons. This carrying of arms is not based on a legal precept, which is extremely unusual. The militia

are under the jurisdiction of the *Kebele* in rural and urban areas. During our mission, we were told that the militia operate with a high level of autonomy and that the government does not exert strong control on the militia. This is a problem, especially as there are reports of unacceptable militia behaviour.

Work-related contact between police and militia is not intensive. Legally speaking, the militia does not belong to the police structure. Given the role the militia play in policing and the risks of misuse and misconduct, it is amazing that the militia get very limited or absolutely no education and training.

The legal basis for the activities of the militia is also unclear. Some regions have issued legislation governing the militia. Others have not.

10.3.2.3 Relations with the other Justice Institutions

In theory, the most important relation of the police with other justice institutions is that with the prosecution service. They work closely together in investigating, prosecuting and thus preventing crime. In reality, however, no control on or supervision of police work occurs. This is very risky. In a modern democracy, the exercise of power needs to be controlled.

Besides, police do not seem to take the prosecution seriously when it comes to pre-trial investigation and in cases of request for further investigation by prosecution. This has led to a huge backlog but also to flagrant breaches of the Ethiopian laws and abuses of fundamental human rights of suspects who have been kept in (remand) custody for years. In some cases, the pre-trial custody is said to have exceeded the eventual sentence. This is intolerable.

10.3.3 Penitentiary

10.3.3.1 Legal framework of the Federal and State Prison Services

The federal and state prison systems have many shortcomings. We would just like to highlight the following ones.

a. Proclamation on the Federal Prison Commission (2003)

The Proclamation is rather rudimentary where it addresses the treatment of prisoners and conditions of detention. Conspicuous omissions are the right of prisoners to lodge complaints and external independent supervision. Besides, the Proclamation sets no clear provisions governing the relationships between prison staff, including prison police, and the inmates. This is a very important aspect against the background of the recent demilitarisation of the

police after the end of the Derg regime. After demilitarisation of the structure of the police, a demilitarisation in the minds of the prison police must still take place. They still tend to think and behave militarily. This is more the case in the regions.

b. The Penal Code

“Young Persons”

Article 53 (1), prohibits keeping young persons in custody with adult offenders. Article 109 (2) provides for prisoners under the age of eighteen years to be kept separate from certain categories of (adult) prisoners. Yet, the placement of young persons as of the age of fifteen years in a “normal” prison is a daily practice. Prisons have no special units for young persons. Neither do police stations. The authorities cannot always determine whether a person has to be considered as an adult or a young person. This is due to the lack of a proper birth registration system.

“General provisions as to the execution of imprisonment”

Those provisions provided for under Article 108 to 111 have not been developed yet. The *Proclamation on Federal Prison Commission* drafted in 2003 deals only with a small part of those provisions.

Prisoners on remand

Article 109 (3) requires the separation of prisoners on remand and those serving a sentence. The reality is somewhat different. These requirements have not been met, except for the separation based on gender (female prisoners).

Parole

Article 112 provides a possibility to release sentenced prisoners to probation when two-thirds of the sentence is served or when a prisoner sentenced for life has served twenty years. This possibility for early release is better known under the name *parole*. To be eligible for parole, the conduct of the prisoner must have been satisfactory and the conditions laid down in article 207 must have been fulfilled. Special laws and regulations relating to the conditions and the manner of putting into effect the right of conditional release (parole) provided for under Article 112 (2) still do not exist. The new Proclamation on prison administration does not seem to have tackled this issue either. The current advisory system of parole is not transparent and induces bias. The Prisoners’ Committee can bring advice that is not based on objective criteria. The directors of prisons can abuse the right vested in them by law. This

makes the eligibility of persons for parole rather arbitrary. Besides, a prisoner is not informed in writing about the reasons for his or her deprivation of conditional release. Neither does s/he have the right to lodge a complaint against such a decision.

Probation

Articles 194 to 205 allow the courts to order conditional suspension of certain sentences and place the offender on *probation* for a certain period. It is self-evident that this sentencing modality offers room for rehabilitative efforts and can be an effective means to combat prison overcrowding. However, this modality presumes the existence of a *probation service*, which is still non-existent. The new Proclamation on prison administration did not deal with this point either.

Conditional release

Articles 206 to 215 provide for conditional release. However, the execution modality of conditional release has been never used. Instead, the instrument of parole is used (see above).

c. The Criminal Procedure Code

Pre-trial custody

Article 59 gives the court the power to decide whether a suspect will be kept in custody or will be released on bail. If the court gives a remand decision, it will be valid for 14 days and can be prolonged every 14 days until the pre-trial investigation is completed. The CPC is silent about the place where the pre-trial custody should take place i.e. in police stations or in remand prisons. In the daily practice however, a suspect remains in police custody as long as the police investigation is not completed. This can take months.

Suspects who are eligible for bail but who lack the resources are always remanded in custody. The law does not offer alternatives like conditional suspension of remand custody.

Conditions of remand

Article 60 of the CPC requires that any person arrested be detained on the conditions prescribed by the “law relating to prisons”. No such law exists yet.

10.3.3.2 Organisation and administration of the Federal and State Prison Services

a. Accountability of Federal and State Prison Administrations

The Federal Prison Administration is by law accountable to the Ministry of Federal Affairs. However, the State Prison Administration is accountable to the State Justice Bureau. This anomaly can be a complicating aspect when co-operation is needed because suspects or inmates of federal offences are held in regional police stations or prisons and in case of supervision of such persons.

b. State proclamations on Prison Administration

As far as we are informed, the only State that has adopted its own prison proclamation is Amhara. Though States are not legally obliged to adopt such a proclamation, it should be seen as a shortcoming that the other eight States have not yet passed legislation in this area. The lack of a state proclamation underpins the lack of guidelines for the prison administration and its functioning. But most importantly, it underpins the lack of a state vision as to the treatment of prisoners in detention and their rehabilitation and reintegration in the society after they regain liberty.

c. Training

Probably the most important shortcomings of the prison system are in the field of training i.e. a) a complete absence of training for civil prison staff b) no special training for police guarding prisoners in police stations c) when training is given, it is focused on safety problems and often lacks the concept of human rights d) professional trainers in the fields of law, psychology and sociology are lacking.

d. Absence of clear provisions governing the relations between prison employees and the inmates

After the end of the Derg regime, by law the police was demilitarised. The challenge has been to demilitarise the minds of police as well. This should have also been the case with prisons' administration and prison police. Based on figures obtained from the visited police stations and prisons, it is clear that prison police are predominantly represented. Civilian staff is often insignificantly present. Therefore, the administration of prisons and police stations is more of a military rather than a civilian character. This is clearly reflected in an attitude and mentality of prison police towards prisoners that is based on obedience and oppression, leading in some cases to human rights abuses. Against such a background, the absence of clear provisions regulating

the relations between the inmates and the prisons' administration not only supports the current military mentality, it also gives wide room for various unfit practices to operate. The misuse of parole as an oppressing and bargaining weapon aggravates the situation of the inmates who are made to accept those abuses.

e. Conditions of detention

The physical conditions of the visited police stations and prisons are poor and in some cases really intolerable (not to say degrading) in terms of hygiene, sanitation, health service, food and education facilities.

Contrary to international standards and to Ethiopian laws, there is almost no separation of detainees. Minors and adults, healthy and mentally sick, recidivists and non-recidivists, prisoners convicted of rigorous crimes and those convicted of minor ones are all held together. Besides, there is no separation between suspects held on pre-trial remand and those who are already convicted.

A complicating aspect of the bad conditions of detention is the overcrowding of police stations and prisons. As a matter of fact overcrowding in police stations and in prisons makes the huge backlogs in the justice system very clear and tangible. Hundreds and hundreds (if not thousands) are awaiting their pre-trial investigation by the police to be completed. Others are waiting for the Public Prosecution to finalise their summons. In the meantime, they are held in custody without a court warrant and without being able to invoke the *habeas corpus* rule. And many others have been waiting for months for a court decision. The "happy" category that has been already sentenced can hardly make use of legal possibilities and modalities to quickly rehabilitate and reintegrate into the society. Sentenced prisoners receive a little card with data regarding the beginning and end of the sentence; file management is not optimal which makes it difficult to keep track of inmates who are eligible for parole. A special section on the cover of the personal file is dedicated to his/her eligibility for parole.²⁷ The files do not contain reports on the behaviour of the prisoner during detention.

f. Prisoners' Committees

Prisoners' committees exist in all prisons. Due to the failure of the administration of prisons, prisoners' committees fulfil various tasks. Some examples: prisoners' committees keep track of the dates of release of prisoners

²⁷ The modality of conditional release is never used, because there is no probation service.

to prevent a prisoner from being kept in custody over his release dates. This check is necessary because the prison administration is not reliable. Due to the backlog in the prosecution service and the courts, it often occurs that people are sentenced for a period much shorter than the time they already have spent in remand. The prisoners' committees also keep track of the remand prisoners. Prisoners' committees are also entrusted with the first screening regarding the eligibility of prisoners for *parole*. They give the directors of prisons an advice as to prisoners that would qualify for parole. The prisoners' committees are empowered to assign jobs and to mete out disciplinary punishments. Disciplinary sanctions are: 1) physical exercise 2) garbage disposal 3) transporting materials and/or 4) cleaning. The prisoners' committees also develop income-generating and educational activities.

Without any prejudice to the initiatives and efforts of the prisoners' committees, they are non-legal bodies that have no basis in any formal law. In fulfilling their tasks and duties, those committees are filling in vacuums that have been created due to a bad prison administration and management. Those gaps ought to be addressed by the legal structure and bodies of the prison administration and not by a prisoners' committee. Besides, many aspects of bias and unfit behaviour characterise the performance of prisoners' committees but prisoners cannot complain because they fear the loss of parole right.

g. Estimation of the total prison population

The data presented by different authorities and the local experts lead to an estimated total prison population (federal and state) in July 2003 of about 65,000.²⁸ The total population of Ethiopia is estimated to have reached 67 million by the year 2003.²⁹ The number of prisoners per 100,000 of the total Ethiopian population would be then 97, which is well below the prison population rates of most African countries (see: www.prisonstudies.org) and equals the prison population rates of major Western-European countries like Germany and France. It must be noted however, that in the absence of official *Prison Statistics* it is not clear how those data are collected. Secondly, it should be taken into consideration that suspects can be held for a considerable time in remand custody in police stations for which data are not available either.

²⁸ Police stations *not* included.

²⁹ Ministry of Federal Affairs FDRE, *A Concept Paper to Reform the Federal and State Prisons of FDR Ethiopia*, Addis Ababa, June 2003, p. 2. The CIA *World Fact book* gives in its update of 1 August 2003 an estimate of 66, 5 million. *Note of the author*: Lacking a proper registration of births and deaths, these can only be rough estimates.

h. Inspection of prisons and police stations

The inspection of prisons is believed to be legally the duty of prosecutors who should control the legality of the custody of prisoners and their treatment. There is however disagreement about this and articles 11 and 12 of Proclamation 39/93 have been revoked. The legal basis for prosecutors to inspect police stations seems to be in doubt. Some think the prosecutor is empowered to do so. Others believe that this duty should be legislated for. In any case, the inspection of prisons and police stations is too important to be neglected, as is the case now. Unless this negligence is remedied, Articles 17 and 21 of the Constitution will not be implemented.

On a national level, no independent ‘watchdog’ exists. Neither is the civil society in the country developed enough to be able to tackle such issues. Article 55 (14) of the Constitution provides for the institution of a Human Rights Commission and Article 15 (15) provides for the institution of an Ombudsman. Both institutions could fulfil the role of an independent watchdog in respect of the performance of prison administration. Obviously, this is an additional check next to the one related to the system i.e. the inspection of the prosecution. Neither of these constitutional provisions has been implemented until now.

There is no contradiction or conflict whatsoever between the ideas of having the prisons supervised by different bodies and organisations. This is the practice in Europe. In the Netherlands, for example, supervision by prosecution is the official and legal approach. The prosecutor deals with all legal matters pertaining to the file of the inmates, their sound treatment. This is the internal supervision provided for from within the justice system. There are other ways of supervision from outside the system i.e. the Ombudsman, journalists and civil society. There is also an official organ i.e. the Prison Supervision Commission. All non-legal issues that are not dealt with by the prosecutor, such as complaints as to food, beds etc, are dealt with by this Prison Supervision Commission. The Prison Supervision Commission is chaired by a judge and has no capacity whatsoever to decide on file-related issues or the legal matters. In all those forms of supervision, there is only one common aim i.e. the independent supervision of the prison performance in order to avoid any abuse of the rights of the inmates and enhance and strengthen a sound performance of the prisons.

Sporadic visits of Ethiopian prisons by the ICRC and the American Embassy are of great value. However, they should not be seen as a remedy for the lack

of inspection by the prosecution and for the non-existent Ethiopian civil society.

i. Weak system of legal aid

One of the reasons remand prisoners have to wait such a long time before their case is heard in court and one of the reasons detainees eligible for parole are not discharged at the earliest moment possible, is the almost total absence of affordable legal aid. Almost no (remand) prisoner can afford to pay a defence lawyer, which means that legal aid is virtually absent in the Ethiopian criminal procedure.

Another problem of the legal aid is allegedly the lack of independence of defence lawyers, as they are obliged to obtain a yearly license from the Federal Minister of Justice.

j. Lack of budget

There is no need for research or studies in order to conclude that police stations and prisons have been neglected for a long time. By the same token, it is obvious that the administration of prisons has lacked and currently lacks budget. To illustrate this situation, a striking example is the drug-budget in zonal prisons which does not exceed 6,000 Birr and is intended for approximately 1,500 to 1,800 detainees.

10.4 Observations and Major Shortcomings Related to Legal Education

10.4.1 Administrative and managerial shortcomings

Two of the visited law schools are not organised as autonomous law faculties. Bahir Dar Law School is part of the Faculty of Business and Economics. The Law School in the Southern University-Awasa is a department within the Faculty of Social Sciences. Staff in both departments has expressed the need for organisational changes aiming at strengthening the position of the law schools.

The enrolment of students at public universities is decided centrally. This system ensures that all universities have an equal share of students of different abilities. Had competition been the rule, regional universities, especially those in remote areas, would have probably received a smaller proportion of gifted students. However, the students we met have objected to this system that limits their freedom of choice and in some cases substantially increases

the cost of their studies. Besides, students tend to opt for the public universities, which generally enjoy a good reputation and did not charge fees until the cost-sharing program was initiated. Even after the introduction of cost-sharing, the fees of the public universities remain fairly low. As a result, private law schools attract students with lower grades, provided they can afford the fees.

Under the regulations of most universities, a three-credit hour course is supposed to take forty-eight hours in a semester. Instructors are contractually bound to deliver this performance. The daily practice is somehow different. Students complained to the team of experts about instructors being frequently absent from classes and no make-up classes are organised. The administration has so far failed to act against this negligence.

Within the law schools, especially in the regions, the teaching staff is often responsible for the development and implementation of the administrative system. As a result, the time that can be spent on teaching and research is substantially limited.

10.4.2 Legal education policy

There is an acute need for legal training for judges, attorneys, prosecutors and other professionals. So far training has been organised in a sporadic manner by different institutions and with the involvement of donors from different countries. Recently, it was recognised that systematic and upgrading training was necessary. In response to this need, the Federal Supreme Court, in collaboration with the United States Agency for International Development, designed a training curriculum for judges. This training has by now been conducted and wound up. In addition, a Judicial Training Centre was set up in late 2003 (for information on the JTC and its curriculum, see the section on the Judiciary in this report). However, many of the practitioners have not yet undergone formal training. There is a need for academic and in-service training.

The objectives of legal education have not been clearly set by the government or the law schools. As a result, grave anomalies persist. For example, whilst the Ministry of Justice requires attorneys applying for a licence to hold a law degree and have practised for five years, judges can be appointed having served for a year only as apprentices.

Recently a preparatory program was launched. All students are required to attend this program before joining the universities. Instructors complained to

the team of experts that the students coming from this preparatory program are not well equipped to enrol for a law degree.

10.4.3 Relations between interested ministries

The relationship between the Ministry of Education, the Ministry of Justice and the Ministry of Capacity Building regarding their respective competence on legal education is unclear. Communication between the three ministries is insufficient and as a result no precise guidelines exist in terms of a more efficient use of the existing legal manpower. And the same applies in terms of student/staff ratio and facilities in law schools.

10.4.4 Insufficient networking

Currently, there is insufficient networking in the following areas: a) co-operation of Ethiopian law schools/faculties with each other; b) co-operation between Ethiopian and foreign universities; c) co-operation between the Ethiopian law schools/faculties and the Ethiopian legal professions.

Creating possibilities for private law schools must be seen as a welcome addition to the educational system. However the attitude and relation between state and private schools are problematic. We find a lack of acceptance and lack of goodwill in respect of achieving an addition to the variety within the educational system. We believe that this situation is not caused by competition. It is rather due to criticism and a lack of respect towards a new alternative in general and in particular towards instructors lacking the highest possible degrees.

A successful reform of legal education in Ethiopia requires a closer co-operation between the various universities and law schools in terms of curricula development, teaching methods and research. A co-operation that demands a better exchange of expertise and know-how. Only recently did the law schools agree to meet periodically in order to share information and to co-operate. The current networking initiatives, under the leadership of Mekele Law Faculty, could be used as a focal point for these desirable developments.

Likewise, potentially fruitful relations with foreign universities and other academic institutions are far from being sufficiently developed and explored. Foreign universities could second experienced and qualified staff, and provide student exchange programs, funds, scholarships, qualified administrators, etc.

There are no established relationships between the law schools/faculties and the legal professions such as the Bar, courts, and the prosecution. As a result there is an insufficient balance between theory and practice and academic staff is not likely to practise law or practising lawyers to teach law.

10.4.5 Lack of curriculum development

Curriculum development is often lacking or, where undertaken, it is unsatisfactory. New legislation is seldom taken into account when revising the curriculum. As a result, curricula are stagnant and graduates are little more than generalists. Our team visited all law schools in the country, including private ones. After studying the curricula of the different institutions, the team reached the following conclusions.

The Addis Ababa Law School has used its initial curriculum for about thirty years without revising it. It is only during the last four or five years that due attention has been given to the revision of this curriculum.

All visited law schools have copied the Addis Ababa University Law School curriculum without any modification whatsoever. The courses in the curriculum do not always seem to meet the needs of the Ethiopian society. For example, the law schools offer courses on international trade law whereas there are no courses on laws dealing with healthcare (in particular HIV) and water management. Besides, the private law schools curriculum designed by the Ministry of Education to provide legal education to “10 + 1”, “10 + 2” and “10 + 3” students appears to be irrelevant because the graduates of those schools are intended to be file managers in courts rather than being lawyers. Yet, they receive courses on substantive legal topics such as Family Law, Contract Law and Penal Law while they receive no file management courses at all.

The curriculum lacks a clear vision and objective inasmuch as the type, quality and level of a graduate are not clearly defined.

There are few optional/elective courses in the curricula. When options exist, they are often limited to a small part of the law program.

Neither in all the visited universities nor at the Ministry of Education did the team find a department/division or a group of persons that is responsible for and effectively dealing with curriculum developing or revision of legal education. The Ministry of Education has indeed a curriculum division but

it is merely responsible for the developing of curricula for institutions below tertiary education.

The team did not find, in any of the law schools, schedules or designed periodical planning for the revision of the curriculum.

There are LL M programs at different locations in Addis Ababa. The Ethiopian Civil Service College LL M project is run in co-operation with the Amsterdam University. The Addis Ababa University Law School has launched a LL M program. Based on discussion with the instructors at the Ethiopian Civil Service College, the team found out that the curriculum of the Amsterdam University project is said to be satisfactory. This curriculum provides advanced law courses covering topics that are not dealt with at undergraduate level leading thus to a better research. However, the curriculum of the Addis Ababa University LL M program lacks a clearly defined objective as far as the graduate is concerned. It merely repeats the courses that are given at the levels of certificate, diploma and LL B. To mention just an example of the LL M curriculum, it repeats the same course General Contract Law that is given at the certificate, diploma and LL B programs.

10.4.6 Teaching methods

Teaching is all too often limited to lecturing to large classes. Whilst the teaching staff are aware of this limitation, the insufficient number of qualified instructors and the lack of essential facilities make diversification difficult. There is little orientation towards developing legal reasoning and the acquisition of skills.

Teaching and learning methodology is a process initiated with the aim to strengthen administrative and pedagogical capacity in order to fulfil the obligation to secure adequate standards regarding teaching methods and attitudes with the ultimate goal to produce instructors with an open mind, critical thinking and tools for the justice system to work in line with the rule of law and human rights. The term “instructor” is commonly used in Ethiopia and this reflects the focus on instructing students *ex cathedra* rather than teaching them to reason legally.

The delivery system is heavily based on lecturing although the team noticed that it could sometimes be participatory inasmuch as students were allowed to ask questions. Clearly, the methodology of teaching is detached from the daily practice of the legal professionals.

There seems to be an expectation for law graduates to become judges or attorneys as soon as they graduate. This is undesirable. There is a need for judges and attorneys to receive practical training. This is currently not always the case.

The team noted that an excessive number of part-timers were employed, particularly in the Addis Ababa University whereas permanent instructors were not teaching the number of hours allocated to them by contract.

The medium of instruction is the English language. The team noticed that not all instructors do have a good command of English enabling them to deliver the lectures soundly. This is primarily the case in private law schools.

10.4.7 Quality control

As announced in ENDP II, the *Higher Education Proclamation* provides for the establishment of a “Quality and Relevance Assurance Agency”. This Agency will fulfil an important role in the accreditation and quality assurance in higher education, of interest to higher education institutions, the government, and the society at large. The team of experts has been informed that until recently there existed no institution to monitor and assess the quality of education in the country. The emerging of private colleges necessitated the establishment of a quality assurance body. This is why the Ministry of Education by law established such a body. However, it may prove too small and insufficiently equipped to monitor and assess fully the quality of education in public and private institutions. Besides, the law on quality assurance does not provide for specialised expertise to support this monitoring body.

Our team received examples of examinations and grading from the various law schools. When comparing the examinations of the same programs, there seems to be a variation in examination levels. The quality control and assessment is insufficient.

10.4.8 Inadequate facilities

The faculties are not provided with a regular supply of court decisions and consolidated and codified laws (see section on Law Making and Law Revision) nor do they receive recent and up-to-date reading materials. The law libraries are currently not well equipped and the ICT infrastructure of the law schools is insufficient.

10.4.9 Lack of qualified staff and poor human resource management

Currently there is a lack of good and well-qualified instructors at the various law schools. At present, potential candidates are not attracted by relatively poor salaries and benefits. This is equally true of administrative staff. Salaries are not linked to good performance, and vary from one university to another. The programs for upgrading the knowledge of teachers and administrators and train them are not well structured. Career plans for teachers and administrators are virtually non-existent.

10.4.10 Problems related to the funding of higher education

The government allocates budgets to universities for staff and facilities based on budget requests submitted by the universities. However, the universities do not receive the full compliment of the requested budget.

It should also be noted that at present funding is solely based on expected enrolment numbers. The success rate of students and the quality of teaching are not taken into account.

10.4.11 Research and publication

The team of experts, having visited the law libraries, did not find commentaries and legal literature on Ethiopian law except some that were written by foreign expatriates decades ago. No law journals published except the Journal of Ethiopian Law that is irregularly issued at the Addis Ababa University Law School. The team has been informed that the instructors are contractually bound to do research and publication. Though there are a few instructors who abide by their contract and do write articles leading to an academic promotion, many do not fulfil their contractual obligation and the administration does not take measures against this shortcoming. The administration seems to condone this shortcoming bearing in mind the following: a) that the average income of the instructors is fairly low b) that qualified instructors are scarce in Ethiopia. The government has allowed instructors to have double employment in order to keep and attract good instructors.

Furthermore, the team of experts has found out that many of the instructors do lack the necessary skills to perform sound research.

11

Recommendations

11.1 Recommendations Relating to the Legislative Procedure (Law Making and Revision)

Recommendation 1

Parliament must recognise that the Speaker and Deputy Speaker of the House of Representatives are the only authorities to initiate legislation, apart from the Council of Ministers. To do this it must:

- *Amend the Constitution to allow this to happen;*
- *Revise article 4 of Proclamation No. 271/2002;*

The right to initiate legislative proposals should only be given to the Speaker, the Deputy Speaker and the other Members of the House and to the Council of Ministers and not to the other bodies mentioned in article 4 of *Proclamation No. 271/2002* because the latter specific interests. The right thus given to them contradicts the principle of separation of powers. This article should be revised as soon as possible for this purpose. The Constitution should be amended to allow for this new provision to be enacted.

Recommendation 2

Parliament must give constitutional validity to article 57 of Proclamation 251/2001 allowing for the House of Federation to initiate legislation. To achieve this it should:

- *Cause article 62, paragraph 8 of the Constitution to be amended.*

Article 57 of *Proclamation 251/2001* giving the House of Federation the right to submit draft laws to the House of Peoples' Representatives contradicts article 62, paragraph 8, of the Constitution. If the House of Federation is to be given the power to initiate laws, this article of the Constitution should be changed to that effect.

Recommendation 3

Draft laws should only be submitted to the House through the Council of Ministers. For this to be achieved:

- *The Council of Ministers and the sector Ministers should scrupulously adhere to the new procedure of the Council of Ministers.*

Draft laws prepared by ministries and other governmental agencies and bodies should only be submitted to the House through the Council of Ministers. They should not be sent to the Speaker without prior approval by the Council of Ministers. The new procedure of the Council of Ministers must be adhered to.

Recommendation 4

The positions of the Minister of Justice, the Sector Ministers and Minister of Cabinet Affairs must be clarified. To make this possible, all Ministers must:

- *Give full effect to article 23 of Proclamation No. 4/1995.*
- *Amend this provision to make clear that the Minister of Justice has a role in the preparation of all draft laws (see below).*
- *Ensure that the Minister of Justice is the chief advisor on all legal matters relating to the Council of Ministers.*

The Authorities should give some consideration to and - at some point - give full effect and force to article 23 of *Proclamation No. 4/1995*. We also recommend amending this particular provision to make it clear to all sector ministries that the Ministry of Justice has a role in the preparation of all draft laws to be submitted for approval to the Council of Ministers. We recommend to redraft this article and to read it as follows: “The Ministry of Justice shall have the powers to: be the chief advisor to the Federal Government on matters of law; 11: assist in the preparation of all draft laws prepared by the other ministries and other Federal Government organs (delete: when so requested by Federal Government organs and Regional Governments); 15: carry out the codification and consolidation of laws; collect laws of Regional Governments and consolidate same as necessary” add: “in co-operation with the relevant ministries and Federal Government organs concerned”.

Again, ideally, the Minister of Justice should become effectively the chief advisor on legal matters to the Council of Ministers. He should have pre-eminence in this regard, as far as coherence, consolidation and codification of the laws and implementation of international treaties are concerned. Only such an approach could address effectively the current fragmentation and

incoherence pervasive throughout the legal system. Under the new manual the constitutionality of drafts and their coherence with the various provisions entailed in international agreements remains mainly in the hands of sector Ministers. This should not be the case, as these ministries do not have the legal expertise to pass such judgement.

The Ministry of Justice should be mandated by the Council of Ministers to verify and ensure the constitutionality and the respect of the principle of legality for all draft bills and regulations submitted to the Council of Minister's approval. It remains to be seen to what extent the newly created Minister of Cabinet Affairs will be in a position to head this effort for overall coherence and co-operation. The Ministry of Justice should in any case be fully associated to these efforts.

Recommendation 5

Clarify the role and place of the Justice and Legal System Research Institute.

To this end:

- *The resources of the Research Institute and those of the Ministry of Justice should be joined.*
- *The Research Institute should be placed under the authority of the Minister of Justice.*

We recommend joining the resources of the Research Institute and the ones of the Ministry of Justice to provide the latter with the resources needed to fully perform its duties described in article 23 of *Proclamation 5/1995*, that is “to be chief advisor to the Federal Government on matters of law...assist in the preparation of draft laws ...carry out the codification and consolidation of laws; collect laws of Regional Governments and consolidate same as necessary”. If the Ministry of Justice is not performing satisfactorily, then the issue should be addressed at a political level by the Council of Ministers.

If the Institute is going to become a justice oriented “think tank” without becoming a part of the Ministry of Justice, it should nevertheless be placed under the authority of the Minister of Justice. If the future task of the Institute is going to have a broader strategic scope, it might be placed under the authority of the Prime Minister.

Recommendation 6

Stakeholders should be consulted by Sector Ministries as part of the drafting process.

We recommend consulting stakeholders as early as possible in the legal drafting process and, whenever applicable, organising a consultative approach by creating working groups consisting of Ministry officials, and representatives of the stakeholders concerned by a particular bill, including lawyers from the private sector. Their expertise would be of help in defining the best possible drafting for the bill.

Recommendation 7

Parliament should amend the law making process. The following steps should be taken:

- *The Parliament Secretariat should be re-enforced;*
- *The process through the Standing Committees should be improved;*
- *The procedure for public hearings should be improved;*
- *The right to amend legislative proposals should be regulated;*
- *The discussion of bills should be done article by article;*
- *All provisions relating to voting majorities should be brought in line with the Constitution;*
- *The public should have access to the plenary meetings of the House;*

The legislative procedure of the House should be significantly amended and the departments of its Secretariat involved in assisting the Members of Parliament to discharge their obligations should be significantly reinforced. The full complement of staff should be attained as soon as possible. Consideration should be given to the establishment of salary scales commensurate with the staff's expertise.

The Speaker should send all draft bills having been approved by the Council of Ministers, as well as bills initiated in the House to the relevant Standing Committee. Article 4 (9) (e) of *Proclamation No. 271/2002* should be revised for that purpose.

All draft bills received by the Speaker of the House from the Council of Ministers should be sent to the appropriate Standing Committee. The Chairman of that Committee should designate a Committee member to prepare a fully-fledged report on the bill and its recommendations for changes and amendments. The Committee should discuss the findings of the member and decide on changes to be made to the bill. The Standing Committee's recommendations should be made in a written report to the Speaker. The Speaker should then send the report to all Members of the House before the second and third readings of the bill, when the bill is examined in detail. In their in-depth review of draft laws, the Standing

Committees should be assisted by the experts of the Secretariat's Legal Department. For that purpose, the experts should be grouped in specialised teams relating to specific Standing Committees on the basis of their specified competence and experience. The Standing Committees' reports should be published with the laws. This would provide material for the entire legal community and explain in particular the rationale for the law, and the input made by the House.

The procedure of Parliamentary public hearings should be improved. In particular the dates and programs of Public Opinion Collecting Forums (or public hearings), as well as the proposed law should be widely published and made available on the web site of the House so that interested parties such as lobbying groups and NGOs can prepare their intervention before attending any particular forum. The Standing Committees may also decide to invite specific lobby groups, active in the area concerned, to attend the hearing and send them the draft law beforehand. The Standing Committees should give an account in their reports of what has been done with the proposals, suggestions and recommendations made during public hearings.

Proclamation No. 271/2002 should be amended for this purpose.

The right to amend legislative proposals should explicitly be laid down in *Proclamation No. 271/2002* and its procedure should be regulated.

It is of the utmost importance that the plenary discussion and adoption of the bills be done article by article. Only this approach enables Parliament to thoroughly analyse the internal coherence of a law with the Constitution, the overall legal framework, and foremost, with the stated objectives of this law.

Proclamation No. 271/2002 should explicitly state this procedure and should contain precise rules on the voting procedure.

All provisions in proclamations or regulations that require voting majorities, which are at variance with the simple majority rule of article 59 (1) of the Constitution, should be revised as early as possible and should be brought into line with the Constitution.

The plenary meetings of the House should be made open to the public at large, as has been required by the Constitution.

Recommendation 8

International treaties ratified by Parliament must be integrated into national law. For this to happen:

- *All ministries must co-ordinate with Ministry of Foreign Affairs during the negotiating process of international agreements.*
- *The Ministry of Justice must insert the treaties into national law.*

Bring up to date *Proclamation No. 5/88* as promptly as possible to fill the legal gap in the current procedures relating to the negotiation, signature, and ratification of international agreements.

All ministries must consult and co-ordinate with the Ministry of Foreign Affairs and also the Ministry of Justice during the negotiating process of international agreements.

Ensure publication and translation of all treaties ratified by the Ethiopian Parliament over the years. Ensure that the Ministry of Justice, as the chief legal advisor of the Council of Ministers, has the means to insert the provisions and guiding principles of these treaties within existing laws and codes, promptly after their ratification.

Recommendation 9

The Ministry of Justice must ensure that drafters expressly mention all provisions cancelled by the new law. To this effect the Ministry of Justice must set up appropriate procedures.

It is the responsibility of the Ministry of Justice to ensure that drafters expressly mention all provisions cancelled by the new law. Blanket provisions should not be systematically substituted for the precise mention of provisions cancelled. To this effect, the Ministry of Justice should set up appropriate procedures which will come into play before the proposed new law is forwarded to the Council of Ministers.

Recommendation 10

Laws must be consolidated, codified and published. The Ministry of Justice must establish procedures for the consolidation, codification and publication of laws, possibly in collaboration with a specialised private firm.

Recommendation 11

The House should ensure that laws are implemented.

The House should be encouraged to exercise greatest vigilance and control on all activities of the Ministers in general and on the implementation of laws in particular.

Recommendation 12

The Ministry of Justice must improve drafting skills:

- *A drafting department, composed of senior staff, must be created.*
- *Salary scales must be revised.*
- *Training courses in drafting must be provided.*

Create a drafting department, preferably at the Ministry of Justice (to remedy the current fragmentation of resources), to be composed of senior staff with a very strong legal background and experience and good knowledge of public administration.

The scale of salary for experienced lawmakers should be as high as is possible in the civil service, to be able to attract and retain senior lawyers, judges or professors. Consider revising salary scales upwards if necessary. Recruit eventually retired personnel with a strong legal experience.

Provide training courses in drafting techniques for all legal staff and drafters across all ministries and the House. Request donor assistance to fund training projects as needed.

Avoid recruiting staff without expertise training, and good knowledge to write drafts in areas in which they have no expertise. Place junior staff under the supervision of senior and experienced staff and give them in-house training, when possible with the assistance of the Law Faculty of the Addis Ababa University.

Instruct staff and Ministers to respect the codification process or need for consolidation when preparing new drafts. Instruct them to accompany each draft with a report assessing the conformity of the proposed bill or regulation to the Constitution, International treaties, other laws, and how the new law or regulation will receive effective implementation.

Recommendation 13

The issue of law making in the Regional States should be studied in depth. Parliament should ensure that the issue of law making in the Regional States is researched and that the regional States be given assistance in this matter.

The issue of law making in the Regional States should be studied more in-depth and assistance should be given to them in finding solutions to their problems.

Recommendation 14

While not an immediate priority, a study should be conducted to determine the customary and religious legal norms with a view to ensuring that all justice in Ethiopia accords with Constitutional and international legal norms.

The issue of the prevalence of federal law upon customary law will need to be addressed in the long run, more specifically in areas where customary law discriminates against particular groups of the population.

The numerous and grave failures of the current court system (described at length in other parts of this report) should be thoroughly resolved before considering submitting customary law and practices to the federal judicial system. The utmost should be done to address first of all the other issues raised in the various parts of this report, before tackling the complex issue of entrenched religious and customary law in the regions concerned.

A team of international and local experts well versed in local languages, customs and practices, should conduct an in-depth study of customary norms which do not conflict with constitutional, international, and legal norms and could be accepted into positive law. This study should also list the norms, which contradict rights granted by the Constitution and other legal norms, to declare them illegal. The findings of this study should eventually allow for the codification of religious and customary law which, when found in accordance with the Constitution, would explicitly become part of the Ethiopian legal system. Codification of religious and customary law would also allow citizens to acquire a better understanding of their rights and obligations.

11.2 Recommendations Relating to the Judiciary

According to the international concept of the rule of law at least the following aspects are required:

- an independent judicial system to limit the power of the government and to protect the rights of individuals;
- courts can interpret and apply laws and regulations in an impartial, predictable, efficient and transparent way;
- a consistent enforcement of decisions of the court;
- access to justice to all citizens;

Based on observations and discussions during the visits to Ethiopia, the following recommendations can be made, bearing in mind the rule of law principles.

Recommendation 1

The independence of the Judiciary should be consolidated and its professional capacity should be enhanced. This has to be made a high political priority.

Judicial reform aimed at consolidating the Judiciary's independence and enhancing its professional capacity should be made a high political priority. Currently, there are some influences from the executive that could be detrimental to the independence of the Judiciary. There is no need for the Ministry of Finance to administer the budget of the Judiciary, thus breaching the Constitution. Because the Civil Service Commission is responsible for administrative court staff, the Judiciary only accepts the proposed staff and has no say in its selection or the determination of its qualifications.

Recommendation 2

The Powers vested in the function of the President of the Federal and States Supreme Courts should be transferred to the Judicial Administration Commissions.

Consider establishing completely independent bodies on both federal and state levels called Judicial Councils, in which the powers of the President of the Supreme Court will be vested, to ensure administrative judicial independence, rather than vest the responsibility for the administration of the courts in one position. Such a solution gives more guarantees against vertical (and outside) undue influence or interference and does more justice to the internal independence of the Judiciary. The Judicial Administration Commission (Council) can play the role of Judicial Council, like the ones in Europe. However, the composition and the functioning of the Commission should be altered. In regard of the composition, input from outside the Judiciary and legislative organs should be allowed. Mainly the input of other legal professions should be utilised. In terms of functioning, the Commission should make much more transparent its procedures and policy with regard to selection, promotion, discipline and other conditions of employment of judges. The Commission will also have to work on a permanent basis (it currently meets from time to time).

It is common throughout the world for Presidents of Courts to have both judicial and administrative functions. In Western European systems as for

example the Netherlands and Germany, a board of the court, chaired by the President, has the administrative function. However, there are many guarantees in the system that the President will not be influenced by the executive. Also, there are guarantees that he cannot influence the decision of other judges or the independent selection and recruitment thereof. In Europe, it is more and more the practice that professional court managers are employed in courts in order to enable the president to concentrate on judicial functions. The chief court manager of a court in the Netherlands is member of the board of that same court.

Recommendation 3

A more transparent recruitment and selection system for judges should be set up. A working group will have to map the existing methods of recruitment and selection of members of the Judiciary, evaluate them and discuss adaptations to them or the setting up of new possible ways of selection and recruitment, the contents of the procedure and the conditions that should be set to enter the Judiciary and to be able to take part in the selection procedure.

An example of selection, recruitment and training used in several Western European countries follows.

General remarks

In order to maintain the quota - which actually is insufficient to handle the considerable caseload without falling into arrears - many new judges and public prosecutors need to be appointed each year. A jurist can be appointed as a member of the Judiciary in two ways. On the one hand, via the internal training system of the Judiciary and on the other hand via the so-called outsiders' route. A Judiciary often aims at achieving a balance between internally and externally selected candidate judges and prosecutors.

Internal candidates

Internal candidates are young lawyers who are selected in order to receive an initial judicial training. This initial training takes place partly within the Judiciary itself and partly outside it. Although many of these young lawyers decide from the beginning of the training about becoming either a judge or a public prosecutor, it is possible (and even necessary) to postpone this decision, as the training covers both fields during the first years. A disadvantage of the internal training program might be that at the time internal candidates qualify for the appointment as a judge or as a public prosecutor, they in general have less life and/or working experience than

external candidates. On the other hand, the courts are able to influence the education of these candidates considerably. Furthermore, experience shows that a sufficient number of highly competent and talented young lawyers apply for this training. In order to apply for the training the candidate should have a university degree in law, should be of unspoken behaviour and should not be older than 30 years of age; a minimum age is not provided for and s/he should hold the nationality of the country. It goes without saying that both judges and public prosecutors speak and use the language of the country in their daily work, so fluency in the national language is a necessary requirement.

The pre-selection of the trainees starts with a selection on the basis of a letter of application that candidates write upon an advertisement in a newspaper. The selected candidates are invited for a psychological test that covers personality, character, intellectual as well as analytical abilities, attitude to work, immunity to stress and social skills. After this test the best candidates may proceed in the selection procedure. These candidates undergo a more specific psychological test and an interview with the selection commission. This commission consists of judges and public prosecutors, officials of the Ministry of Justice and other members who have broad work experience but do not belong to the Judiciary or the Ministry. The selection commission makes recommendations to the Judicial Council upon the eligibility of candidates to complete the training program successfully and upon their ability to serve as a judge or a public prosecutor. The Judicial Council organises, co-ordinates and executes the selection procedure, whilst the Judiciary itself advises on the selection to be made. The selection and recruitment is secret in order to respect the candidates' privacy.

Upon admittance to the training program, the trainee is appointed as a civil servant. After a successful training of six years the candidate is eligible to be appointed as judge or public prosecutor. Out of the large number of lawyers that apply for the training program, only a few (about 50 a year) are recommended by the Judiciary for training at a court.

The internal initial training lasts six years. The first four years are spent at a court as well as at the Public Prosecutor's Office at that same court. During this period, the candidate - supervised by an experienced judge or public prosecutor - participates in all the work that will become part of his or her duties as a future judge or public prosecutor. Among the duties of the candidate are hearing witnesses, deliberations in chambers, presenting a case before the court and preparing written judgements. Additionally, the

candidate attends a tough training program that is provided by the Judicial Training Centre. In the third year of the training, the candidate will have to decide for a career as a judge or as a public prosecutor. On the basis of this decision, the fourth year of the training program will be determined and will take place either at the court or at the public prosecutors Office, for both deepening and broadening of knowledge and experience. During the first four years, the work of the candidate is evaluated every year. Should such an evaluation turn out to be negative, the candidate will receive a formal warning. A second negative evaluation will definitely lead to the dismissal of the candidate.

The last two years of the training program are spent outside the Judiciary and consist of an apprenticeship. In most cases such apprenticeship is fulfilled at a law firm, but apprenticeships at other organisations are possible (e.g. Council of Europe, multinationals, police etc.).

The director of the JTC, who is himself member of the Judiciary, has an important role in supervising the proper implementation and execution of the training program. For that purpose, he regularly keeps in touch with all those engaged in the coaching of the trainees (mentor, coaching judges and public prosecutors, Presidents and Chief Public Prosecutors), as well as with the trainees themselves.

When the training is successfully completed, the candidate is appointed, according to his or her own choice, either as a deputy judge or as a substitute public prosecutor, in which position s/he can fulfil all duties performed by a judge or a public prosecutor. After having done so during a certain period and if the court or the Public Prosecutors Office is satisfied with his/her work, the court or Chief Public Prosecutor may recommend to the Judicial Council through the Minister of Justice to appoint the candidate as a judge or public prosecutor. The Minister of Justice tends to follow such a recommendation. An appointment as a judge is for life. A public prosecutor is considered a public servant and is not appointed for life.

External candidates

In general, it is considered essential not only to appoint internal candidates, but also lawyers who have already gained considerable experience in the legal practice and who, in the opinion of the court or the Public Prosecutors Office, have highly distinguished themselves. The appointment of external candidates is of great value for the diversity of the Judiciary as well. As said before, it is the aim of the Judiciary that 50% of the recruits are external

candidates. Announcements for vacancies of public prosecutors are made in newspapers, while no specific announcements for the position of judge are made. Possible candidates in general present themselves before the selection committee on their own initiative. Only applications of candidates who have a university degree in law, who are of unspoken behaviour and have gained at least six years of juridical experience (in any legal profession), are taken into consideration. These general job requirements are checked before the candidate may enter the selection process. The selection and recruitment of outsiders is kept secret to respect the candidate's privacy.

The selection, which is quite demanding, is performed by a committee, consisting of senior judges and senior public prosecutors as well as of a representative of the Minister of Justice, a distinguished member of the Bar and a law professor. Since the candidates have already gained considerable experience as lawyers, the selection is mainly focused on their ability to perform as a judge or a public prosecutor. Candidates who have successfully passed this selection are appointed as deputy judge at a court or as deputy public prosecutor, in which position they are assessed by the court or by the Chief Public Prosecutor. Depending on their professional experience and aptitude to learn, the period of assessment lasts one to two years. During the assessment period, the candidate continues the daily work in his or her profession. If the assessment is evaluated positively, the court or the Chief Public Prosecutor will recommend the candidate to be appointed as a judge or public prosecutor.

Outside candidates are trained in practice at a District Court or a public prosecutors Office and follow necessary courses, depending on their working experience and personal and professional needs, at the JTC or another relevant training institute (university, post graduate schooling...).

Recommendation 4

Objective, regularised, merit-based and transparent procedures for administrating judges' career paths should be developed.

Recommendation 5

Systems for periodic evaluation of judicial performance that are transparent and based on a balance of relevant quantitative and qualitative criteria must be developed. Performance evaluation should be integrated into the training programs.

Recommendation 6

An Association of federal and state judges should be established.

The experiences with Associations of Judges all over the world are excellent. A lot of countries in the world have already established such an association. When these associations have an independent status, they can become members of the International Association of Judges (IAJ).

The Dutch Association for the Judiciary (NVvR) is the association of judges and public prosecutors in the Netherlands. It is a private organisation that is founded in 1923. The NVvR has its headquarter in The Hague. The NVvR has about 3073 members (January 2004); this is about 97% of the Judiciary. As a professional association, the NVvR seeks to promote reflection by its members on their profession as judges or public prosecutors. For this purpose, the NVvR organises, *inter alia*, symposia and seminars on certain aspects of the administration of justice and it also publishes its own magazine. The NVvR has a consultative status with the Dutch Minister of Justice and the Dutch Parliament, giving advice on bills for (new) legislation. The NVvR also makes recommendations for the Judiciary in the Netherlands on several aspects of the administration of justice. As a union, the NVvR seeks to promote the idealistic and materialistic interests of its members. Collectively, this takes place in regular negotiations with the Minister of Justice about the work conditions of the Judiciary. On an individual basis, the NVvR, amongst other things, supports its members with legal aid concerning their work relations. Since 1957, the NVvR has been officially recognised by the government as *the* organisation, which represents the whole of the Dutch Judiciary. The NVvR is a member of the International Association of Judges.

The International Association of Judges was founded in Salzburg (Austria) in 1953 as a professional, non-political, international organisation, grouping not individual judges, but national associations of judges. The main aim of the Association is to safeguard the independence of the Judiciary, as an essential requirement of the judicial function and guarantee of human rights and freedom. Today the organisation encompasses 65 such national associations or representative groups, from five continents. African members are: Burkina Faso, Cameroon, Egypt, Ivory Coast, Mali, Morocco, Niger, Senegal, South Africa, Tanzania, Togo and Tunisia. The following rules apply to the admission of new members to the IAJ:

- Only one association or national representative group of each country may be admitted to the International Association of Judges.

- The association or group applying must be representative of the Judiciary of its country. There is no requirement, however, that its membership should include any specified minimum percentage of the Judiciary of the country in question. Nor is there a requirement that the association or group should have a formal constitution.
- The association or group applying must furnish proof that its activities and its principles accord with those of the International Association of Judges, as embodied in its Constitution.
- In every case, before membership is granted, the Central Council must be satisfied that the independence of judicial authority is genuinely ensured in the country in question.
- This article does not apply to applications for extraordinary membership made by Associations of Judges, which are struggling to achieve independence.

Recommendation 7

The initial and continuous training of judges and staff must be improved. Education, curriculum building and terms to be met at the end of training period must be developed. Technical and managerial skills should be incorporated into training curricula.

Also in this respect a comparative study of initial training programs abroad can be undertaken. Expertise from a training institute or person(s) responsible for initial training of members of the Judiciary from other countries could be integrated, for example in the form of bilateral co-operation. For all three groups (initial and continuous training for judges and training for the staff) within the Judiciary, special programs, preferable function-orientated, must be developed. The developed strategy/program for training and curricula will be later imbedded in the program of the Judicial Training Institute once the latter is operational.

Recommendation 8

The government of Ethiopia must finance the training of judges in a stable and sustainable way.

Recommendation 9

The administrative staff should be trained in professional skills, job qualifications should be described and uniform selection method for staff members must be developed.

To overcome the problem of under qualified administrative staff members, training should be provided on a basic level. Training should focus on practical skills, necessary for the execution of the function of administrative support, such as communication skills, organising and creating a sense of responsibility.

The above-mentioned summary on recruitment, appointment and training of judges would not be complete without mentioning how a Judicial Training Centre (JTC) should be organised. This is an organisation that sees to the initial training and the permanent education of judges and public prosecutors. The JTC must be an independent institution of the Judiciary itself and has to have the legal status of a foundation. The JTC has to be directed by a Board consisting of experienced and high-ranking members of the Judiciary, a distinguished member of the Bar, a trainee and one representative of the Ministry of Justice. The chairman of this Board can be a Justice of the Supreme Court. The Board is the policy-making and supervisory body of the JTC.

The daily management of the JTC is under the supervision of the director, who is responsible for the day-to-day business of the institution. The director is a member of the Judiciary, seconded full time for a period of five years to the JTC and supported by clerical staff and several other members of the Judiciary, who are either full time or part time seconded for a period of three years.

Within its own premises the JTC provides for an extensive training program including courses that take up several days. These courses, free of charge, are mandatory for the inside candidates, but optional for judges and public prosecutors.

The recommendations, based on above-mentioned observations, are:

Recruitment and Selection

- develop a uniform system for recruitment and selection of judges and prosecutors.
- develop uniform selection criteria for those groups; till the diplomas and university degrees have a guaranteed value, the Judiciary has to develop his its judicial selection criteria, exams and additional training.
- reform the “judicial exam” according to the needs of a democratic judge.
- research the role that the JTC can play in the recruitment, initial training and selection of candidate judges and prosecutors.

Initial training

- develop initial training, for candidate judges as well as for new appointed judges and prosecutors.
- structure the training of judges and prosecutors in a systematic way.
- develop a well structured continuous program on the basis of a needs assessment methodology.

Strategic planning and business plan

- develop an overall strategy for continuous training.
- set up a business plan for the JTC to guarantee sustainability.
- make the JTC the training institute for continuous and initial training of judges.
- look for the legal basis for the JTC to give the JTC an independent status.
- develop a more than one year program for the JTC, financed by the Ethiopian Government.
- convince the Ethiopian Government of its responsibility for the quality of judges and prosecutors.
- involve the government in the financial structure and the infrastructure of the JTC, including extra facilities.
- develop a long-term training plan for regular and specific training.
- develop a communication plan of the JTC for communicating with the target groups about the training activities.
- improve the information flow between the Ministry of Justice and the Judiciary about new legislation, so that the JTC can start with the training in this area in advantage and in time.

Continuous training and various levels

- improve the coherence of the continuous training program of judges and prosecutors.
- develop a so-called ideal program for the JTC in co-operation with the target groups to prevent the continuous training from being too much controlled by ad hoc money streams of donors.
- develop a well structured continuous program on the basis of a needs assessment methodology.
- develop training programs on various levels like basic, advantaged and specialist.
- expand the number of offered continuous training programs.

Trainers

- built up a permanent group of well educated trainers (capacity building).

- develop a train the trainers program within the JTC.
- set up a didactical program within the JTC.
- pay trainers or give them other facilities.
- second judges and prosecutors part-time or full-time in the JTC to add their practical experience to the training programs and communicate with the target groups.

Recommendation 10

Transparency of courts and accountability of judges should be increased. An inventory of the current administration system should be made and the internal structures of the court administration should be reorganised.

On the basis of the outcome of the above-mentioned evaluation and revision, the internal structures of the court, as far as court administration is concerned, can be changed to a workable system.

Recommendation 11

Professional management at the court level should be introduced. Managerial and administrative functions should be transferred from judges to trained professionals under their supervision.

Recommendation 12

As far as computerisation is considered, nomination of pilot courts to try out newly developed computerised systems for court administration and new ways of court administration must be envisaged.

The pilot courts can be of great help in the fine-tuning of new structures and soft- and hardware to be developed. The same goes for the introduction of formats for standardised decisions and reasoning. The Canadian CIDA program on computerisation of the case management process should be supported as well as the similar French program concerning prosecutors' offices. An appropriate co-ordination should be set up in order to make compatible the data and the formats of both these computerised systems. The computerised case management should be expanded progressively to the main courts throughout the country.

Recommendation 13

Priority should be given to solving the problem of backlogs.

One of the most important obstacles to good access to justice is the backlog that has plagued courts and delayed justice by months and in some cases by

years. “Justice delayed is justice denied”. Delayed justice is in some cases in Ethiopia literally the daily practice. The backlog is a plague upon the system and a shame to justice that should be remedied as soon as possible.

Recommendation 14

The current system of legal aid should be revised. Legal aid (advocacy) should be strengthened everywhere in the country and in particular in the regions.

- *Legal clinics at all faculties should be strengthened and/or established.*
- *Possibilities for establishing funds for providing legal aid should be considered.*
- *It is imperative that training be provided to lawyers and practitioners.*
- *A working group composed of representatives of the Bar to do the necessary research on the possibilities and the form in which the Federal and States Bar(s) must be organised.*

Recommendation 15

Licensing, training and all other matters related to the functioning of a lawyer should be the responsibility of the Bar itself.

In the current system, lawyers are requested to apply yearly for a license that is given to them by the Minister of Justice. The Minister of Justice, combining executive and judicial (prosecution) competencies, can in this way also control the Bar. Licensing, training and all other matters related to the functioning of a lawyer should be the responsibility of the Bar itself. In any case, the Ministry of Justice is the wrong institution to license an advocate one moment and meet him with his or her client in court at another. The independence of the advocate or his license is potentially compromised. The licensing responsibility given to the Ministry of Justice, especially on a yearly basis, could threaten freedom of defence. Indeed, the government has the right to deprive a lawyer of his license without any reason, only by not renewing it at the end of the year. One can imagine the situation of a lawyer “too efficient” when acting for an accused, in particular in a political case. That is why, in our opinion, it’s preferable that an independent body, like the Bar Association, be given licensing responsibility.

The government should keep the responsibility to verify the capacity of a candidate lawyer, through an initial professional exam. If after this exam, the Bar Association has delivered the license, it should be responsible of disciplinary proceedings and decisions. The government, through the public prosecutor, should have the right to undertake a disciplinary proceeding against a lawyer before the disciplinary body of the Bar Association, then to

appeal against the decisions before the High Court. Such process is in force in some countries, for instance in France.

Recommendation 16

The current system of civil execution should be revised. The establishment of bailiffs' service should be considered. Funds for establishing these judicial officers must be made available and training developed.

Recommendation 17

The Proclamation on the Establishment of the Institution of the Ombudsman must be implemented. Consideration should be given to empower the Ombudsman to receive public complaints concerning the conduct of judges.

Recommendation 18

The Proclamation on the Establishment of the Human Rights Commission must be implemented.

Recommendation 19

The civil society and the media should be encouraged and supported in informing the public at large thus improving the legal public awareness at grassroots.

- *NGOs providing legal aid to indigents³⁰ should be supported.*
- *The EHRCO public litigation programs should be strengthened.*
- *The EHRCO civic education program should be supported.*

Recommendation 20

Copies of the court decisions must be made available to the lawyers and the public at large. To enable this to happen presidents of courts should issue appropriate administrative directions.

Recommendation 21

Court decisions should be commented upon by academics. These case comments should be made available to judges, lawyers and prosecutors offices. A web site containing this information should be created and made freely accessible.

³⁰ Based on action plans to be submitted by them.

Recommendation 22

Selected Federal Supreme Court decisions should be printed regularly and in a sufficient number and sent out to every court, justice ministry and university in the country.

In the computerised courts, an access point to the internet should be set up, in order to make it possible for judges to consult the Federal Supreme Court case law through its web site. For other courts, an access point to the internet should be set up in co-ordination with other administrative departments and shared with them.

Appropriate co-ordination should be set up with each law faculty, in order to make possible a selection of significant court decisions, coming from the Federal Supreme Court or from other courts, to be commented by academics. On a regular basis, the decisions and the commentaries should be gathered in books or brochures to be sent out to courts.

Recommendation 23

The working conditions of judges must be improved as soon as possible.

- *Each court must receive compilations of the Official and the Regional Gazette and get subscriptions to them.*
- *The French program of consolidated codes should be supported and the codes disseminated.*
- *A CD-ROM containing consolidated codes with appropriate index and search engine should be issued and disseminated in the courts.*
- *Court libraries should be created where they do not exist, and improved in other courts, in order to provide judges with a minimal standard of reference material and documentation. Given the situation in some regions, establishing public libraries that are open for all legal professionals, including judges should be considered.*

The working conditions in courts are definitely an obstacle to upgrading the Judiciary. Most visited premises are really poor and the situation seems to be worse in other regions. It is not acceptable that judges do not have copies of proclamations and regulations, law books, typewriters, bookcases, furniture, computers, copy-machines and well-trained court staff.

Each court must have the applicable law in a way it can be easily used. Consequently, each court should receive a compilation of the Official Gazette and of the Regional Gazette in the regions and get a subscription to the Gazettes for the future.

Recommendation 24

Possibilities for use of Alternative Dispute Resolution must be explored. Consideration should be given to using ADR to address the backlog of criminal cases. A corps of ADR specialists should be trained.

Recommendation 25

A separate and comprehensive study of the status and the position of the Social Courts in the judicial system should be initiated.

Social Courts are prevalent throughout the country. They do have advantages. As there are thousands of them, they are easily and quickly accessible even in remote places. They treat thousands of cases that might otherwise be backlogged in the regular justice system. But Social Courts also parallel and to a certain extent undermine the operation of the regular justice system. Article 78. (3) of the Constitution provides that “States shall establish State Supreme, High and First Instance Courts. Particulars shall be determined by law”. Article 78 (5) provides that “pursuant to sub-article 5 of article 34... State Councils can establish or give official recognition to Religious and Customary Courts.” Social Courts have been established in five States in rural and urban areas. There is an outstanding question as to whether these courts are constitutionally permissible and a separate study about their constitutionality should be considered.

Recommendation 26

Three pilot courts in different levels of court and in different areas of the country should be designated to implement all above-mentioned recommendations.

Given the many reform efforts that have been undertaken within the Ethiopian Judiciary, the idea of pilot courts might be considered as less relevant at this stage of the reform. We think this is unfortunate. Many countries where the reform of the Judiciary is going on or has just been accomplished use this idea successfully to further upgrade the system. Besides, even Western Judiciaries do use this approach for introducing new systems, ideas and for trying out certain aspects of a reform.

11.3 Recommendations Relating to the Law Enforcement Institutions

11.3.1 Recommendations Relating to the Public Prosecution Service

Recommendation 1

The reform of the PPS should be well co-ordinated and the Federal and State Ministers of Justice across the country should endorse the formation of a national group of heads or directors of PPS.

- *The national group should meet regularly and discuss issues of common concern.*
- *The national group should be co-chaired by a federal and a regional head of prosecutions.*
- *The national group should set up a working group of national, regional and international experts to which specific matters be submitted on ad hoc basis for study and recommendation.*
- *The recommendation of the working group should be submitted to the Ministers.*

There needs to be a good co-ordination of the reform of the PPS both on the federal and state levels. Ministers of Justice across the country should endorse the formation of a national group of heads or directors of PPS. That group should meet regularly to discuss issues of common concern. It should be co-chaired by a federal head and a regional head of prosecutions. They should constitute a working group of national, regional and international experts. Specific matters should be submitted on ad hoc basis to the working group for study and recommendation. The advice of the working group should then be submitted as a recommendation to the Ministers for change and improvement.

Recommendation 2

There should be one meeting per year of all prosecutors within the jurisdiction, federal or state, to discuss issues of common concern and receive information about new policies and pertinent legal developments.

Recommendation 3

The political/executive and judicial powers of the Minister of Justice and the Heads of Justice Bureaux should be divided.

- *An Office of the Prosecutor General, which has a judicial rather than executive relationship, should be established.*

- *The Minister of Justice should not be making day-to-day operational decisions in the PPS, nor should s/he be reviewing or changing decisions taken by line prosecutors.*

There are different systems in the world. Some of these do give the Minister of Justice the power to combine political and judicial (prosecution) tasks. This combination exists also in some western countries that have a long history of democratic tradition. In that respect, the Recommendation of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System (see Annex 6) and in particular Article 13 is a good example of a legal document that takes this aspect into account. However, there is in Europe an ever-growing trend of separating both tasks and creating a special body to be responsible for the prosecution service. In the Netherlands, for example, as of the 1990s the *College van Procureurs-Generaal* was established. The Minister of Justice is still politically responsible for the Prosecution Service. However, the prosecution operates under the authority and leadership of the *College van Procureurs-Generaal*. In this way, the Dutch system tries to avoid ministerial intervention in individual cases. By law the Minister of Justice, however, still holds the right to intervene in individual cases. Yet, the Minister must inform the Parliament in writing beforehand about the case and about the intended intervention and the reasons for it. Informing the Parliament makes the case transparent and the control of the Minister's action possible and it thus prevents arbitrariness. Besides, it discourages the Minister from using this power that might lead to intervention in individual cases. In fact, Dutch Ministers of Justice have used this power no more than once or twice in recent history.

Our recommendation in respect to separating the PPS and the Ministry of Justice takes into consideration this growing trend and aims at suggesting best practices. It might be that Ethiopia would prefer the current system. It might be that historical reasons make it at this moment rather sensitive to build up a separate Attorney General Office. Our recommendation could be seen in the light of a long-term process and thus could be seen as a long-term recommendation. In the short term, however, we would recommend the Minister of Justice not to be making day-to-day operational decisions in the PPS, nor should s/he be reviewing or changing decisions taken by line prosecutors.

Recommendation 4

The Authority of Federal Prosecution should be brought into a single institution, namely The Public Prosecution Service, which would be the only

authority that has access to court in criminal cases. If the Ethiopian authorities choose not to change the current system, the exchange of information between the different services should be standardised and intensified.

The current system in Ethiopia used to be and is still used in many countries including European countries. This system used to operate in the Netherlands as well. Indeed, specialisation in the different areas and thus in the different prosecution institutions is its privilege and benefit. If the Ethiopian authorities choose to keep the current system with its different prosecution institutions, we would recommend access to courts to be exclusively through the PPS. In that case, the various prosecution institutions keep doing their work but shall have access to the judge only through the PPS. This means also that the various institutions would be put under the authority of the Ministry of Justice to which the PPS is accountable. Among other countries, this is currently the case in the Netherlands where only the PPS has access to courts in all criminal matters. For example, the Customs Service investigates a criminal customs case. But it submits the file to the PPS for prosecution and the PPS brings the case before the courts. This system has many benefits. Firstly, it makes clear for all related institutions, the Judiciary and for the public that prosecution only happens through the PPS and it strengthens thus the position and image of the PPS. Secondly, this system enhances the co-operation and communication between the different prosecution institutions. Thirdly, the benefit from the specialisation of the different institutions remains guaranteed.

If the Ethiopian authorities choose not to change the current system, we would urge standardising and intensifying the exchange of information between the different services.

Recommendation 5

The Federal Prosecution Service should be given the competencies of Articles 8 and 9 CPC in the framework of an investigation by the State Police on behalf of the Federal Police. The PPS should be given, in Article 23 of Proclamation No 4/1995, power to supervise and give necessary legal orders and directives to:

- *Federal Police investigation units (organs).*
- *Regional Police investigation and other police organs where federal crime suspects are detained.*

According to the Ethiopian experts, the existing laws are adequate. The Federal Prosecution is empowered by law to instruct the Federal Police while the latter investigate crimes. When the State Police act on behalf of the Federal Police, it is considered as though it is the Federal Police. Thus, as a representative thereof, it cannot legally object to instructions from the Federal Prosecution so long as the delegation stands. While this reasoning is sound and logical, unfortunately, we have been informed of this issue being a problem in the daily practice. The lack of a clear legal instrument has been constantly mentioned as being the very obstacle. Therefore, it is necessary to give the Federal Prosecution Service the competencies under Articles 8 & 9 CPC and clear powers to supervise police in article 23 of *Proclamation No. 4/1995*.

Recommendation 6

The competencies of the Federal PPS should be the same as that of the State PPS. The federal prosecutor should have the same duties in the field of prison administration, such as to:

- *Supervise the legality of any imprisonment or detention.*
- *Ensure that the rights of the person under custody are respected.*
- *Visit, at any convenient time any place where a person is detained or imprisoned*
- *Order the release of illegally detained or imprisoned persons.*
- *Ensure the execution of sentences, ensure regularity of prisoners' living conditions.*
- *Design and implement policies for the rehabilitation and social integration of prisoners.*

Article 23 of Proclamation No. 4/1995 should be further amended to:

- *Give power to supervise the legality of imprisonment and handling of inmates wherever housed.*
- *Give pertinent legal orders and directions with respect to federal inmates.*
- *Order the immediate release of those held unlawfully.*

The Ethiopian experts are of the opinion that the law has regulated much of those issues. For instance, *Proclamation No. 365/2003*, as under Article 13, stipulates that “no person shall be admitted into custody by the Commission (Prisons Commission) without a court warrant”.

Moreover, Article 20(1) of *Proclamation No. 313/2003* states “any police officer has the duty to perform his activities in accordance with the Criminal Procedure Code and other relevant laws by fully observing human and democratic rights ensured by the Constitution”.

The Ministry of Federal Affairs is also empowered to oversee the activities of these institutions (the Federal Prisons and Police Commissions) accountable to it. Also, *Proclamation No. 210/2000*, as under Article 6(4), authorises the Ethiopian Human Rights Commission to “undertake investigation, upon complaint or its own initiation, in respect of human rights violations”.

They conclude that the existing legal framework is adequate and that, if at all, illegal detention occurs, it will then be a problem of compliance rather than of law.

Notwithstanding the above-mentioned and taking into consideration the current daily practice in Ethiopia, we strongly recommend that the PPS be given power to supervise the operation of prisons. This is also the practice in most of the European countries. Therefore, we recommend that Article 23 of *Proclamation No. 4/1995* be further amended to:

- Give power to supervise the legality of imprisonment and handling of inmates wherever housed.
- Give pertinent legal orders and directions with respect to federal inmates.
- Order the immediate release of those held unlawfully.

We do underpin the wish of the Ethiopian experts to secure the political will to end the problem of compliance with the law and to punish violations thereof.

Recommendation 7

All States should issue the necessary proclamations for the PPS. They should make clear the provisions about the position of the prosecution in the regions.

The provisions about the position of the prosecutors in the regions are not clear everywhere. States should have the necessary proclamations for the PPS. The remaining States should be induced to shortly issue their proclamations on the PPS and encouraged to use the federal one as an example in order to save time.

Recommendation 8

The policies of selection, appointment and promotion of prosecutors should be made more transparent. For this purpose:

- *A working group to develop new ideas about a new procedure of selection, appointment and promotion should be installed.*

- *Other stakeholders of the justice system, such as the Judiciary, the Bar Association, universities and the civil society, should be involved in the selection of applicants.*
- *Psychological testing could be used as an objective means to assess the qualities and skills of the candidates.*
- *An active recruitment policy, including the provision of information about the PPS to law school students, should be developed. The practice of awarding scholarships to law students should be considered.*

The policies of selection, appointment and promotion of the prosecutors should be made more transparent. Other stakeholders of the justice system, like the Judiciary, the Bar, universities and the civil society, should be involved in the selection of applicants. We recommend any commission or organ that will be entrusted with a more transparent selection of prosecutors in the future not to have politicians, as for example members of the legislature, among its members.

Psychological testing could be made part of the selection procedure. Psychological tests are used to assess certain qualities and skills that are needed for the function, for example, analytical skills. It is a means of testing that has grown popular in Europe and that is very frequently used in different fields including the legal and judicial ones. Psychologists in Europe have specialised in this particular field. Many private offices are famous for their psychological tests and analyses that are being called upon by private and public institutions and enterprises. Those private offices are independent and they give an independent expert's advice that is based on their analysis. In the Netherlands, the report of the psychologist is confidential and may only be sent to the members of the selection commission that has requested it. If at the end of the selection procedure, the commission selects a candidate, the report on the psychological testing will be kept in his/her file. In the case of the prosecution service, the file will be kept at the office of the prosecutor general during the full career of the related prosecutor.

An active recruitment policy, including the provision of information about the PPS to law school students, should be developed. In order to help attract and retain legal professionals, the Ethiopian experts rightly recommend considering the practice of awarding scholarships to law students so that they will serve the sponsoring organ, *in casu* the prosecution, at least some years immediately after graduation.

Recommendation 9

The Federal Government and the States should take effective measures to ensure that the public prosecutors have appropriate education and training, both before and after their appointment

- *Each prosecutor should be required to undertake a certain number of days or hours of continuing legal education each year. That education should be approved by the management and paid for by the prosecution service.*
- *Universities should be used for this purpose.*
- *Federal co-ordination in training and education should be considered to avoid duplication of state efforts and to share best practices.*

The JTC will on the long run be very useful in solving the issue of initial and continuous training of the prosecutors and upgrading their qualifications. However, the situation of the PPS needs immediate short-term intervention and action. We highly recommend the program developed by the University of Mekele in the northern Tigray to be used as a good example for training of prosecutors on the very short term. Besides, the following topics could be treated in the future curricula and in the training i.e. Penal Code, Criminal Procedure Code, Criminology, modern investigative methods, administration of a prosecution office, human rights, ethical duties of a prosecutor.

Recommendation 10

As a matter of priority, clear policies on the supervision of investigation should be instituted

- *Consulting between the different related parties in order to set up a plan for realising this target should be started.*
- *As a first step, it is advisable to start involving prosecutors only in the investigation of grave crimes.*
- *For minor crimes, one can develop guidelines and standard formats for the police that can quickly be approved by the prosecutor after police filled it in.*
- *The prosecutor should be the only party to be able to apply for extended pre-trial detention of a suspect.*

The prosecutor should have a well-defined vital role within the criminal justice system. To ensure police compliance with legal mandates that role should be particularly significant during the pre-trial investigative phase. In order to perform that role, the prosecutor must be informed of the matter at its very inception, be able to direct the course of the investigation including

determining with the police what witnesses should be heard, what steps should be taken, and how long the investigation should last.

Ethiopia does not require its prosecutors to supervise police investigations. This practice exists in other countries. However, those countries have older democratic traditions and systems of genuine checks and balances. Even in a common law system, like the one in Great-Britain, there has been a growing acceptance of prosecutors' supervision of police investigations. Cases of police abuse mainly in terms of coerced and self-implicating statements of innocent detainees paved the way towards this growing acceptance of prosecutor's supervision.

The prosecutor is entrusted with presenting and defending a criminal case before a judge. S/he is the one to better understand the legal aspects of the investigation and the case and thus present them in court. S/he can only do this, or do this soundly, if s/he has been involved in the case from the very beginning i.e. the investigation. In the Netherlands, for example, the PPS is part of the Judiciary. Police investigation takes place under the auspices of a prosecutor and thus police investigation is under supervision of a magistrate from its start.

Ideally, the involvement of a prosecutor in supervising the investigation of a case should occur as early as possible and last for the whole course of the investigation. This should not only guarantee conformity of the investigation with the law but also an in-depth grasping of the case by the prosecutor, which guarantees a good performance in court. We do understand the situation in Ethiopia well and we are aware of the shortage of qualified prosecutors, which makes it difficult on the short-term to achieve this target. We do believe, however, that there should be consulting between the different related parties in order to set up a plan for realising this target in the long-term. As a first step, it is advisable to start involving prosecutors only in the investigation of grave crimes. Besides, for minor crimes, one can develop guidelines and standard formats for the police that can quickly be approved by the prosecutor after police filled it in. In Europe, such standard formats are used, for example, in a case whereby the speed limit in the traffic has been violated.

As in our vision the prosecutor should be the only authority with access to court, we recommend the prosecutor to be the only party to be able to apply for extended pre-trial detention.

Recommendation 11

The Public Prosecution Service should be made accountable for its professional performance.

- *The PPS should uphold and abide by the existing laws.*
- *The roles and responsibilities of line prosecutors should be increased.*
- *The number of decisions taken by prosecutors that have to be reviewed by management should be reduced.*
- *Only persons who actively prosecute or manage prosecutors should in fact be given the title and salary of prosecutor.*
- *Clear policies about the exercise of discretion to discontinue cases should be instituted.*
- *Job descriptions for junior, intermediate and senior prosecutors which reserve certain types of decisions and cases to senior prosecutors should be created.*
- *Prosecutors should attend court on every occasion files assigned to them are scheduled for court.*
- *Regular office meetings, at least monthly, between line prosecutors and management within each office should be conducted.*
- *A code of professional conduct and a peer review mechanism should be shortly adopted. The Heads of Justice Bureau of the Regional States should be encouraged to use the Federal Code of Conduct as an example and shortly introduce their own codes.*
- *Special emphasis should be put on accountability and good conduct while selecting and training candidates to become prosecutors.*
- *The PPS should institutionalise a regular evaluation of the prosecutors that is aimed at upgrading and improving their performance. Due attention should be given to the remedy of the identified shortcoming and training should be provided.*
- *Disciplinary measures against unfit elements within the prosecution should be taken.*

The prosecution office should make use of the existing legal framework and assert its powers in view of having the rights of detained persons respected and maintaining public peace and order. There is a need and obligation to duly adhere and be accountable to the law. The sensitisation of prosecutors and their making conscious of their obligations before the law and the public should start as early as the selection procedure of candidate prosecutors. Special emphasis on this responsibility of the future prosecutors and on good behaviour and conduct should be put during their education and training. The assessment of the performance of prosecutors from within the justice system often lies in the hands of judges who decide on their cases and thus

(in)directly on their performance. However, both the Federal and State PPS should themselves pay due attention to those matters in the framework of their internal policies i.e. evaluation of the performance of the prosecutors and enacting and disseminating a code of conduct and in some cases apply disciplinary measures against unfit behaviour.

The developed Code of Conduct should be sent to the Heads of Justice Bureaux of the Regional States in order to hasten its introduction in all States of Ethiopia. Obviously, the Federal Code of Conduct shall serve as a model which the Regional Justice Bureaux may adopt thereto. Please find attached (Annex 7) the Netherlands Code of Conduct for Public Prosecutions Service as an extra example.

Prosecutors should be able to exercise those powers provided to them by law limited only by ethical codes and PPS policy. They should have the authority to make decisions on their own and should be held accountable for those decisions. Younger and less experienced prosecutors should be trained and supervised (guided) by more senior attorneys.

Both on federal as well as on state levels, the PPS need a long-term vision. We do not believe that respect from the public, the courts, police and prisons is a matter of an implementation strategy. Respect cannot be received but it should be rather earned and deserved. The only one way for the PPS to do so is to deliver a high quality performance. The PPS only deserves respect if it is reliable in terms of its performance and obligations before the courts, police, prisons and the public. Such a long-term vision aiming at reforming the PPS and upgrading its independence should be based on a transparent and decent selection of would-be prosecutors, a sound education and training and a permanent assessment of the performance of the PPS. Inside information flow on this long-term vision mobilises all people within the PPS and makes sure that the reform plans and vision are understood and broadly supported. Outside information flow makes changes visible to the public and induces respect.

Recommendation 12

Judges and prosecutors should have and show due respect to each other and to each other's role in the criminal justice

- *Judges and prosecutors should be informed about each other's role in the criminal justice.*
- *Judges and prosecutors should attend joint training to discuss different issues of joint concern and learn about each others vision.*

- *Co-operation and communication between High and First Instance Courts and the PPS should be developed in order to discuss matters of common concern such as backlogs, summoning of witnesses and the exchange of statistical data.*
- *Minutes of the discussions and the agreed procedures should be disseminated.*

Prosecutors and judges must give due respect to each other. Joint training courses that involve the discussion of this issue should be held. Co-operation and communication between the PPS and the Judiciary should be developed on every level. Discussions between the authorities on the level of the High/First Instance Courts and the PPS concerning backlogs, the summoning of witnesses, the exchange of statistical data, case flow and other common problems should be held. Minutes of the meetings should be maintained and appropriately disseminated.

Recommendation 13

Police-prosecutor relationships should be improved and co-operation between them enhanced.

- *The Ministries of Justice and of Federal Affairs and on state level the Head of Justice Bureau should play an active role by organising talks and discussions on how structural consultations between the PPS and the police can be developed. Subjects for consultation should include the development of a criminal policy, the problems of the backlogs, the summoning of the witnesses, the exchange of statistical data.*
- *Minutes of these meetings should be appropriately disseminated.*
- *As a matter of urgency, clear policies on when prosecutors should return files to police for investigation should be instituted.*

Recommendation 14

A working group consisting of the Judiciary, the PPS, the Ministry of Justice and the police should be set up to discuss guidelines for the appearance of witnesses and accused in courts.

- *Appearance of a witness should be seen as a shared responsibility and all involved parties should work towards having witnesses showing up in courts.*
- *Compensating witnesses for their transport and contributing to their food and residence expenses should be considered as a means to induce their appearance.*
- *An in-depth study on witness protection programs in the Ethiopian situation should be initiated.*

As explained above, the appearance of an accused or a witness in court is a real problem in the Ethiopian justice system. There is currently a real controversy in this area that relates particularly to the responsibility of bringing an accused or a witness to court and improving the likelihood that people appear in court. Besides, the discussion touches on issues such as witness protection programs, the compensation of witnesses for their expenses in attending court and the responsibility for administering those programs. Consistent disagreements in this area are harming the smooth functioning of the criminal justice system.

We believe that the issue of appearance of an accused or a witness to court should be dealt with through co-operation and communication between the different Ethiopian justice institutions. It would be advisable for Ethiopia to establish a working group consisting of the Judiciary, the PPS, the MoJ and the police to discuss this issue and agree on a guideline for this matter. They should also see to it that the agreed guidelines (policy) be upheld, monitored and evaluated.

The appearance of a witness before a court in Europe is by law obligatory. In The Netherlands, it is the PPS that is responsible for summoning witnesses and if a witness does not appear the court can order the prosecutor to bring the witness forward. The prosecutor gives the orders to the police to bring forward a witness and the police have its own responsibility to do so. The summoning to and presence of a witness at a trial *is thus a shared responsibility* inasmuch as the prosecutor is responsible before the court and the police is responsible before the prosecutor. The situation in Ethiopia is rather different and more complicated. The court itself summons witnesses without intervention from the PPS.

Witness protection programs are in Europe used only in a few major cases (for e.g. organised crimes). Such a program would be advisable in Ethiopia. However, we would advise to initiate an in-depth study of the Ethiopian situation beforehand whereby one should take into consideration that such a program often costs much.

It is not unusual (also in Europe) that a witness is compensated for expenses he makes to be present at trial, such as transport. As poverty and lack of financial means seem to hinder witnesses from showing up in court, we would advise the Ethiopian Authorities to consider compensating witnesses for their transport and contributing to their food and residence expenses so that witnesses will be induced to show up in court.

Regarding the appearance of accused before courts, it is in Europe permitted by law to sentence an accused *in absentia*. However, the court must be convinced that the accused in a case knows about the indictment and the trial. In practice, sentencing *in absentia* happens in Europe only in minor cases. In fact, the accused of a serious crime is nearly always brought before court and thus almost never judged *in absentia*. In case of an accused that is on bail, it is the responsibility of the accused to appear in court on trial day. Obviously, s/he should be informed properly about the trial and the indictment.

Recommendation 15

The drafters of the new Penal Code and the Criminal Procedure Code should seek international expertise. Due attention should be given to the reclassification of penalties and the clarification of jurisdictions under which crimes fall.

International advice and recommendations regarding the draft Penal and Criminal Procedure Codes should be obtained. It is our impression that the majority of the people we met with are unsatisfied with the current drafted codes. We think that the involvement of international experts will benefit the codes a great deal inasmuch as it provides international expertise and best practices.

We believe that a reclassification of the penalties should take place. Instead of such an extensive first schedule to the CPC, minor crimes, e.g. with a maximum penalty of 5 years, could be brought under the authority of the First Instance Court. The more serious crimes with a maximum penalty of more than 5 years could be brought under the authority of the High Court as First Instance Court.

Recommendation 16

In all cases in which the prosecutor declines prosecution, complainants should be provided with the fundamental right of access to courts to seek a judicial order from the court that the prosecutor institutes proceedings.

The court hears the complaint and should decide independently on upholding the decision of the prosecutor or order the latter to initiate prosecution. Obviously, the first step to seek remedy of the prosecutor's decision should be the prosecution structure itself. The private person should in first instance resort to the internal procedure up to the official having the power of final say in the prosecution system. If the complainant is still not satisfied with this final decision, there should be a possibility to test it for the

last time by an independent party from outside the prosecution i.e. a judge. A prosecution office that really stands behind its final decision should have no concern whatsoever about having it tested independently. Such an independent test may benefit the related individual case. But it mainly benefits the prosecution a great deal in terms of transparency and respect from other institutions and the public.

The procedure we are recommending is common in many European countries among which Belgium, Germany and the Netherlands.

Recommendation 17

The PPS should develop a reliable system of internal statistics that covers Federal and States' Public Prosecution in a compatible way. This system should be computerised. At least the following information should be gathered:

- *The number and dates of files received. How long it takes to allocate a file to a prosecutor.*
- *How long a prosecutor takes to decide on continuing, discontinuing or sending a case back to the police.*
- *The number of files discontinued and the reason for that.*
- *The number of files sent to the police and the reasons for that.*
- *How long it takes to receive the file back from the police.*
- *How long it takes to get to court.*
- *The number of prosecution appearances in court.*
- *What happens at it's court hearing.*
- *Appearances of witnesses at every hearing.*

Recommendation 18

The PPS should work jointly with the police and the Judiciary to rid the justice system of the current huge backlogs and avoid future ones.

- *The PPS should discuss with the Judiciary and agree on a number of cases that could be handled in a year.*
- *The PPS should discuss with the police and agree on the number of cases to be investigated and brought before court.*
- *The PPS should discuss with the Judiciary and the police and agree on alternative procedures to deal and process the remaining cases*

The PPS, the Judiciary and the police should develop guidelines to get rid of the current backlog. Minimum criteria could be:

- *The seriousness of the crime*
- *The age of the defendant*

- *The age of the case*
- *Closeness of the case to limitation*
- *Appropriateness of for e.g. the use of ADR*
- *If the relationship of the victim and defendant has been restored*

Discussions should be started between the different institutions: between courts and the PPS as to how many cases the courts are able to handle; and between the PPS and the police as to how many cases are investigated in a way that they can be brought before the court. Only when there is a consensus as to what can be actually done, it will be possible to establish priorities, choose appropriate cases to pursue, eliminate (or handle in a different way) those that cannot possibly be processed, and thereby reduce the backlog.

Guidelines to get rid of the current backlog and avoid a future one through a clear criminal policy should be developed. A minimum of criteria should be considered a) seriousness of the crime, b) age of the defendant, c) age of the case. Such guidelines might well consider other elements such as: closeness to the time of limitation; appropriateness of other types of approaches, such as ADR or discontinuance; in addition to the severity of the offence, the role in the crime played by the defendant; whether the relationship of the victim and defendant has been restored; health of the defendant; whether there is a pending civil case that might resolve the issue; uncertainty as to the facts or the law, etc.

Recommendation 19

The administrative organisation and procedures of the offices of the PPS, both on federal and state levels, should be developed and strengthened.

- *The “Project Document for the Reorganisation of manual filing system for the Administration of the Prosecution offices of the Addis Ababa region”, should be carried out.*
- *The computerisation pilot project that has been started in the Addis Ababa Administration, Lideta and Arada branches should be carried out and followed both at federal and state levels.*
- *The Ministry of Justice should share information about the progress of organisational reform with the Heads of Justice Bureaux.*
- *The different branches of the High Court and the First Instance Courts should be reorganised into one centralised organisation.*
- *A qualified Office Manager should be appointed to head the administrative organisation with appropriate training to administrative staff members. This should be considered both at federal and state levels.*

- *The same administrative procedures for all the offices of the PPS, both on federal and state levels, should be developed thus promoting the future introduction of information and communication technology into the administration of the criminal justice.*

Recommendation 20

In order for the prosecution to function well, the shortage of prosecutors should be reduced. The Prosecution Service should prioritise on recruiting qualified graduates. It should develop an active recruitment policy and consider awarding scholarships to students.

The shortage of public prosecutors should be reduced by improving working conditions and salary (on the state level). Make it more attractive for law graduates to become prosecutors. We are indeed aware of the shortage of manpower in the justice system in Ethiopia in general. In this respect, the prosecution is not an exception. Besides, the retention rate of legal professionals within the justice institutions is low, as the private sector is more attractive in terms of remuneration. Given this situation, it might sound rather unrealistic to require all prosecutors to be graduates at this time. In the long run, however, we deem it necessary for reforming, upgrading and strengthening the PPS, both at federal and state levels, to select candidate prosecutors only among graduates. This should be one of the pillars of the reform strategy and vision of the PPS in the future.

An active recruitment policy, including the provision of information about the PPS to law school students, should be developed. In order to help attract and retain legal professionals, the Ethiopian experts rightly recommend considering the practice of awarding scholarships to law students so that they will serve the sponsoring organ, *in casu* the prosecution, at least some years immediately after graduation.

Recommendation 21

The working conditions of the Public Prosecution Service should be substantially improved in order to be able to retain and attract good and qualified prosecutors. Funding must be made available to do so.

The PPS should have its own budget, set priorities, and ensure that offices are appropriate in size, quality, and security to maintain files, store equipment and provide for proper work areas.

A review of the existing structural systems should take place and lead to making recommendations for improvement. These recommendations should

include minimum requirements for office equipment, access to professional books and equipment and support/administrative staffing requirements. The recommendations might be:

- *each prosecutor must have access to a desk, chair, typewriter, telephone and sufficient paper and pens to do his or her job.*
- *appropriate filing systems be developed.*
- *there be an office in every courthouse for prosecutors to conduct their work from.*
- *there be space in every office for confidential interviews with police and witnesses.*
- *there be space in every police station for prosecutors to attend and review files and meet with police.*

11.3.2 Recommendations Relating to the Police

Recommendation 1

Police must increase their capacity to manage information. To do this the police should retain external expertise to assist them to:

- *Conduct a thorough assessment of the information used by the police in the performance of their duties.*
- *Determine what information could be dealt with using computer technology.*
- *Determine those areas that urgently require or which it would be most beneficial to computerise in the immediate future.*
- *Determine and obtain the equipment, manpower, skills and budget required to implement and sustain the IT system.*
- *Plan and implement a pilot or test project which would see the utilisation of computers to manage information in the selected areas.*
- *Evaluate the project and consider whether to expand computerisation.*
- *In developing the test project it will be important to consult with other stakeholders including all police services, prosecutions and courts to ensure compatibility of systems and to avoid duplication of efforts.*

It is advisable to set up an ICT infrastructure for the Regional and Federal Police. Past efforts to introduce computerisation by the Federal Police have been largely unsuccessful. Consequently, we recommend that future efforts in this regard be carefully planned and incremental in nature.

The introduction of information technology should start with drafting an information plan. This plan describes the qualitative and quantitative need for information by the organisation and its divisions. It also involves setting

priorities on the basis of efficiency and effectiveness. This means in practice that the most frequent working processes will be the first to be eligible for computerisation. The existing working processes must be meticulously documented and if necessary (re)designed. On the basis of the description of the organisation in terms of working processes and the need for information and formulated priorities, a computerisation plan can be drawn up. Computerisation does not happen overnight. It is sensible to draw up a time scale for this, spanning several years.

Due to the limited experience with computerisation, we recommend starting computerisation of the police organisation with a pilot or test project.

An external project management team should be recruited to assist the police to design the IT system that will be used by the police. Computerisation involves more than simply installing computers and peripherals. We estimate that there is currently no expertise available within the police service to set up and manage a computerisation project for the police and its partners. This know-how will therefore have to come from outside the police organisation. The input for the project, however, will have to be provided by local police functionaries. After all, they know what working processes look like and they develop ideas on how the police should carry out its duties. The external project management is responsible for the coherence of the project and for providing the certainty that all phases of the computerisation project are conducted correctly. After the project is handed over to the police, the local officials involved in the project will be capable of managing their own ICT department.

As the police move to increased reliance upon computerisation their relationship with others in the justice sector will change. For example, courts and prosecutors will receive information in a new format and police may be able to provide new types of information to justice partners. Consequently, it is very important that the police engage their justice and community partners at the planning stages of all new initiatives. This will ensure that what they develop does not duplicate work being done elsewhere, is informed by a breadth of knowledge and experience and meets the needs of all the players in the justice relay.

One must be very well aware of the fact that the introduction of computerisation necessarily involves a process of change. Wide-ranging computerisation influences the organisation in virtually every aspect. Computerisation calls for maintenance and adds new jobs to the

organisation, such as systems managers, data managers, and application managers. Computerisation will put a strain on the running costs of the police organisation, and one must take this into account. Computerisation calls for training. People must be trained in using facilities and their products. These factors must also be carefully mapped out.

Recommendation 2

Police should establish a distinct project to reinforce and improve the existing communications infrastructure. As with the development of ICT this should involve retaining external expertise to assist police in:

- *Documentation of existing communication processes*
- *Identification of needs*
- *Establishment of priorities*
- *Budgeting for acquisition, implementation and sustainability*
- *Implementation of new communication processes*

The communication infrastructure should be reinforced and improved. Like with computerisation, a mapping of the working processes and the automated communication structures is needed. When setting up good facilities it is also essential to list priorities, make cost estimates and formulate long-term plans. Connections and communication infrastructure are certainly related to computerisation but are supported by other technical knowledge. It is thus advisable to set up a separate communication infrastructure project. It is also highly likely that the project manager for this project will have to be brought in from outside the organisation.

No doubt, the Ethiopian police need to improve communication both internally and with the public. On the one hand, we are confident that is a matter of hardware. On the other hand, it is a matter of designing a good strategy. Generally speaking, the adage “structure follows strategy” applies, which means that the patterns of communication should be derived from the way in which policing is to be organised in the future.

Recommendation 3

It is imperative that police mobility be increased substantially

It is imperative that the mobility of the police be improved. There are different ways to do so depending on the location. In the bigger cities, motor vehicles might be a solution. In the rural areas, foot, bicycle or motorcycle patrols might ameliorate the situation as well. It is obvious that the improving of communication techniques and infrastructure will definitely

help reducing this problem. However, we are of the opinion that police mobility as such should be increased substantially.

Recommendation 4

Police strength should be increased in areas outside of Addis Ababa

The police population ratio in the bulk of the country is very low. In some areas of the country there is virtually no police presence. The absence of a police presence means that it is difficult to maintain the rule of law in remote areas. The numbers of skilled, professional police must be increased to an acceptable level. We suggest the goal should be a ratio of about 1 police officer for every 1000 persons within the decade. While this would not be equivalent to the current ratio in Addis Ababa it would be a significant improvement over the existing situation. As police strength is being developed it will be necessary to continue to rely on the large number of militia in the country to provide law enforcement services at a local level. It may be that over time some militia are trained as and become official police officers. It may be that they continue to provide support and assistance to police as a form of voluntary community police service. But the ultimate goal must be to ensure that there is a fully professional, skilled police service operational, visible and present throughout the country. The formal police service must become the primary police service throughout the country.

Recommendation 5

Police play a vital role in the operation of the criminal justice system. They will be more effective in the performance of that role if they intensify and improve their relationships with their partners in the justice system: prosecutions, other police services, and courts. Police should give priority to strengthening existing relationships and working together with other justice actors to improve the operation of the criminal justice system as a whole.

The relationships between the police and other partners in the justice system should be intensified and improved. Co-ordinating the capacity and working processes does justice to the huge effort put in by every partner to improve the operation of the criminal justice system and make Ethiopia a safer society.

We recommend identifying and omitting the barriers to good working relationships between the police and the related justice institutions such as the prosecution, courts and the defence counsel. Looking at the justice system from the police angle, one of those barriers might be that the police

are perceived as a law unto themselves and do not feel bound by court orders or prosecution directions. Examples of this may be found in the area of remand. Police may not always respect release orders issued by a court. Police must have a good understanding of their source of authority and legitimacy, their role as upholders of the rule of law and their role as investigators and enforcers of the law. Perhaps this goes without saying. But police must work together with courts, prosecutors, defence counsel and the public to improve the efficiency of the criminal justice system and they can only do that if they understand their role in the system and that of others.

We recommend the relation of the police with the prosecution to be particularly studied and improved taking into consideration the huge backlogs and the human rights abuses that the current relationship may have contributed to. The treatment of prisoners and suspects placed under police guard should be strictly monitored. Things might always go wrong. Such is sometimes the case also in Western countries. That's why it is very important to correctly and clearly answer the question "who guards the guards". Logically, in a system whereby the guard is not guarded, abuses might occur often and information about those abuses can be made unavailable. It is important for the police to recognise and welcome the important role of prosecutors, defence council and courts as watchdogs over police conduct.

In some specific areas, we recommend the police to also co-operate with partners from outside the justice system. Border control, for example, is a task that the military could quite easily be fulfilling. Ultimately, it is a question of the organising capacity and the efficient functioning of the Ethiopian Government as a whole. Traditional boundaries between government departments certainly need not form an obstacle to this.

Recommendation 6

Police should work with Regional Governments to consider whether or not the militia could become a more formalised partner in the justice system. A study should be conducted which documents the existing relationship between police and militia and militia and community and critically assesses whether the existing system should be retained or modified in some way.

Police should have greater responsibility for controlling, supervising and providing adequate training to militia.

At a minimum all militia should be regulated and its roles and processes circumscribed in federal and regional legislation.

During our visits, no in-depth analysis was made of the working methods of the militia. Our Ethiopian partners wished us to focus our attention on the regular police system. However during the course of our mission it became obvious that the scale and duties of the militia merited some attention and mention in this report.

We recommend considering and studying whether or not the militia could become a more formalised partner in the justice system. Ethiopia is a vast and not always accessible country. The police's responsibility to maintain peace and order in such a country, using modest means, is difficult. Given the huge size of the militia, it provides an excellent opportunity to create a more than substantial expansion of the security system in Ethiopia. Potentially, the militia could serve as the eyes and ears of the police. They could patrol, mediate if necessary and listen to complaints from civilians.

It is a huge advantage that so many people are willing to contribute more or less voluntarily to the safety of the community within the framework of the militia. This resource should be developed. However, effective use requires that these voluntary services should be kept under good control and made subordinate to the administration and the police. Although there are many systems of voluntary police operating in the world, we are of the opinion that the current militia in Ethiopia do not qualify as a service of a voluntary police comparable to those in Europe. In principle, voluntary police officers should meet the same competence criteria as the professional (paid) police. In the Netherlands, for example, voluntary police officers are under the command of the regional Chief Constable. Their education and training takes place under the auspices of the related Minister. At the national level, the voluntary police have their own association. In our view, before the militia could viably function as a voluntary police service, more control and supervision by the regular police and much more training are required.

As we see it there are three options with respect to the militia.

- *Continue with the status quo:* There are concerns associated with doing this. Currently, to a large degree, the militia are unregulated and have a low level of skill and training. It is difficult for the militia, as it currently exists, to be a positive force for the advancement of the rule of law in the country.
- *Disband the militia:* While this might be a long term goal, in the short term, we believe it is neither desirable or practically possible. An immediate disbandment of the militia would create significant social and political

problems. Disbandment would create a large void in the delivery of law enforcement services throughout the country that could not be easily or quickly filled with trained and skilled police officers.

- *Transform the militia:* We feel this approach holds the greatest promise. The militia is a valuable resource. They are present throughout most of the country. With proper training, supervision and regulation they could become a very useful law enforcement resource. As noted above, it may be desirable to build up the capacity of the militia as a form of voluntary community police service. As such they could be a valuable support to police as they move to increase their professionalism and strength in the country. Over time the relationship will evolve. Perhaps some militia will be trained to become police themselves. Perhaps the need for a voluntary police service in some areas may diminish. It may be worthwhile to consider adopting a new name for the transformed militia performing this role, examples that could be considered include volunteer police, citizen's police, *Kebeles* peace officers, peacemakers. The role, responsibilities and limits on the authority of the militia must be clearly set out in legislation. It should be clear that militia are not police, that they do not have police powers, such as arrest, and that they have limited authority. The legislation should deal with the important issue of what arms, if any, should be carried by the militia and impose clear limits on the use of force and weapons by militia. The militia should have a formalised relationship with police. It should be clear that they work in consultation with police. A law should be drafted giving the Federal and Regional Police appropriate responsibility for training and supervising militia in the field. It is important that the responsibilities and the authority of the militia in the area of law enforcement be legally prescribed so that its activities are lawful and predictable. The existing regional proclamations with respect to the militia should be reviewed and augmented. Those regions that have not passed legislation should do this. Additionally legislation governing police should be reviewed and amended to give police the ability to supervise the activities of the militia.

We recommend tighter control on the work of the militia and in particular regarding carrying weapons. In our opinion, the militia should not be allowed to carry firearms. The “regular” professionals, i.e. the police, should have a monopoly on the use of force. The militia should not perform duties whereby the use of firearms can reasonably be expected. In addition, the militia should be less military in its orientation, and more of a neighbourhood watch.

Whatever the future vision for the militia is, training of the militia is vitally needed and very important. We feel the militia must experience an attitude change towards the public and learn to serve it. Training with respect to communication and social skills is also important. In addition, the militia need to acquire basic police skills, such as recognising and identifying suspicious situations, first aid during accidents and the correct use of force and coercion. An appropriate and effective training course can only be developed once the remit of the militia is clear.

Recommendation 7

Police should implement community policing

The essence of community policing is that it involves a system whereby police action is guided to a great extent by the perceived safety needs of the public. Community policing exists in different forms. A number of core principles should always be recognisable. First of all, policing should take place in a relatively small, manageable territory. The idea behind this is that police officers will then “know” but also “be known by” the population. To serve the public well, police officers must also be generalists to a certain degree, and thus capable of dealing with most questions coming from the public, without having to keep referring them to someone else.

Community policing is the opposite of a state police system, i.e. a system in which the police sees itself primarily as an instrument of the state, the strong arm. The aim of community policing is to support the citizen when exercising his or her citizenship and civil rights. This principle is not only recognisable in the structure of a police organisation but it also calls for its own approach of dealing with the public, its own procedures, transparency etc. In addition, community policing means looking into the extent to which co-operation with other (government) organisations is desirable, in order to achieve the main goal, namely to improve safety. The introduction of community policing is a reorganisation process in itself.

We do believe that community policing can successfully be introduced in Ethiopia. Naturally, it will take some time getting used to it both by the police and the public. The principles of community policing fit well in democratically led (multicultural) societies. Many Western countries have opted for this form of policing and apply it successfully.

Recommendation 8

Police must improve their relationship with the public and improve their public image. They should conduct research to determine how the public perceives them and tackle factors that may negatively impact on the image of police. They should immediately start a “charm offensive”, that is, take action to make the police more approachable and instil in the police the understanding that they perform a valuable public service.

In its work, the police are largely dependent on public co-operation. This factor goes a long way towards determining the successes of the police. It is therefore important that the relationship between the police and public is very good. An indirect way of increasing the effectiveness of the police is therefore to improve the relationship with the public.

We recommend conducting research on the current public image of the police and the reasons for those public perceptions. The image of police has three aspects: overall image, outcomes and process. The research should look at the Ethiopian police in all three areas.

General image reflects perceptions, feelings and evaluations of the police overall without regard to specific characteristics or criteria. Examples include things like: confidence in the police, satisfaction with police, trust, respect and support for the police. This gives a sense of the overall public orientation to the police.

To determine what causes the public’s view, it is useful to determine the outcomes of police work, that is, how the police perform the traditional police mission of reducing crime and disorder, reducing the fear of crime, solving neighbourhood problems and improving the quality of life and developing greater community cohesion.

It will also be helpful to assess police performance in meeting the following process standards generally expected of police:

- Integrity: avoidance of corruption and abuse of power for personal gain, dishonesty, tolerance of corruption, abuse of power, and dishonesty among fellow officers.
- Fairness: treating people equally or equitably, regardless of race, sex, or origin or other potentially discriminatory factors.
- Civility: treating people with respect.
- Responsiveness: giving people what they want, showing care and concern for their problems.

- Police presence: being available and accessible to provide police services in a timely fashion.
- Appropriate use of force: using only that force necessary to accomplish legitimate goals.
- Competence: having the knowledge and skills necessary to do their work.³¹

We also recommend that in the short term the police start a charm offensive. They could do this through tackling factors that have a negative impact on the image of the police. This could be done by increasing the accessibility of police stations, abolishing the all too blatant and heavy weapons, redesigning the uniform to make it less militaristic, introducing name badges, issuing police with business cards, identifying the officer and providing contact information, which can be given to complainants or witnesses so that they may maintain contact with police, holding public meetings on issues related to crime and policing (these might include meetings to discuss how to prevent crime, or how to report a crime), sponsoring or holding community events (examples could include a marathon or other sport event involving police officers held to raise money for an important community problem like prevention of domestic violence, sponsoring a police band which provides free musical training to youth in the community), assigning police to specific geographic areas and encouraging them to establish congenial relationships with the members of that community, and the general thrust of the new police attitude could be demonstrated by changing the name “police force” to “police service”.

If police improve their operations and efficiency and develop a community policing approach to policing, their public image should improve.

Recommendation 9

Police must be subject to the rule of law and accountable for their actions.

The following measures should be taken to enable this to happen:

- *Police should adopt and enforce a Code of Conduct (Ethics).*
- *Establish a clear policy on the use of force which advocates alternatives to the use of force and restricts the use of firearms.*
- *An independent body should be established to handle complaints against police.*

³¹ See the IACP Ethics Toolkit, “The Public Image of Police”, Final Report to The International Association of Chiefs of Police by The Administration of Justice Program, George Mason University, October 2, 2001, at http://www.theiacp.org/profassist/ethics/public_image.html, at pages 14-15

We have not been informed of the existence of a Code of Conduct (Ethics) for the police, either federal or regional. We would recommend developing such a Code both on federal and on regional levels shortly. The United Nations Code of Conduct for Law Enforcement Officials should be referenced when preparing an Ethiopian Code. The Code of Conduct was adopted by the General Assembly December 17, 1979. It has eight articles as follows:

1. Law Enforcement Officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.
2. In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.
3. Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty (in this respect the use of force must be proportionate and the use of firearms is considered an extreme measure).
4. Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.
5. No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.
6. Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.
7. Law enforcement officials shall not commit any acts of corruption. They shall also rigorously oppose and combat corruption.
8. Law enforcement officials shall respect the law and the code of ethics. They shall also, to the best of their capacity, prevent and rigorously oppose any violations of them. Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and,

where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.³²

We are also attaching the European Code of Police Ethics (as Annex 8) that can serve as a source of inspiration and an example.

Because of the nature of their work, police will likely continue to need to be armed and will sometimes need to use force and coercion in the performance of their duties. However, in order to prevent abuses and to promote positive relationships with the community it is necessary to have clear policies and procedures in place which regulate firearms and the use of force by police. Legislation should be amended or drafted which reflects these policies and limitations. In determining how best to proceed reference should be had to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which was adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990. Among other things, it requires that:

- rules and regulations on the use of force and firearms against persons by law enforcement officials be adopted and implemented (what these rules should contain is stated in paragraph 11 of the document).
- use firearms as a last resort.
- when firearms are used law enforcement officials shall exercise restraint and minimise damage and injury and respect and preserve human life.
- governments must ensure that arbitrary or abuse of use of force and firearms by law enforcement officials is punishable as a criminal offence.
- firearms be used only in very limited circumstances.
- there be a system of reporting whenever law enforcement officials use firearms in the performance of their duty.
- government and law enforcement agencies ensure that all officials are “selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.
- those authorised to carry firearms have successfully completed special training in their use.

³² The text of “Code of Conduct for Law Enforcement Officials” with commentary, can be found at http://www.unhcr.ch/html/menu3/b/h_comp42.htm

Police must obey the law of the land and their own code of discipline. Achieving this requires that there be improvements in police practice, that is, improvements in supervision, training and the recruitment of police. In addition, there must be an effective and transparent mechanism for handling both internal and public complaints about police conduct. The mechanism for dealing with complaints must be seen as fair and impartial, based in the rule of law, containing guarantees of procedural fairness. There must be a clear and simple mechanism for complaints to be made. There must be no negative consequences to those who make bona fide complaints against police. An impartial body should conduct investigations into police misconduct. Police who are the subject of a complaint should be allowed to defend themselves in a full and fair hearing. Decisions to discipline police should be fair and proportionate, as should decisions to take no further action or to refer the matter for criminal charges. This may require establishing an independent body to receive complaints and direct investigations and conduct hearings. While this body may contain police officers it should not have on it persons who are personally involved in the work of officers who are the subject of a complaint. The police disciplinary body should have on it, respected lawyers and members of the local community in addition to those who have experience in policing. The mechanism developed must be prescribed in legislation.

The Prosecution, the Ombudsman and the Human Rights Commission could contribute to the monitoring of police conduct. Engaging the community through citizens' commissions, NGOs and the civil society can also contribute to the transparency of police work and thus to improving the relation with the public. This will become more and more important in the light of the desire of the Ethiopian police to introduce community policing which is by its nature heavily based on co-operation and contacts with the outside organisations and partners. Willingness to genuinely co-operate and mutual respect are a *sine qua non* for such an approach to work out and lead to fruition.

Recommendation 10

Police need to develop a vision of policing and police education. A workshop should be held for this purpose. That vision should be informed by a clear understanding of what day to day police work requires in Ethiopia and the transformative goals of the police service. That vision should be the basis upon which a new police training curriculum is developed. As a practical matter some of the existing education premises for police must be replaced by functional buildings that meet minimum standards.

The professional attitude of the people we met in schools is a good basis for further development. In our opinion a workshop should be organised to elaborate visions on policing and police education. Experts from abroad in the field of policing and police education should participate. The visions should be discussed extensively with all people in the police and police education.

It is very important to map practical police work. What are police constables and police officers doing? What are they supposed to do now and in the future? The descriptions should follow a clear scheme, to make practical policing visible. To get this picture information should be gathered by written questionnaires and oral interviewing. The outcome of this data gathering is very important for answering the educational question: 'What kind of learning environments should be created to give people the opportunity to develop their competencies in such a way that they are able to deal in a proper way with the core activities of their job?'. Gathering and processing this information is a challenging activity. The information should be gathered amongst the militia too. The reason is that we think that, although the militia doesn't have a formal status as police, they do act as police in rural areas, they do have an important function and that they therefore do need proper education.

Learning takes place always and everywhere. A basic mistake is the idea that learning takes place in schools exclusively. Police practice is one of the most ideal places to learn to be a police constable or police officer. Police education should be a well-balanced combination of learning in school and learning in practice. In this way the gap between education and practice will be narrowed. We advise to organise a number of workshops in which, with the help of educational experts, a limited number of this kind of learning environments are designed and developed.

Dealing with human rights must be like a red thread through the curriculum. It must be clear what dealing with human rights means in relation to practical policing.

Some of the existing education premises are inadequate and should shortly be replaced by functional buildings that meet at least minimum standards.

Recommendation 11

Police training must be improved. The Police College should be supported to improve its services. Police should receive more training in the work place.

Both the Police College and the work place should have access to the internet and computers for the purpose of gaining access to information and participation in training programs.

The quality and the capacity of the police training system must be improved. Although further study is needed to look at how the education system could be enhanced, a few ideas have presented themselves. They will have to look at whether, perhaps in combination with a computerisation project, a police official's workplace can also function as a learning place. Due to the limited mobility of the police in combination with the great distances, some form of tele-learning would be extremely efficient. Whatever the case the training of police officers should be transferred more to the place of work.

The ambition of the Police College to improve its service must be respected. The support they requested relates to substantive know-how, teaching materials, utility services and improvement of the teacher's teaching skills. We believe that the College can meet many of their wishes and they should be able to do it without much international intervention. We think that foreign experts only in certain areas can contribute to this process and visit the academy for a number of days. During such visits, a course or part of a course could be developed, together with Ethiopian training staff. Local teachers could prepare questions, which were answered jointly. Literature overviews could also be presented, which could function as raw material for a lecture. An expert could provide substantive knowledge. A teacher from the academy would then translate this knowledge into a course unit. Such gatherings could be preceded by a 'train the trainer course', in which local trainers were trained in working with modern educational techniques. It is also necessary that the police college and the training centres gain access to one or more internet connections. This would enable them to participate in international discussions on their specialised area. General support for the Police College must be geared towards facilitating the training staff.

Recommendation 12

Successful reform requires a high level of commitment and involvement by managers. The existing hierarchical management style should be changed and a flatter management structure, designed to encourage all personnel to engage in and commit to the new vision of policing adopted. A flatter management structure is more conducive to the adoption of community policing models which devolve greater decision making capacity to the lowest ranks of the police service. A study tour should be taken to gain exposure to the management models and structures used in other countries.

If the reform is to succeed, it will call for a high level of commitment and involvement by all police personnel and their managers in particular. In addition, a management style will have to be employed which provides as many guarantees as possible that every member of staff gives his best. A management style that is based exclusively on hierarchical principles provides insufficient guarantees for this. It is therefore advisable to train the higher police managers in the principles of the learning organisation. Such a training course would better equip them to create a working climate in which staff and they themselves achieve the best results.

Familiarisation with management, as occurs in other societies, can be extremely helpful when developing and fleshing out ideas on how one's own organisation must take shape. Not particularly to become convinced by the benefits of the system deployed by another country. A working visit can also serve to affirm one's own views and preferences. A working visit to one or more European police organisations can, in fact, provide an excellent grounding before actually launching an innovation project. In connection with building up a relationship of trust, it is advisable that experts who will also be given a role to play in any implementation of the recommendations made here shall also take part in such a working visit. We estimate that several Western countries, including the Netherlands, would be willing to do this.

Recommendation 13

The delivery of professional police services requires the support of forensic services to investigators. The resources of the existing federal forensic laboratory must be immediately updated so that it can work more effectively. The laboratory must be developed to a level where it can deliver new services as well. Services like DNA analysis and some chemical analysis can not be performed now. Efforts should be made to ensure the forensic laboratory can provide a full range of modern forensic services to the police as efficiently as possible.

The national forensic laboratory should be developed as a teaching resource to ensure that police can effectively use forensic services in conducting investigations.

A long term strategy must be developed which ensures that forensic services are delivered in a manner which best meets the needs of the police services throughout the country. This may involve consideration of the establishment

of regional forensic facilities and or the incorporation of forensic services within local police facilities.

The capacity of the forensic laboratory must be increased in terms of people and resources. For various reasons, this increase can be achieved fairly quickly. First of all, the laboratory is a small organisation. Secondly, the management also has a clear plan for the long term. The use of updated resources, such as ballistic investigative material, computer equipment for fingerprints or modern microscopes do not really change the working processes. They enable the organisation to do the same work more effectively. Furthermore, efforts in the field of training etc. are not that great. On the other hand, the implementation of these resources mainly improves the quality of the work. It does not mean a real increase in capacity, in the sense that it leads to a reduction in the time needed to reach a sentence.

It is vital that police investigation is supported by forensic expertise. We believe that special emphasis should be in the first place put on strengthening and upgrading the federal laboratory. On a short term, this will lead to better performance of the federal laboratory. On the long term, a strengthened federal laboratory could serve as a teaching centre for colleagues who will be conducting forensic examinations elsewhere.

The establishment of separate regional forensic laboratories could be considered in order to remedy shortcomings in the field of forensic expertise. But this is not the only possibility. Another option is to integrate the laboratories into the police organisation.

Recommendation 14

There should be a central fingerprint registry that is computerised.

Records of fingerprints must be kept automatically. The reason for this is that it considerably increases the number of hits. In the Netherlands, fingerprints are scanned, so that the quality of the print is preserved. There are rules governing the taking of fingerprints of suspects. It can only be done if someone is suspected of a serious crime. The records are kept up to date by linking them with the public records. In principle, the technical investigation department of every service manages fingerprints. All fingerprints are stored in a national database. If someone makes an enquiry, the name of the police officer and the reason for the enquiry is recorded. Nowadays, the fingerprint discussion is gradually shifting to the back burner. The reason for this is that

a similar discussion has flared up about the use of DNA profiles as an investigative tool.

Recommendation 15

Further research must reveal whether or not it is desirable and possible to incorporate the riot police into the regular police.

11.3.3 Recommendations Relating to the Penitentiary System

Recommendation 1

The ambitious prison reforms that are planned should be guided by a national committee comprised of federal and state representatives.

The Ethiopian prison system is, especially compared to Continental-European and Anglo-American systems, relatively young. In 1944 a prison administration was established under the rule of Emperor Haile Selassie (*Proclamation relating to Prisons 1944, No. 45*, still in force). During the Derg regime the prisons were neglected and after the fall of the Derg regime reform of the prison system had no priority. The present government is determined to reform the whole prison system.³³

Such an ambitious plan seems to call for federal and state co-operation, preferably in a National Committee for comprehensive prison reform, which should include the reform of the conditions of detention during police custody.

Recommendation 2

All stakeholders in the justice system must work together to achieve consensus regarding the basic principles that should be applied to the treatment of prisoners in Ethiopia. These basic principles will then form the basis of reform in this sector.

Federal and state prison reform proposals should be formulated on the basis of consensus regarding the basic principles that should be taken into consideration by the prison administration in the treatment of prisoners. It goes without saying that any prison reform plan will need the full support – not only of the prison administration and the police – but also of the prosecution service and the Judiciary. It is of utmost importance to include

³³ *A Short Briefing about the Federal Prison Administration*, paper [no author mentioned] [Addis-Ababa] 11 July 2003.

high ranking representatives of these judicial services from the very start in any committee that will be entrusted with preparing a new policy on prison management, conditions of detention and prisoners' rights.

Reform proposals should take account of the views of prisoners themselves, for instance by interviewing the prisoners' committees on the basis of pre-structured questionnaires.

Non governmental organisations in Ethiopia that are interested in the treatment of prisoners are the Christian Prison Fellowship and the International Committee of the Red Cross (ICRC).³⁴ They should be involved in the planning of reform of the prison system.

Recommendation 3

Prison reform programs should be designed based upon sound knowledge of the actual state of affairs within the country. Consequently, high priority should be given to the conducting of a national survey of the population in prison or otherwise detained.³⁵ Statistics about the operation of prisons and the nature of prison population should be developed.

For the development and implementation of prison reform programs it is absolutely necessary to dispose of accurate actual and computerised statistical data regarding a) the imposing of remand custody, b) sentencing; c) the population of police stations and d) the population of the federal and state prisons.³⁶ High priority should be given to the development of these kinds of statistics.

High priority should be given to a national survey of the prison population, the population of the police stations and of the condition of detentions in these premises.

³⁴ Mr. Marco Bruderemann, Head of the ICRC delegation in Addis said his organisation focuses on the problems of overpopulation, food and the legal situation of prisoners.

³⁵ Although the terms of reference of this baseline study did not include assessment of the situation in police stations, two police stations were visited when it became clear that the conditions of imprisonment in those facilities resembled those in prisons or were even worse. Of course two visits are not enough to formulate comprehensive recommendations on the improvement of the situation in police stations. This topic needs more attention than it has gotten now. Follow-up research should be organised by the Ethiopian authorities.

³⁶ At least regarding the annual flow, the daily average population and the categories of detainees.

Recommendation 4

Prison reforms must be financially affordable and morally acceptable for the government and the general population.

One should be aware of the fact – as was said repeatedly during the visits - that every reform measure must stay within the limits and means of the Ethiopian Government and people. This means not only that reform proposals must be financially affordable, but also that they must be morally acceptable for the government and the general public. This touches on what in the penological discipline is known as ‘the less eligibility principle’. It means that – in the view of the people - prisoners should not be in a better socio-economic position than the average free citizen. When prisoners are considered by politicians and the general public as being in a better position than the average citizen, whether this is true or not, the impression will be that ‘crime pays’. This can obstruct any reform initiative.

The following arguments can be brought forward in support of prison reform:

- remand prisoners require optimal prison conditions because they are not considered to be guilty until finally sentenced (the presumption of innocence);
- sentenced prisoners are to be rehabilitated³⁷, which aim requires certain material and immaterial investments in their future; and
- the internationally and constitutionally formulated human rights require humane treatment of all people legally deprived of their liberty.

Recommendation 5

Prison reforms must not only focus on improving efficiencies but also upon improving the quality of prison administration. While reform may entail changes to legislation, changing the law by itself is not enough. There must be a change in the attitude and philosophies of those working in corrections.

Reform of the penitentiary legislation (‘the law in the books’) is important and necessary, but not sufficient. It is the people working in the penal institutions and their philosophies that make the difference (‘the law in action’), provided these civil servants receive adequate training.

One of the aims of reform may be to enhance the efficiency of the prison administration, but this should not be the sole or main ambition of a reform

³⁷ Int. Covenant on Civil and Political Rights, Art. 10 §3.

program. Also the quality of the prison administration should be improved. This can be realised by adopting new attitudes to working with prisoners, based on shared values, embedded in an articulated and widely disseminated mission statement of the prison administration, indicating what ends are to be met by imprisonment.

Recommendation 6

While recognising the importance of maintaining security, reforms should emphasise the importance of rehabilitation and reintegration. These principles should be imbedded in the penal law and in the laws governing prisons.

Perhaps the biggest challenge for prison reformers will be to convince the courts, prison administrators, politicians and the general public that it is really worthwhile to offer prisoners programs that facilitate their rehabilitation. This means that on all levels people become aware of the fact that mere ‘warehousing’ prisoners in ‘universities of crime’ does not diminish recidivism at all. The new Penal Code should emphasise the importance of rehabilitation and reintegration as most important justifications for imprisonment. Given the opportunity to acquire some vocational skills and/or some (basic) education during their time in prison, learn something useful, combined with the support of a rehabilitation or probation service after release can give ex-convicts the chance to live a crime-free life and will enhance the safety of the public. Mere imprisonment doesn’t solve anything, not for the convict, his victim nor for society. Most people are aware of this, but for many this will require a radical change in thinking about crime and criminals and how to deal with them.

It will be necessary but not sufficient to embed the concept of rehabilitation in criminal and penitentiary law. The general public and the officials concerned (first and foremost the prison administrators and prison police) have to get used to view prisoners as fellow-citizens, who after their detention have the right (and the duty) to reintegrate in free society.

Of course a fair balance must be struck between the security of the general public, prison personnel and the rehabilitation of prisoners. The concept of dynamic security – meaning preserving and enhancing ‘good order’ inside the prison by developing mutual trust between prison personnel and

prisoners – could complement the traditional static security that is based on the fear of disciplinary sanctions and the use of force.³⁸

Recommendation 7

Any investment of energy and financial resources in meeting the material needs of prisons should be undertaken only after there is a clear understanding of how prisons will be expected to function in the future.

Existing proposals to reform the prison administration³⁹ end with a list of the most pressing material needs. It has to be said however, that investing energy and financial resources into the penitentiary system without a previous, thorough analysis of the structural flaws and needs of the system itself can only result in a temporary relief. For instance: what is the sense of buying computers without having a clear idea about the best way to administer prisons and prisoners? To what end would one want to purchase 2000 helmets, 2000 shields and 10,000 police sticks (like the Oromia project proposal requests) when there is no clear policy regarding the role and training of prison police (prison guards) in maintaining good order and security in prisons?

Recommendation 8

Universities should be encouraged to develop the disciplines of penology and corrections and encourage evaluative research in those fields.

The sociological and/or criminological departments of the federal and state universities should be encouraged to develop the disciplines of penology and penitentiary law and programs for (evaluative) research on these fields.

Recommendation 9

The problem of overcrowding in prisons must be addressed. A task force should be formed to examine how best to pursue reforms in the following key areas:

- *Effective case management strategies.*
- *The availability of sanctions that are alternatives to imprisonment.*
- *The role of the prison administration in regulating the parole of prisoners under Article 112 of the Penal Code.*

³⁸ Information on good practices regarding rehabilitation can be found in the excellent book on this subject by Anton M. van Klamhout & Jack T. M. Derks, *Probation and Probation Services – A European Perspective*, Zutphen/Nijmegen 2000 (ISBN 90-5850-008-X), which describes in detail the organisation and implementation of probation in 19 countries.

³⁹ As found in the PSCAP plans prepared at the federal and regional level at the end of 2003.

- *How to make use of the provisions enabling conditional release, as found in articles 194 to 205 of the Penal Code.*
- *Strategies to reduce the numbers of prisoners held in custody pending trial.*
- *Whether a form of community corrections or probation service should be developed in the country.*

A priority of a prison reform policy should be the battle against the overcrowding of police stations and prisons. Overcrowding affects adversely all the services and activities within police stations and prisons. Structural co-operation and consultation between police, prosecution service, Bar, courts and prison administration regarding the flow of cases and the planning of handling them should be realised with the overall aim of reducing the prison population.

To get a grip on the problem of prison overcrowding, alternatives for imprisonment, like community service orders and educational orders, should be introduced in the Penal Code. The implementation of these kinds of ‘alternative’ penal sanctions certainly is expensive when it is entrusted to a kind of probation service, like is the case in several Western-European countries. The administrative structure of Ethiopia with the *Kebele* as basis may offer a unique opportunity to entrust the execution of the alternative penal sanctions to the Woreda and/or *Kebele* administration under the supervision of the Social Courts. Within the limits of this baseline study it is not possible to expand on this idea. A special task-force should report on the development of alternative penal sanctions and the supervision on the implementation of these sanctions. Difficulties to address are: could or should the militia play a role in the implementation of alternative sentences or should this be left to committees of civilians under supervision of the Social Courts or perhaps the prosecution service?

The paroling of prisoners under Article 112 of the Penal Code needs to be regulated. The way parole is put into effect currently is questionable, because in practice the first selection of possible parolees is done by Prisoners Committees. The responsibility for the selection of parolees should lie with the prison administration, which to this end should keep records of the good or bad conduct of prisoners.

The possibility of conditional release, embedded in Articles 194-205 of the Penal Code is never used, because the country lacks a probation service that could be entrusted with the support and control of the ex-convict during the

probationary period. Where in certain cases the option of conditional release is to be preferred over parole, the possibility of entrusting the *Kebele* administration with the support of conditionally released prisoners (under supervision of the Social Courts) should be considered.

The present bail system is not very effective in the battle against the overcrowding of police stations and prisons. Only few suspects are able to find the required sureties. It should be considered to introduce the possibility to suspend remand conditionally. Consideration should be given to determining whether the militia in the *Kebele* where the suspect lives could be entrusted with the supervision of the conditionally remanded suspect. Should a conditionally remanded suspect re-offend prior to the conclusion of the remand, he or she would, generally, be denied further release and held in custody pending trial.

Recommendation 10

Decisions with respect to pre-trial detention should always be in writing and subject to appeal and review. Pre-trial detainee should be held in appropriate facilities. There should be a fixed limit on the period of time that suspects may be held in custody in police stations.

Any court decision regarding pre-trial detention should always be given in writing. The CPC should allow for an appeal against such decisions and allow for requests to the court to end or (conditionally) suspend the pre-trial (remand) detention.

The CPC should fix a term for the length of stay of suspects held in custody in police stations. Police stations are evidently not equipped (nor financed) to house suspects for more than a few days. Prolonged detention in police stations may easily lead to inhuman conditions of detention.

Recommendation 11

The National Committee, referenced in Recommendation 1, should be charged with developing recommendations for the establishment of national legal standards for the treatment of offenders. These recommendations should be incorporated into relevant federal and regional proclamations.

A modern and progressive prison system which meets the requirements of international and Constitutional legal norms can best be framed in a Prison Act, which is binding throughout the country. In a Federal State such as Ethiopia where jurisdiction over these matters is divided it is important that

there be consistent national standards developed and employed throughout the country. These standards should be reflected in both federal and regional legislation. The following matters require particular attention, in this regard:

- Article 108 of the Penal Code and Article 60 of the Criminal Procedure Code require the drafting of penitentiary law. Article 108 PC should be amended in such a way that it requires formal legislation regarding the execution of sentences.
- Legal provisions regarding the execution of remand custody and/or imprisonment, like the present Articles 109-111 PC and the Articles 203-205 CPC, should be transferred from the PC to a Prison Act.
- State and federal prison legislation should reflect the mission, powers and accountability of the Federal and State Prison Administrations and the rights and duties of prisoners. On a lower legislative level details can be elaborated in regulations and directives.
- A Prison Act should include clear rules on criteria used to allocate prisoners to federal or state prisons and provisions to appeal against decisions regarding placement and transfer.
- Consideration should be given to including in a Prison Act rules concerning the treatment of people in police custody.
- A new penitentiary law should only be drafted after intensive consultation with police, prosecutors, the Judiciary, prison administrators, prisoners' committees, academics and international experts.
- Consideration should be given to drafting two new proclamations one on the establishment of prison commissions and the prison wardens and one containing standard minimum rules for the treatment of prisoners (also those in police stations). The text of the existing proclamation on the Federal Prison Commission mainly concerns the administrative organisation of the (federal) prison system. Considering the preamble of the draft, part four, handling the *Treatment of Prisoners*, should represent the central theme of this Proclamation.⁴⁰ However this is the least detailed component of the proclamation. This deficiency should be repaired.

⁴⁰ Guidance for this can be found in the *UN Standard Minimum Rules* and the European version of those Rules, *The European Prison Rules*. Other relevant international texts are: the *UN Basic Principles for the*

- Three fundamental safeguards against ill-treatment of detained persons (whether in police custody or in prisons) are: the right of the person concerned to have the fact of his detention notified to a third party of his choice, the right to access to a lawyer, and the right to request a medical examination by a doctor.⁴¹ Immediately after entry in a prison, a prison doctor or nurse should perform a medical check on the detainee and make records of his findings. These records will be kept in a file which is available for the detainee. Penitentiary law should be amended to include these guarantees.
- Adequate numbers of staff must be present at any given time in areas used by prisoners for activities. Penitentiary law should fix a minimal staff/prisoners ratio.

Recommendation 12

New prisons should be designed and built only after there is a clear vision of how the prisons are to operate in the future.

Prison reformers should give more thought to the optimal format of prison facilities before constructing very large ones. The format will be influenced to a high degree by the treatment philosophy of the prison administration. If mere ‘warehousing’ of prisoners were the main goal the prison administration, cheap large prisons are preferable. If differentiation between groups of prisoners and their rehabilitation would have priority, the construction of relatively small, specialised units seems preferable. No new prison or prison unit should be designed without a clear view of what they are intended for.

New prisons and police stations should be located as much as possible in the vicinity of the prosecutors’ office and court house. In the present situation the distance between prisons, police stations and the prosecutor’s office and the courts requires (too) many personnel and transport-vehicles. Where possible, prosecutors and/or judges should be encouraged to go to the police stations and prisons to hear suspects whenever their case requires so.

Treatment of Prisoners (1990) and the UN *Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment* (1988).

⁴¹ Source: European Committee for the Prevention of Torture or Degrading Treatment or Punishment (CPT), Substantive Sections of the CPT’s Reports, Strasbourg, 2003. Other recommendations of the CPT are incorporated in this chapter.

Recommendation 13

Prisons should keep better and electronic records on detainees. Legislation should be drafted which governs record keeping in prisons.

Police stations and prisons should be equipped with computerised registration systems in order to keep an up to date registration of detainees and their legal, material and health status. Prison legislation should govern record keeping and archiving of prison records. An example of this can be found in foreign prison legislation, like in Chapter 8 of the Dutch *Penitentiaire Maatregel* (Penitentiary Rules, attached to the Dutch Penitentiary Principles Act).

Recommendation 14

Juvenile offenders should be detained separately from adults.

Juveniles in terms of the International Convention of the Rights of the Child and the Ethiopian Constitution should be detained separate from adults. Implementation of this requirement should get the highest priority.

Recommendation 15

Female detainees should never be guarded by male police or prison personnel.

Recommendation 16

Special provisions should be made for mentally ill and vulnerable prisoners.

Special units for mentally ill offenders should be constructed. These units should be staffed by specialised personnel.

Vulnerable detainees (for instance child molesters) should be protected from assaults by fellow-detainees.

Recommendation 17

Prisoners must be able to fulfil their spiritual needs.

Prisoners shall – within the practical limits of their detention - be free to practice their religion or to fulfil other spiritual needs. To this end representatives of any religion shall have access to prisons, provided they respect prison regulations.

Recommendation 18

High priority must be given to the improvement of prison medical services (preventive and curative), hygienic and sanitary conditions and the supply of food and drinking water in police stations and prisons. The food supply must not be dependent on what the family of the detainee brings him during visits.

Police and prison cells and/or dormitories should be of a reasonable size for the number of persons they are used to accommodate and have sufficient lighting and/or natural light. Detainees should be provided with clean mattresses and blankets.

The results of every medical examination as well as the doctor's conclusions should be formally recorded by the doctor and be available to the detainee. There is no medical need to separate HIV-positive detainees from others. There should be full educational programs about transmissible diseases for both prisoners and prison staff.

Basic principles regarding the organisation of health care in prison with specific reference to the management of – in particular – HIV infection and Aids, Tuberculosis and Hepatitis can be found in Articles 36-42 of Recommendation No. R (98) 7 of the Committee of Ministers of the Council of Europe on *Health Care in Prison* (see Annex 9). These articles cover the subjects of prophylactic measures, HIV-tests, isolation of patients with an infectious condition, segregation of people who are HIV positive, treatment of seriously ill Aids patients, measures after detection of tuberculosis and vaccination against hepatitis B.⁴²

Recommendation 19

Prisoners should have access to activities and educational and vocational training.

Educational and vocational training facilities should be enhanced. Every detainee should have a right to a legal minimum of training. Priority should be given to basic literacy skills.

Programs of activities should be developed for all establishments holding detainees. Every detainee should have a right to a legal minimum of programmed activities per day.

⁴² Information and guidance on these topics can be found on various internet- sites, for instance: www.dh.gov.uk (search there for: Policy and Guidance – Prison Health) and: www.aidsnews.org with special reference to HIV/Aids in prisons.

Recommendation 20

The issue of conjugal visits should be addressed in reform plans.

Given the generally long stay in prisons and bearing in mind that the right to family life is one of the most important human rights, the issue of conjugal visits should be addressed in prison reform plans.

Recommendation 21

The role of prisoners' committees should be formally regulated and controlled by the prison administration.

Acknowledging their important role in the current situation, prisoners' committees should not be entitled to decide on and execute disciplinary sanctions for inmates, nor advise on the eligibility for parole. Such powers – when not properly supervised by the prison administration can easily lead to biased decisions and abuse of power by (members of) these committees. This kind of executive powers belong exclusively to the prison administration. Other functions of these committees should be regulated formally and under constant control of the prison management. Decisions of prisoners' committees should be subject to revision by the prison administration by way of complaint.

Recommendation 22

Clear disciplinary procedures as well as effective grievance and inspection procedures must be formally established.

Clear disciplinary procedures must be formally established and applied in practice to prevent unofficial and uncontrolled system developing or to put an end to such systems.

Effective grievance and inspection procedures, in and outside the prison system must be open to detainees.

Recommendation 23

To be effective, rehabilitation efforts require the development of individual detention plans. Prisons need to establish mechanisms for development and implementation of those plans.

The envisaged evolution of the execution of imprisonment from mere 'warehousing' into a rehabilitative effort requires individual detention

planning. This requires the development of special departments for individual detention planning within the prisons.

Recommendation 24

Prison staff must be transformed from prison police to prison warder with a service oriented mentality and a commitment to rehabilitation of detainees. This requires a change to recruitment and training policies.

After the end of the Derg regime the police was demilitarised. Formally speaking, this is not a big problem, more problematic for the prison police is perhaps changing a militarised mentality into a service-oriented mentality, which acknowledges the importance of rehabilitation of the detainees. The present prison police expect prisoners just to obey orders without any discussion and are accustomed to intervene with force when orders are disobeyed or when insubordination is perceived. The change from the function of prison police into the function of warder announced by the former Minister of State Mr. Gebreab Barnabas is a precondition for successful prison reform and should get the highest priority.

The related personnel may experience a transformation of their jobs from police constable or officer into warder or warden as a loss of status. This possibility must be faced by the government and be dealt with in a sensible way, underlining the importance of this new job for the society.

Modern (Western-European) prison systems do not employ police forces to maintain good order within the penal institutions. Of course perimeter security has to be maintained. This perimeter security can be maintained by technical means like closed circuit TV and wiring systems and (armed) guards where high tech control systems are unaffordable. There is no reason why prison guards should be part of the regular police organisation. They belong to the prison personnel. These guards – if properly trained - should get the opportunity to change their job into that of warden.

Properly recruited and trained prison staff is the cornerstone of a humane prison system. The (UN) Committee for the Prevention of Torture (CPT) emphasises the great importance it attaches to the training of law enforcement police and prison personnel, including education on human rights matters.

Recommendation 25

The use of force and carrying of weapons by prison staff should be strictly limited and regulated.

Security and safety of personnel and detainees in the penal institutions should not depend on force but on the moral authority of well-trained warders and on a program-based, human treatment of the detainees.

The maintenance of control in prison should be based on the use of what is called dynamic security. That is the development by prison personnel of positive relationships with prisoners based on the firmness and fairness, in combination with understanding of their personal situation and any risk posed by individual prisoners.⁴³ Technical devices should not prevail but always be an adjunct to dynamic security methods.

The routine carrying of weapons, including firearms and truncheons, by persons in contact with prisoners should be prohibited within the prison perimeter. Means of restraint (sticks, shields, handcuffs etc.) should be locked away until needed and only may be used by warders in extreme situations and with the explicit permission of the head of the prison. The use of means of restraint should be strictly regulated in directives to the prison management and limited in time.

Recommendation 26

The curriculum for training prison staff should be directly linked to the job function of the trainee. It should be a combination of classroom, follow-up and on the job training. Those responsible for developing curriculum should be given the opportunity to attend a high level training institution in Europe to learn from their experience.

All categories of prison personnel and police personnel guarding jailed suspects should receive training in penal law, penitentiary law and human rights. The level of this training must be related to the (future) function of the trainee.

During training considerable emphasis should be placed on developing interpersonal communication skills, based on respect for human dignity.

⁴³ Source: Council of Europe, Recommendation 2003/23 on the management by prison administrations of life sentence and other long-term prisoners.

The training of prison personnel should be organised by a Prison Service Training Centre. This kind of training must not necessarily be organised by the Police Academy, though instructors from this Academy may well be invited as guest-teachers for some subjects.

A Prison Service Training Centre should be accessible for federal as well as for state personnel. In-service training can be complementary to training in a central training centre. Training of top and middle level personnel should be centralised. Training of guards and warders could be organised at regional level.

The present prison police should be reformed into a corps of a) prison guards, in charge of maintaining (perimeter) security, entrance control and the transport of detainees and b) warders in charge of the daily management and programmatic treatment of the prisoners.

The training of prison guards should be well distinguished from that of warders. The curriculum for prison guards and their commanders should, on top of some basic police skills, at least provide training in (at least) the following subjects:

- Safety and security: handling aggression and dangerous situations; anti-hostage policy; communication with prisoners in critical situations; management of calamities; co-operation with external services; internal assistance units; self-defence techniques.
- Integrity and corruption: code of conduct; sexual relations, financial integrity; dilemma training; (how to behave in the 'grey area'); handling misconduct.
- Law: penitentiary law; basics of criminal law and criminal procedure; human rights

Warders and other prison personnel at all levels, in charge of the daily treatment and administration of prisoners, should specially be trained in designing, developing and running special programs for prisoners including schooling and vocational training. They also should acquire special skills in handling special categories of prisoners like women, juveniles, mentally disturbed persons, drug addicts and vulnerable prisoners that cannot cope very well with imprisonment for various reasons.

Next to external training courses, in-service or 'on the job' and follow up training courses should be developed.

Before adapting the existing training programs of prison personnel to new standards it is advisable to send part of the top level and middle management abroad to study current training programs in countries with highly developed prison systems like Switzerland, Scandinavian countries, Germany and The Netherlands. It can be important to send prison management to South Africa, to see for themselves which problems prison reform can bring along.

If it is agreed that the training curriculum needs change and should be concentrated in a separate and specialised Prison Service Training Centre, the question arises how to do this. To this end, a delegation of the staff of the present Ethiopian Police College together with representatives of the Aleltu Training Centre should participate for two or three months in existing high level training schools, for instance at the *Dutch Prison Service Training Centre*, which provides for a wide range of courses. Another example of a specialised training centre is the *Swiss Centre for the Training of Penitentiary Staff*, which displays its curriculum on internet: www.prison.ch.

Recommendation 27

Prisons should be regularly inspected by an independent authority and by prosecutors and supervised by an independent “Board of Visitors”.

Police stations and prisons are by their nature closed institutions. It is evident that in institutions that are not accessible for the general public, abuse of power and violation of fundamental rights and freedoms is a real risk. This can only be prevented by installing a system of inspection by an independent authority. Different forms of this independent authority have been discussed in other parts of this report.

Inspection should include the legality of the (remand) imprisonment, the material conditions of detention and the legal position of the detainees.

It is the duty of the responsible federal or state department to organise regular official inspections, *in casu* the prosecutor. The inspector shall report to the responsible Ministers, who – whenever necessary – will take the necessary steps to redress reported abuses or shortcomings. He may replace or dismiss civil servants responsible for mismanagement.

In addition to formal administrative inspections every penal institution should be supervised by independent ‘Board of visitors’ that can speak freely with the inmates and has access to the prison management. It should be competent to handle prisoners’ complaints.

Regular visits to police stations and prisons by an independent body possessing powers to hear complaints from prisoners and to inspect the establishments' premises are of particular importance.

If the FDRE decides to sign the Optional Protocol to the UN Convention Against Torture (UNCAT)⁴⁴, the Subcommittee on Prevention, mentioned in this Optional Protocol will be empowered to visit any place in Ethiopia where persons are or may be deprived of their liberty. The creation of a national inspecting agency seems a logical preparation for the future international inspections by this Subcommittee.

The Ethiopian Constitution says in Article 55 (15) that the House of Peoples' Representatives shall establish the institution of an Ombudsman. When legislation on this subject will be drafted, it might be considered whether the Ombudsman should be empowered to investigate complaints of prisoners.

Recommendation 28

Prisoners should have access to free legal advice.

To alleviate the problem of legal aid it should be considered to call upon law students for help. They could – as part of their practical training – hold office hours in prisons. Of course they need special training in penal and penitentiary law and coaching by (university) teachers. Another possibility to be considered is the use of jailhouse lawyers. Jailhouse lawyers are experienced (ex-) convicts who are allowed to assist prisoners within the prison system. It should be considered to allow jailhouse lawyers to act as defence lawyers in court. In the long term, specialised members of the Ethiopian Bar should take over.

11.4 Recommendations Relating to Legal Education

Recommendation 1

Co-operation between the various Ethiopian law schools/faculties should be improved. This can be done in the following way

- *Law schools/faculties should share information on curricula, teaching methods, teaching materials, administration system and quality assessment.*

⁴⁴ Ratified by the FDRE in 1994.

- *Representatives of law schools/faculties should meet regularly in order to share information.*
- *Promote collaboration between the stronger and the weaker law schools/faculties through exchanging teachers and researchers for agreed periods.*
- *Consider formalising the co-operation between law schools/faculties by establishing an association of laws schools/faculties.*
- *The Law Faculty of Addis Ababa should play a leading role in facilitating this co-operation.*

Law schools/faculties and departments should share experiences and workload. It is not necessary for all the faculties/departments to re-invent the wheel. Supporting each other with teaching materials, systems for administration and quality assessment could contribute to a good result. Only recently did the law schools agree to meet periodically in order to share information and to co-operate. This positive initiative should be supported financially in order to promote co-ordination and networking. It is even worth considering formalising this initiative (e.g. by a declaration of intention of all law schools). We understand that there is an initiative to form an association of universities and therefore it could be possible to reflect on an association of law schools in Ethiopia as well. The Law Faculty of the University of Addis Ababa and the emerging universities should play an important role in facilitating this co-operation, calling for the joint meetings and circulating relevant information.

Collaboration between the stronger and the weaker law schools/faculties in exchanging researchers and teachers should be promoted. Some incentives might be considered to make it attractive to serve an agreed period in the regions and *vice versa*.

Recommendation 2

Co-operation between the Ethiopian law schools/faculties and foreign faculties and other academic institutions should be initiated and enhanced.

- *Through their universities, Ethiopian law schools/faculties should initiate and develop sustainable contracts with foreign faculties for mobility of staff and post-graduate students.*
- *They should be encouraged to send their staff for training in teaching and research abroad.*
- *Ethiopian law schools/faculties should work towards twinning with foreign faculties, especially with African ones sharing the same interest and ambitions.*

- *The Ministry of Education should ensure financial and technical support to those faculties which wish and are competent to establish durable contacts with foreign universities.*

Ethiopian law schools should develop sustainable contracts for mobility of staff (as a first step) and students (post-graduate students) with foreign universities. Some of the Ethiopian universities should be encouraged to establish links for training in research and teaching abroad. In the short term, we believe that establishing contacts and exchanges with foreign faculties are the most relevant. As those contacts must be developed on a bilateral basis and demand a lot of efforts and financial means, especially for small or nascent law schools/faculties, the Ministry of Education should be urged to provide adequate financial and technical support.

Universities in most of the European countries have opportunities to establish exchange programs (related towards study programs and research) but it is not easy to compete with all efforts that exist at European universities to find their partners in Europe. Special EU-funding stimulates this kind of needs and ambitions to strengthen the partnership amongst European universities. In doing so universities in developing countries have to find ways to compete with other universities. On a bilateral level much can be done but the network is hard to enter. Some kind of consultative and/or facilitator/co-ordinator role could be needed.

Besides, the European Union distributes funds for contacts with developing and transition countries. Tempus program for developing projects between European countries and countries in transition, i.e. particularly Eastern European countries, is a good example of those European funds. The MoE should seek information on these kind of initiatives. In the first place the representative of the European Union and major embassies in Ethiopia should be approached with a view to obtaining relevant information on academic exchanges with African countries.

Already existing contacts and their content should be described as a matter for information and be transparent to all law schools in Ethiopia.

Recommendation 3

The inter-relations between the law schools/faculties on the one hand and the legal professions and the civil society on the other hand are very important and they should be initiated or developed. That can be achieved in the following way:

- *Members of the legal professions, such as the Bar Association, Courts and Prosecution, should be invited to give guest lectures or seminars on specific topics. These guest lectures and seminars should be seen as a complement of rather than an alternative to a course.*
- *Members of the legal professions should be invited to give students an opportunity for practical training at their offices. This relationship/ traineeship should be formalised between the university and the legal profession(al).*
- *The legal professions should be invited to take part in the discussions on the development and revision of the curricula.*
- *Members of the civil society, such as Human Rights NGOs, women's organisations and any other association whose activities are relevant to developing practical skills of students, should be invited to give guest lectures or seminars on specific topics. These guest lectures and seminars should be seen as a complement of rather than an alternative to a course.*

Regarding law schools and their need to develop their learning organisation, including ways to reach access to “reality” and practice, it is important to find a good structure to make it possible to involve manpower outside the universities to take up their responsibilities and interest in relation to universities. If the universities will have a role in life-long learning activities for say judges, prosecutors, etc., we find it important to take advantage of the practical experiences in the mentioned institutions in order to add to the theoretical perspective presented by professors/instructors at law schools. This would create a win-win situation for the universities but also for the mentioned justice institutions.

The relations between the law schools and their environment i.e. the society have to be developed and the interesting ambitions that exist in AAU (law clinics), Mekele (Practical Attachment - PA) and Jimma (field- and community work) should be supported. Law students can get to know the realities and legal problems and the public, who have little access to information on laws and rights, can understand that at universities there are efforts to prepare professionals for dealing with legal cases in a serious manner. In order to create these good contacts relating to for e.g. legal clinics, there should be a focus on curriculum and also on funding to make these external contacts a reality.

Recommendation 4

There is a huge need for legal research and publication. Teaching staff must devote more time and energy to research and publication. In order to achieve this,

- *They should be provided with administrative support.*
- *Legal libraries should be improved.*
- *Better use should be made of information technology.*
- *Inter-action with the legal professions and access to information should be facilitated.*
- *International exposure should be guaranteed.*
- *Seminars for researchers and teachers should be organised on a regular basis.*
- *Researchers and teachers should be trained in research techniques.*
- *Consider increasing the salary of the teaching staff so that they can solely concentrate on teaching and research rather than combining different jobs.*
- *Hold the teaching staff to their contractual obligations to undertake research.*
- *Financially and technically support the Ethiopian Law Journal and develop it to a national widespread journal.*

The teaching staff are often responsible for the development and the implementation of the administrative system. They should be relieved of their administrative tasks and thus allowed to concentrate on teaching and research.

Law professors/instructors need to have access to an environment dealing with research and legal problems. A good teacher, able to give advice in tutoring and lecturing, has to relate to relevant results from research. The universities cannot be allowed to concentrate on teaching to the detriment of research. And the relevant research institutes cannot be allowed to work without expressing and discussing issues and findings with other academic staff. Sometimes, the same person works both at a law school and at a research institute, thus establishing the required connection. But these categories i.e. researchers and professors/instructors should have an opportunity to participate in joint seminars on a regular basis.

The Ethiopian Law Journal (or another journal) ought to be developed to a national and widespread journal. It will provide a useful source of legal information and literature for the law schools/faculties and for the

practitioners in Ethiopia. It will also open a forum for researchers, teachers and professional researchers alike, and experts from abroad.

Recommendation 5

Law libraries should be set up and where they already exist they should be reinforced and upgraded.

- *Laws and proclamations should be delivered to law libraries on a regular basis and shortly after their adoption or publishing in the Negarit Gazeta. A mechanism for this delivery should be developed (example subscribing law libraries to the Negarit Gazeta).*
- *Decisions of the Federal Supreme Court and the State Supreme Courts should be delivered to law libraries. A system of publishing and/or distributing single decisions on demand from law schools has to be worked out.*
- *The management and organisation of the law libraries should be upgraded.*
- *Staff and administrative personnel at law libraries should be trained in special programs in archiving and managing stored materials and in modern means of information technology.*
- *Law libraries should be better equipped and furnished. They should also be provided the financial means to purchase the necessary books and subscribe to among others the Negarit Gazeta and the Ethiopian Law Journal.*
- *Law libraries should be shortly provided with modern means of information technology and access to the internet. A pilot project on automating one of the law libraries should serve as a precedent before transferring the know-how to other libraries.*

All laws and proclamations must be delivered to law libraries after being adopted or published in the Gazette. To teach law without relevant codes, laws and other kind of normative regulations is not possible. It makes it very problematic to focus on law and practice and often leads to a theoretical and superficial approach delivering lawyers that are not always trained for practice. One can argue that all this kind of materials do not even exist in courts in Ethiopia in an acceptable, sufficient and structured way and certainly not in the overall justice system, but nevertheless the starting point is indeed the law library. In the regions with law schools (law libraries) an adequate system ought to be set up to deliver and organise law materials. Even important draft laws could be of interest to make sure drafted laws are publicly available and discussed. Areas of responsibilities for this distribution must be defined and decided and it is a matter of buying and logistics.

All Federal Supreme Court decisions and State Supreme Courts' decisions should be delivered to law libraries. The responsibility to send court decisions is a far more complicated matter. A workable system of publishing and/or distributing single decisions on demand from law schools has to be looked into.

Facing the new technical situation with possibilities to use ICT – floppy-disks, CD-ROM, intranet and internet it ought to be considered if a pilot project could be introduced and tested in order to give one or two regional universities information in an electronic way.

A program for personnel at law libraries has to be developed to make sure all materials are stored and practically accessible. In order, for the law libraries to be genuinely reinforced, their management and organisation should be upgraded and developed.

Recommendation 6

Law schools/faculties should design curricula to meet the need of the present Ethiopian society. To that effect they shall:

- *Make a division/department or a group of people (a commission) responsible for dealing with curriculum developing and periodical revision. Curricula development or revision should not be dependent on one or two leading persons. It should be the joint responsibility of the commission in which law schools/faculties but also the legal professions and other disciplines should be represented.*
- *Clearly define the objective of the curricula taking account of the academic and professional needs of current Ethiopia (see Annex 10).*
- *Ensure that the curricula be dynamic, be monitored and revised whenever needed.*
- *Ensure that new legislation and development in the country are taken into consideration while revising curricula.*
- *Ensure that the designers of curricula be trained and competent in methods of developing and revising the curricula.*
- *Involve instructors and teachers in curricula development and revision.*
- *Encourage (Organise) regular meetings (seminars) between curricula designers of the different law schools/faculties to exchange ideas and expertise.*
- *Establish relationships and develop interaction with the legal professions such as the Bar Association, Courts and the Prosecution and with the civil society such as human rights NGOs and alumni associations in order to guarantee their practical input in the curricula.*

- *Establish relationships and develop interaction with other disciplines such as economics, accounting, sociology, criminology, psychology, psychiatry, pedagogy, and anthropology. Assure their specialised inputs in the curricula when deemed specifically necessary.*
- *Enrich the curricula and diversify them by adding optional/elective courses that are problem and practice- oriented. A pilot project in one of the law schools can serve as a precedent for this introduction.*
- *Research the need and desirability to include Alternative Dispute Resolution and Sharia law and customary law.*
- *Provide an opportunity for the designers of curricula to visit foreign countries and get international exposure (study visits or training in techniques of designing curricula).*
- *Establish relationships with foreign universities that could assist by providing highly qualified experts in the field of development and revision of curricula and advice in this matter.*

The universities' aim is to train an adequate number of good quality students suitable for a professional role in today's society. This requires political clarification having regard to the national requirements. The mission and objective of a curriculum define the profile and the qualifications of the legal professional who is aimed at. One should not expect a curriculum that is developed to prepare managers to lead to highly qualified and critical legal professionals. Doubt about or lack of a clearly defined objective of the curriculum sheds doubt not only on the quality of the legal education but also on the qualifications and capabilities of the delivered legal professional. We therefore, suggest that an in-depth discussion and analysis of the mission and objective of the existing curricula takes place. This discussion should lead to answering the questions:

- a) What are the profiles of the legal professionals that are currently needed and will in the near future be needed in Ethiopia?
- b) Do the existing curricula really prepare legal professionals with the right profiles?
- c) What changes and improvement are needed to meet the needs of the country? Legal education must relate and respond to social needs and curricula should be continuously revised and upgraded to meet those needs. It contains a further description of curricula development modalities and extracts from the curricula of three foreign universities.

Working in a decentralised environment gives the law schools an opportunity and a challenge but also heavy responsibilities. It is necessary to use positive initiatives and to co-operate within joint seminars on curriculum

development. Regular meetings amongst curriculum designers and a frequent participation of teachers are very important. The situation of law school differs in terms of administrative competence and levels of decision in the system. Building competence in methods of developing and implementing curriculum is essential.

Upgrading all law schools to law faculties may give collaboration a better starting point.

Too theoretical a teaching approach is not just due to a written document and the curriculum design. It also strongly relates to the staff responsible for teaching, their competence, and ambitions and even will to do so. In the framework of “classroom-design” a bad or weak design can have a good practice in reality and a well-thought design can in the hands of instructors, that are not prepared or involved in the ideas behind it, result in a output that is either not intended or even bad. In developing curriculum-skills, the law schools have to involve all instructors.

Legal clinics can be a way to develop problem-based curricula and to build in practice relevant components. It has to be linked to tutoring and coaching. Partnership with Bar Associations and the courts should be developed and encouraged.

Other experiences and initiatives, such as the Mekele Practical Attachment and the Jimma field and community work, could be a precious addition and need a structure for tutoring and academic advice.

It is important to investigate and take decisions on a number of possible optional courses for the student. Conditions under which this could be done should be formulated through for example a pilot-project as a first possible step. If these new courses are problem-oriented, a sufficient number of students could be expected to enrol and make all these courses not just an option on paper. In this respect, it is not just a matter of organising some joint seminars at law schools. The MoE should take the lead and it should also involve the Agency for Quality control in this matter.

Special attention has to be given to the need for a stronger focus on gender issues. It can be dealt with as a special and optional course for the students and make it possible for female and male instructors to develop and organise a new curriculum on Law and Gender. A course can have its focus on the legal structure as a whole and family matters in particular. Studying issues in a gender perspective must also be connected to all other parts of subjects

within every curriculum. Some of the universities have already developed this idea and it is important to give other universities in Ethiopia a description of the method to structure studies and design.

A Code of Ethics should be formulated and introduced as part of the legal education. It would encourage lawyers of all categories to search for and identify solutions for practical legal problems.

Relations with other disciplines should play a bigger role in the output of the universities and a system of actions to make it easier to develop interesting profiles for universities/law schools should be considered. Legal issues are not allowed to be regarded as closed areas but have to accept and even take the initiative to interact with other academic disciplines and benefit from their expertise and research. Law schools/faculties should be encouraged to take initiative and invite other disciplines.

Comparisons with other countries curricula are ways of finding ideas and possible solutions. In a society in transition, work has to be done in the short perspective and also on a solution years ahead. Study-visits to foreign countries must be a chance to discuss and examine alternatives. It is important that instructors, heavily involved in curriculum development, get a chance to pay a visit to a developed country for at least a month and gather some information and experience.

Recommendation 7

Teaching methods at Ethiopian law schools/faculties should be modernised and upgraded by introducing more practice and profession-oriented methods.

To this sake:

- *Flexibility in the credit hour-measuring system should be introduced.*
- *The distribution of workload to instructors in teaching hours should be reconsidered.*
- *Law teachers should be trained in teaching methodology and in pedagogy through various seminars and programs. A manual on training of law teachers should be developed.*
- *The severe lack of teaching materials should be remedied. Teachers should be induced to spend part of their time preparing teaching materials.*
- *Students should receive the prepared and compiled teaching materials of their courses before the start of the courses.*
- *Classes should be organised in small seminar groups in order to allow students to ask questions, discuss and argue.*

- *Guidelines and restrictions in terms of students/staff ratio and facilities should be set.*
- *Law schools/faculties should be encouraged to introduce participatory and practice-oriented methods of teaching such as: moot courts, legal clinics, practical attachments, exercises in legal drafting and legal interpretation, field research, problem-based assignments, tutoring by legal professionals...*
- *The Ministry of Education and law schools/faculties should set up a working group that will explore new and practical teaching methods that fit the Ethiopian situation and aspirations.*
- *Whilst teaching in English is necessary, local languages should be used in order to apply the legal knowledge in local situations.*
- *The design of examinations should be improved to mirror the new teaching methods.*
- *The number of part-time instructors should be reduced as they are not taking part in research.*

The curricula-design and the teaching are the responsibility of the university and the law school. In curricula, we find little information on teaching methods. The focus on teaching hours as a way of measuring different subjects and their space in the study program (instead of weeks or months) also limits the flexibility for law schools and the teachers to decide how their meetings and the dialogue with the students will take place. Tutoring on the level of senior thesis is an exception.

The lack of staff and the limited number of classrooms for working in small groups could be the reason for the current style of teaching which relies on large group lecturing.

One step could immediately be taken in order to strengthen the AAU/LL M program (designed to provide other law schools in the country with instructors) with substantive and pedagogic training. Law instructors should be trained in teaching methodology and a starting point could be to develop this LL M program and add law and pedagogy.

All students are taught in English. Using a common teaching language is very useful as an advantage for programs abroad and a vehicle to make use of references, books and other legal sources. However, teachers should also encourage students to use their own local languages in discussions and other exercises so that they can apply their legal knowledge to practical situations in their own regions.

Recommendation 8

Quality control must be established and developed. In particular:

- *The Agency for Quality Control should set up a specialised body to define criteria and systematic assessment methods in relation to legal education.*
- *The law faculties should introduce self-evaluation schemes with student participation.*
- *The problem of lack of essential facilities should be addressed as a matter of urgency. Universities/law schools may consider a small participation by students in the cost of running such facilities.*

Quality control in a decentralised system is essential. Uncertainty on the controlling and assessment mechanism could be devastating for the structure as a whole. Quality criteria must be developed and systematic assessments be undertaken by the universities and law schools. Implementing a systematic control mechanism aiming to create a platform for development of all law schools must be set up.

Even with a centralised task for the Agency it is important for all law schools to develop and practise some kind of self-evaluation. Introducing the self-evaluation scheme is also a way of preparing the law schools with arguments for improvements in their dialogue with university central authorities and central organs in Addis Ababa.

A working group ought to be set up to issue instructions, ways of information and clarifications on the duties of MoE and the Quality Agency. Some clarifications on the tasks of the universities and law schools and their responsibilities are also needed. Maybe this could and should be done in a series of workshops nation-wide with the law schools involved. Whatever the future of the private law schools has in store, there should be a quality control of these schools so that they reach the same standards as public law schools.

Recommendation 9

As a matter of urgency the facilities at the universities should be improved.

All universities lack facilities in general: lack textbooks and teaching materials, have weak library resources, not enough classrooms, lack of computers/ICT and not enough photocopy machines. These are some examples of shortages that have a bad effect on the efforts to reach needed quality and even quantity. Every law school knows its weaknesses in these regards and should be involved in comprehensive analyses to formulate

concrete actions. For the central authorities one possibility would be to distribute some materials direct to law schools in relation to their number of students.

Without trespassing on the university central decision-making body, it could, in respect of fast development input, be analysed if there exists an effective way to designate a (rather large) portion of donors resources to all universities/law schools.

Recommendation 10

Human resources in law schools must be improved. In particular:

- *Universities/law schools should give consideration to long term career planning for academic and administrative staff.*
- *Such planning should include contacts, exchanges and sandwich programs with foreign universities.*

Shortages are not just related to materials. There are also shortages with regard to all staff members i.e. instructors and administrative services personnel. Through a budget support making it possible to employ more staff members, universities/law schools will be induced to improve the quality of legal education. This could be the tool in supporting the Justice System Reforms and getting a positive result of law schools participation towards Ethiopian vision on democracy, rule of law in action and human rights' awareness.

Special efforts should be focused on training instructors in the production of textbooks and teaching materials. Some kind of incentive ought to be reflected upon to make the development of education materials more effective.

As we hope that our recommendations on libraries will be taken seriously and that they will thus get more materials, we would draw attention to the need for developing and upgrading the management and organisation of law libraries.

Long-term planning and distribution of space and personnel for services e.g. computers/ICT – installed and introduced for information flow and writing theses and papers – the need for instructors is obvious, but for the students it should also be a possibility to make copies (with a fixed price). It makes it necessary also to add more photocopy machines.

Enough staff and human resources are essential for all inter-action in education. Possibilities to develop a career within the university could also contribute to the ability to attract good staff members. It is a need to build in incentives and increase the chances to take part in training programs – academic and pedagogical.

Accepting this kind of experiences relevant for academic teachers could also strengthen the relation to practice. Career planning requires a well-structured training program for instructors and administrators. Participation in this kind of activities can make it possible to gather all experiences in a “professors-portfolio” and “academic-administrators-portfolio”.

The staff member should be introduced to the possibilities to build linkages with other law schools in the country and also with foreign universities. Exchange programs within Ethiopia and external with foreign universities must be developed. Describing this kind of opportunities can be a factor to find more action in working at law schools in the country.

It could in this regard be a challenge to develop flexibility in teaching hours and the use of the instructor’s monthly hours on teaching. In fact, the time not spent in the classrooms is to be used to develop the quality i.e. reading, preparing, producing articles, text and materials for students etc. Instructors who do so ought to be stimulated by some kind of incentive program. We understand that it will be difficult to create special solutions for instructors at law schools but alternative solutions and interventions ought to be analysed. If full-time teachers serve only 6 hours a week in classroom (and the other task is more or less impossible) it is a waste of resources and often good competencies as well.

Recommendation 11

The management of universities/law schools must be strengthened and rendered transparent.

- *University/law schools’ regulations should be printed and distributed to all staff and students.*
- *A program of study visits abroad should be developed to enable university/law school managers to acquaint themselves with alternative management models.*

The government and MoE ought to take the necessary steps to find a manageable way to inform all relevant stakeholders of decisions taken and possibilities for actors working in universities to be part of this in active

implementation. To make changes work, in reality the functionaries have to be involved and share responsibilities for implementing and also defend the new structure.

Printing and distribution of important “University laws and regulations” relevant for universities should be considered. Ways should be found to encourage discussions on implementation and interpretation and also presentation of good examples and guidelines for universities and/or faculties. These meetings could also focus on and give opportunities to address needed changes and visions for the future and by doing so also prepare for further changes in the system.

A program ought to be developed for study-visits to other countries in order to give some key-persons at the Ministry of Education and at law schools a chance to develop a good understanding of alternative systems of university management, university steering systems and decision-making.

Besides, it could be of special importance to broaden the participation in university-related discussions. MoE could take the initiative to set up a special program to involve stakeholders, external experts and students not only in general questions, but also specifically in the work on the next generation of curricula, in order to build stronger links between theory and practice. Special attention should be focused on students’ representation in decision-making. Their experience and ideas can be of great value for internal work at law schools. It should be put in some formal structure and all possible support to promote student organisation at law school ought to be activated.

12

Implementation Strategy, Work Plan and Costing

12.1 Implementation Strategy

Implementation of the recommendations contained in this report will require well-structured and sound management.

There is an existing structure in place that is responsible for seeing to the implementation of the reform. As we understand it, the structure at the federal level is lead by a National Steering Committee. Members of the National Steering Committee are drawn from all three levels of government. This is a very high level committee. Members are from the Council of Ministers and Presidents and Vice-Presidents of courts at the federal level. The National Steering Committee is charged with overseeing the National Justice Reform Program and as such it sets policy that is intended to guide implementation of reforms at a national and regional level. The Minister of Capacity Building chairs the National Steering Committee. That Ministry has responsibility implementing the Justice System Reform Program.

Within the Ministry of Capacity Building there is a Justice System Reform Program Office, which acts as a secretariat to the National Steering Committee. A Director, three local and one foreign expert staff the office. This office is responsible to facilitate and co-ordinate implementation of policies and programs approved by the National Steering Committee and both the federal and regional levels.

Implementation of actual reforms is the responsibility of various implementing agencies. These are, at the federal level, the Ministry of Justice, the Federal Police Commission, the Federal Penitentiary Commission, the Ministry of Education, various law schools throughout the country and the Federal Supreme Court. Each of these implementing agencies has a project manager/focal point on staff charged with managing implementation of

reforms. Each region has a similar structure with a Regional Steering Committee, charged with setting policy and generally managing the JSRP in the region. Each region has a program co-ordination office. There are of course local implementing agencies in each region. The regions are differentially staffed and equipped to handle management of this very large reform program.

Generally this structure has been working well. However as implementation gears up it will be necessary to remedy existing deficiencies and perhaps create some new structures to support consistent and co-ordinated reform efforts across the country.

Efforts must be made to ensure that each region and the Federal Government has

- adequate structures in place to manage and oversee the reform.
- professional staff to co-ordinate implementation of the reform.
- supported the implementing institutions so that they have adequate manpower and resources to implement the reform.

Resources are scarce in Ethiopia. Every effort must be made to conserve resources. Duplication of effort must be avoided. As we see it, the current system has the potential to fragment resources and require a duplication of effort. What is preferable is a structure that directs the reform on the basis of common understandings and consensus whenever possible. By way of illustration let us presume that one of the reforms contemplated is the development of an orientation-training package for all staff employed in prisons. It would be inefficient for the Oromia and federal prison authorities to both hire people to develop such a package. It would be better if the federal and regional authorities could agree on the need for such a training package, jointly determine the terms of reference for a consultancy on the issue and assign a region or the federal authority to manage the consultancy with a view to sharing the report with everyone and jointly determining a continuing course of action. As it stands now, there is no structure in place that could readily support this kind of discussion and planning.

Thus what we suggest is the creation of a new committee structure to augment the existing structure. It could be called the National Standards Development Committee, or the Interjurisdictional, Intersectoral Coordination Committee. There is no magic in the name. But its mandate should be clearly the co-ordination of reform efforts at a national and regional level. It would not be a policy making body but rather an advisory

body to the policy makers and implementing agencies. We suggest that the Directors of the various co-ordinating offices at the federal and regional levels be members of this Committee. The Committee's work would include identifying issues, proposing solutions and making recommendations to the National and Regional Steering Committees. It would serve as a clearinghouse for information about the reform and as such an early warning system for potential implementation problems. This Committee could recommend the formation of national working groups populated by appropriate expertise to develop proposals and reform programs.

Of course individual members of such a committee would retain their functional independence. The goal of forming such a committee is solely to promote co-ordination of the resources and efforts of all those participating in the reform.

We would suggest that such a committee, if formed, should meet regularly, at least monthly to begin with. They should report as a committee to each of the National and Regional Steering Committees. Of course individual members of the committee would continue to report to and be responsible to their respective Minister or Head of Bureau and would be responsible to bring to the committee a full understanding of the reform efforts under way in their jurisdiction.

In our view the creation of such a structure would greatly enhance the capacity of the Steering Committees to make appropriate policy and program decisions and would enable maximisation of scarce resources, thereby increasing the capacity of the implementing agencies to effect reform.

12.2 Work plan and Costing

Below, we suggest a work plan that encompasses all recommendations for the related institutions i.e. Law making and Revision, Judiciary, Public Prosecution, Police, Penitentiary System and Legal Education. The recommended activities are based on a time schedule lasting from 2004 to 2010. A general costing of the activities is also provided. This document is a guide only. It should assist in doing preliminary reform planning. However, it will be necessary when implementing specific recommendations to review and edit this document to ensure it conforms with actual planning and realities. As well detailed project work plans and costing will need to be developed on a project-by-project basis.

Annex A
Implementation Work Plan
and Costing

Component: Law making and revision										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)						Total Costing		
		2004	2005	2006	2007	2008	2009		2010	Total
Improve the drafting of bills in a consultative and participatory approach in the ministries	Set up working groups consisting of ministry officials and representatives of the stakeholders, including lawyers from the private sector, concerned by a particular bill									
Join the resources of the Research Institute and those of the Ministry of Justice	Place the Research Institute under the authority of the Ministry of Justice									
Improve the legislative procedure through enhancing the legal drafting and strengthening the administrative and drafting support of the House	Increase the legal staff of the Committees and increase their salaries Increase the administrative staff supporting the Members of the Parliament Train the staff of the secretariat in administration and management	15 (L)LTE	15 (L)LTE	15 (L)LTE	15 (L)LTE	15 (L)LTE	15 (L)LTE	15 (L)LTE	90 (L)LTE	648,000 Euro
		1 (I)STE 3 (L)STE 10 sem-inars	1 (I)STE 3 (L)STE 10 sem-inars	1 (I)STE 3 (L)STE 10 sem-inars	1 (I)STE 3 (L)STE 10 sem-inars	1 (I)STE 3 (L)STE 10 sem-inars	1 (I)STE 3 (L)STE 10 sem-inars	6 months 18 (L)STE 60 sem-inars		75,000 Euro 54,000 Euro 45,000 Euro

Component: Law making and revision								
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)						Total Costing
		2004	2005	2006	2007	2008	2009	
(Improve the legislative procedure through enhancing the legal drafting and strengthening the administrative and drafting support of the House)	<p>Publish the report with the laws</p> <p>Improve public hearings and Standing Committees report on what has been done with the suggestions and recommendations that arose in public hearings (amend Proclamation No. 271/2002 for this sake)</p> <p>Lay down the right to amend legislative proposals in Proclamation No. 271/2002.</p> <p>Ensure that bills are discussed and adopted article by article. Explicitly state the article by article procedure and the precise rules of voting in Proclamation No. 271/2002</p> <p>Ensure that voting majority is in conformity with Article 59 (1) of the Constitution</p>	10,000 Euro	10,000 Euro	10,000 Euro	10,000 Euro	10,000 Euro	10,000 Euro	60,000 Euro

Component: Law making and revision										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
Codification, consolidation and publication of laws	Proceed with the consolidation, the codification and publication of the laws		100,000 Euro	100,000 Euro	100,000 Euro	100,000 Euro	75,000 Euro	75,000 Euro	525,000 Euro	525,000 Euro
			100,000 Euro	100,000 Euro	100,000 Euro	75,000 Euro	75,000 Euro	75,000 Euro	525,000 Euro	525,000 Euro
	Disseminate the consolidated laws to all courts, prosecutions offices and other lawyers in the public sector		1 (I)STE 3 (L)STE 5 seminars	1 (I)STE 3 (L)STE 5 seminars	1 (I)STE 3 (L)STE 5 seminars	1 (I)STE 3 (L)STE 5 seminars	1 (I)STE 3 (L)STE 5 seminars	1 (I)STE 3 (L)STE 5 seminars	6 months 18 (L)LTE 30 seminars	75,000 Euro 54,000 Euro 22,500 Euro
			1 (I)STE 3 (L)STE 5 seminars	1 (I)STE 3 (L)STE 5 seminars	1 (I)STE 3 (L)STE 5 seminars	1 (I)STE 3 (L)STE 5 seminars	1 (I)STE 3 (L)STE 5 seminars	1 (I)STE 3 (L)STE 5 seminars	6 months 18 (L)LTE 30 seminars	75,000 Euro 54,000 Euro 22,500 Euro
	Devise a subscription system to the Negarit Gazeta									

Component: Law making and revision										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)								Total Costing
		2004	2005	2006	2007	2008	2009	2010	Total	
Strengthen the drafting department of the Ministry of Justice	<p>Reinforce the Drafting Department of the MoJ by employing senior staff with a very strong legal background and experience and knowledge of the public administration</p> <p>Include a specific scale for salaries outside the current grid for Civil Service to be able to attract and retain senior lawyers for this department.</p>	5 (L)LTE	5 (L)LTE	5 (L)LTE	5 (L)LTE	5 (L)LTE	5 (L)LTE	5 (L)LTE	30 (L)LTE	216,000 Euro
Strengthen the Ministry of Cabinet Affairs	<p>Initiate courses in drafting techniques open to all existing potential drafters in all Ministries</p> <p>Select experienced and highly qualified legal professionals for the drafting team of the Ministry of Cabinet Affairs and give them in-depth training in legal drafting</p>	1 (I)STE 2 (L)STE 1 month training	1 (I)STE 2 (L)STE 1 month training	1 (I)STE 2 (L)STE 1 month training	1 (I)STE 2 (L)STE 1 month training	1 (I)STE 2 (L)STE 1 month training	1 (I)STE 2 (L)STE 1 month training	1 (I)STE 2 (L)STE 1 month training	6 (I)STE 12 (L)STE 6 months training	75,000 Euro 8,400 Euro 60,000 Euro

Component: Law making and revision									
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)						Total Costing	
		2004	2005	2006	2007	2008	2009		2010
Ensure that laws and codes are constantly available and up-to-date	Build an electronic database of laws, codes and court judgements (license an international or national company for this sake) Publish a CD-ROM twice a year, with the most recent laws and court decisions								2,000,000 Euro
Study the law making procedure in the different regions	Set up a group of experts to study the law making procedure in the regions		9 months (L)STE						32,400 Euro
Definition and codification of religious and customary laws that do not conflict with the constitution or international standards	Set up a team of international and national specialists		2 Int experts 10 Local experts for 5 years 250,000 Euro for transport						1,500,000 Euro 300,000 Euro 250,000 Euro
Total Law Making and Revision								6,773,700 Euro	

Component: Judiciary		Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
			2004	2005	2006	2007	2008	2009	2010		Total
Objective Prioritise strengthening of the independence of the Judiciary	Form an interdisciplinary working group to study the feasibility of creating judicial councils vested with the powers to administer the Judiciary at a federal and state level. The working group must consider the experience of other countries and may wish to retain an international consultant. The working group has to report its finding to JSRP Steering Committee.	2 (I)STE 12 (L)STE 10,000 Euro								2 (I)STE 12 (L)STE 10,000 Euro	25,000 Euro 6,000 Euro 10,000 Euro
	Form a separate interdisciplinary working group to establish a more transparent recruitment and selection process for federal and states judges. The contents of the procedure and the condition or criteria that should be set to enter the Judiciary should all be taken into consideration	1 (I)STE 24 (L)STE 10,000 Euro								1 (I)STE 24 (L)STE 10,000 Euro	12,500 Euro 12,000 Euro 10,000 Euro

Component: Judiciary								Total Costing			
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)									
		2004	2005	2006	2007	2008	2009	2010	Total		
(Prioritise strengthening of the independence of the Judiciary)	<p>The working group has to report its finding to the JSRP Steering Committee.</p> <p>Form a separate inter-disciplinary working group to develop objective, regularised and merit based transparent procedures for administering judicial career paths. This working group must take steps to develop systems for periodic evaluation of judicial performance.</p> <p>Organise a yearly national symposium open to all judges in Ethiopia to discuss key issues like;</p> <ul style="list-style-type: none"> - establishment of an association of judges - training curricula and facilities - independence of the Judiciary - code of conduct for judges 		1 (I)STE 24 (L)STE 10,000 Euro	25,000 Euro					1 (I)STE 24 (L)STE 10,000 Euro	12,500 Euro 12,000 Euro 10,000 Euro	
			25,000 Euro	25,000 Euro	25,000 Euro				25,000 Euro	25,000 Euro	150,000 Euro

Component: Judiciary		Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
Objective	Action	2004	2005	2006	2007	2008	2009	2010	Total	
		<p>Upgrade the professional quality and skills of judges. Formulate a training strategy for the initial and continuous training of judges and court staff</p>	<p>Establish a group of experts consisting of judges, staff and international experts and mandate it to study the needs for initial and continuous training of judges and the training of staff at the federal and state level, to develop initial and continuous training curricula for judges and training curricula for staff, and to make recommendations for the delivery, monitoring and evaluation of training. The working group should explore ways to make financing of training sustainable. It may be useful to visit well organised training centres in other countries when doing this work</p>			<p>3 (I)STE 24 (L)STE 80,000 Euro</p>				

Component: Judiciary										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)						Total Costing		
		2004	2005	2006	2007	2008	2009		2010	Total
Develop an improved/new system of court administration Increase transparency, predictability and accountability of courts Reduce the backlogs to an acceptable level	Mandate a working group of judges, court staff and international experts to study and develop a new system for professional court management and court administration. This working group should study the transfer of managerial and administrative functions from judges to trained professional staff members	3 (I)STE 24 (L)STE 30,000 Euro							3 (I)STE 24 (L)STE 30,000 Euro	37,500 Euro 12,000 Euro 30,000 Euro
		15,000 Euro	15,000 Euro	15,000 Euro					45,000 Euro	45,000 Euro
			30,000 Euro						30,000 Euro	30,000 Euro

Component: Judiciary		Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
Objective	Action	2004	2005	2006	2007	2008	2009	2010	Total	
		(Develop an improved/new system of court administration Increase transparency, predictability and accountability of courts Reduce the backlogs to an acceptable level)	Establish a working group of judges, staff and international experts that is mandated to study backlogs in courts closely and in depth. At the same time a selected group of judges will be formed who, with assistance of law clerks or students, will tackle the most serious backlogs. Members of that selected group need not to be currently practising judges i.e. they can be selected from qualified and well-known lawyers in the private sector or they can be experienced and qualified retired judges with a proven good track and reputation. Members of that group can also be looked for in the Ethiopian diaspora. A number of the members of that group should be either ADR specialists or quickly			3 (I)STE 36 (L)STE 20,000 Euro				

Component: Judiciary											
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing		
		2004	2005	2006	2007	2008	2009	2010		Total	
	trained in ADR in order to make use of ADR in the selection of cases to be discontinued or quickly coped with.										
Strengthen the position of the Bar in the legal system	Establish a working group of advocates- lawyers, which devises an outline of an independent Bar Association, with assistance of the International Bar Association, and which formulates a better structure of legal aid		1 (I)STE 3 (L)STE 20,000 Euro							1 (I)STE 3 (L)STE 20,000 Euro	12,500 Euro 1,500 Euro 20,000 Euro
Proper execution of judicial decisions	Form an inter-disciplinary working group, which examines possibilities to execute judicial decision by professional bailiffs			1 (I)STE 3 (L)STE 20,000 Euro						1 (I)STE 3 (L)STE 20,000 Euro	12,500 Euro 1,500 Euro 20,000 Euro

Component: Judiciary										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)						Total Costing		
		2004	2005	2006	2007	2008	2009		2010	Total
Improve working conditions of judges and courts staff to an acceptable level	<p>Provide judges and staff with furniture, equipment and facilities promptly:</p> <ul style="list-style-type: none"> - Provide at least two computers for every court - Provide judges with legal information such as consolidated laws, proclamations, regulations, Official Gazette, Federal Supreme Court decisions... - Introduce a subscription system for all courts in the country to the Negarit Gazet - Provide courts with a decent and well-equipped library - Provide courts with access points for internet so that they can easily do some research - Increase the salaries of judges 			5,000,000 Euro					5,000,000 Euro	5,000,000 Euro

Component: Judiciary								Total Costing		
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)								
		2004	2005	2006	2007	2008	2009	2010	Total	
(Improve working conditions of judges and courts staff to an acceptable level)	<p>- Provide courts with own budgets to be able to keep the working conditions up to a certain standard without having to wait for the regional or federal bureaucracy</p> <p>Study the possibility and consider legislating for courts and the courts' system to keep and apply the collected fees in the course of their operation to upgrade and improve their operations instead of sending them to the Treasury</p>			3 (L)STE					3 (L)STE	1,500 Euro
Make court decisions available to the legal professions	Entrust a technical bureau at the Federal Supreme Court and the State Supreme Courts with the selection, indexing and summarising and commenting of decisions of those courts.		100,000 Euro	100,000 Euro	100,000 Euro	100,000 Euro	100,000 Euro	100,000 Euro	600,000 Euro	600,000 Euro

Component: Judiciary		Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
			2004	2005	2006	2007	2008	2009	2010		Total
Objective (Make court decisions available to the legal professions)	Publish selected decisions and disseminate them to all courts on a monthly basis										
Lighten the workload of the Judiciary	Establish a working group of local and international experts to study the existing forms of ADR Map a list of the ADR forms existing in every state Study the constitutionality and legality of those forms Agree on a list of ADR forms to be used in the future, also in the regular system Amend current laws, where needed Train a corps of specialists in selected ADR forms		24 (I)LTE 12 * 5 (L)LTE 20,000 Euro	24 (I)LTE 12 * 5 (L)LTE 20,000 Euro	24 (I)LTE 12 * 5 (L)LTE 20,000 Euro	24 (I)LTE 12 * 5 (L)LTE 20,000 Euro					900,000 Euro 90,000 Euro 60,000 Euro

Component: Judiciary										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
(Lighten the workload of the Judiciary)	Organise training in ADR in the Judiciary									
Include the Social Courts in the regular system	<p>Study the status and position of Social Courts</p> <p>Start an open debate on the constitutionality of those courts</p> <p>Study the possibility of clearly linking them to the regular system</p> <p>Study the selection procedure of "judges" i.e. laymen of the Social Courts and bring it in line with the newly developed selection procedure for judges in the regular system. Transparency of the procedure and qualifications of the candidate should be guaranteed</p>	25,000 Euro							25,000 Euro	

Component: Judiciary										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
(Include the Social Courts in the regular system)	Train the "judges" and staff of Social Courts on all legal fields, human rights and the Constitution Better equip and furniture the Social Courts		500,000 Euro	500,000 Euro	500,000 Euro	500,000 Euro				1,500,000 Euro
Monitor the results of the justice reform program	Designate for instance three courts on different levels and in different regions as pilot courts, in which the proposed changes will be tried out		75,000 Euro	75,000 Euro	75,000 Euro					225,000 Euro
Total Judiciary										
									9,739,000 Euro	

Component: Prosecution										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
Co-ordinate the reform of the PPS at federal and states' levels	Endorse the formation of a national group of heads or directors of the PPS that meets regularly and discusses issues of common concern.		25,000 Euro	25,000 Euro	25,000 Euro	25,000 Euro	25,000 Euro	25,000 Euro	150,000 Euro	150,000 Euro
	Set up a working group of national, regional and international experts to which specific matters should be submitted on ad hoc basis for recommendations		75,000 Euro	75,000 Euro	75,000 Euro	75,000 Euro	75,000 Euro	300,000 Euro	300,000 Euro	300,000 Euro
	Submit recommendations of the working group to the ministers									
Consultation and communication of PPS on jurisdiction, federal and regional levels on issues of common concern and new policies	Organise one meeting per year within each jurisdiction of the PPS		50,000 Euro	50,000 Euro	50,000 Euro	50,000 Euro	50,000 Euro	50,000 Euro	300,000 Euro	300,000 Euro

Component: Prosecution										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
Give the Federal PPS the same competence and duties as the State PPS in the field of prison administration	Amend Article 23 of Proclamation 4/1995									
Make clear the position of the PPS in the regions	States to issue proclamation on the PPS		10,000 Euro	10,000 Euro	10,000 Euro					30,000 Euro
Ensure transparency of the policies of selection, appointment and promotion of prosecutors	Install a working group to develop new ideas about selection, appointment and promotion of prosecutors Involve other stakeholders of the Judiciary in the selection procedure		50,000 Euro							50,000 Euro
Appropriate education and training of the prosecutors before and after their recruitment	Conduct immediate training, using the Mekele example, both for prosecutors and staff Conduct medium and long term training Conduct initial training for prosecutors		30 sem-inars	10 sem-inars	10 sem-inars	10 sem-inars	10 sem-inars	10 sem-inars	10 sem-inars	80 sem-inars
			15 sem-inars	10 sem-inars	10 sem-inars	10 sem-inars	10 sem-inars	10 sem-inars	10 sem-inars	65 sem-inars
										1,200,000 Euro
										975,000 Euro

Component: Prosecution								Total Costing		
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)								
		2004	2005	2006	2007	2008	2009		2010	Total
(Make the PPS accountable for its professional performance)	<p>Give the title and salary of a prosecutor only to those who actively prosecute</p> <p>Institute clear policies about the use of discretion to discontinue cases</p> <p>Draw up job descriptions for junior, intermediate and senior prosecutors</p> <p>Prosecutors to attend court when files assigned to them are heard</p> <p>Conduct regular office meetings between line prosecutors and managers</p> <p>Adopt the Federal Code of Conduct and a peer review mechanism and encourage the regional prosecution service to do the same</p> <p>Institutionalise a system of regular evaluation of prosecutors</p> <p>Take disciplinary measures against unfit elements within the PPS</p>	30,000 Euro	30,000 Euro						60,000 Euro	60,000 Euro

Component: Prosecution										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
Improve relationships with judges	<p>Inform prosecutors and judges about each other's role</p> <p>Organise joint training for judges and prosecutors about issues of joint concern</p> <p>Set up a working group of High Courts' and First Instance judges to discuss shortcomings in the criminal justice and in its management and disseminate the minutes of the discussions.</p>		75,000 Euro	75,000 Euro	75,000 Euro	75,000 Euro			300,000 Euro	300,000 Euro
Improve relationship between the prosecution and the police	<p>Set up a working group of Federal and Regional Prosecutors and police in which the Federal and Regional MoJ and the Ministry of Federal Affairs will take part in order to discuss their joint co-operation in criminal justice. Disseminate the minutes of those meetings.</p>		25,000 Euro						25,000 Euro	25,000 Euro

Component: Prosecution											
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)						Total Costing			
		2004	2005	2006	2007	2008	2009		2010	Total	
(Improve relationship between the prosecution and the police)	Institute clear policies when a prosecutor should return a file to the police										
Create a policy and guidelines for the appearance of witnesses and accused in courts	Set up a working group of representatives of the Judiciary, the PPS, the MoJ and the police to discuss and agree on guidelines for the appearance of witnesses and accused in courts Initiate an in-depth study on a witness protection program		25,000 Euro	25,000 Euro							50,000 Euro
Control of the Court on the prosecutor's decision to decline prosecuting	Give complainants the right to approach the court to seek a judicial order when the prosecution declines to prosecute										

Component: Prosecution											
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing		
		2004	2005	2006	2007	2008	2009	2010		Total	
Develop a reliable, computerised and compatible system of internal statistics that covers Federal and Regional PPS	Set up a working group consisting of the Federal and Regional (MoJ), experienced federal and regional prosecutors, international experts and experienced automation experts to devise a computerised statistical system		300,000 Euro							300,000 Euro	300,000 Euro
Get rid of the backlogs in the criminal justice system and avoid new backlogs	Judiciary, PPS and the Police develop guidelines to get rid of backlogs and determine the cases that should be brought to court		30,000 Euro							30,000 Euro	30,000 Euro
Strengthen the administrative organisation and procedures of the PPS	Carry out the project on the reorganisation of manual filing system Administration in Addis Ababa region, evaluate it and use it as a basis for developing a filing system		5,000,000 Euro							5,000,000 Euro	5,000,000 Euro

Component: Prosecution											
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)						Total Costing			
		2004	2005	2006	2007	2008	2009		2010	Total	
(Strengthen the administrative organisation and procedures of the PPS)	Carry out the computerisation pilot in Lideta and Arada branches, evaluate it and use it as a basis for developing a functional design for computerisation of the prosecution administration Develop the same administrative procedure for all offices of the prosecution Install ICT Provide management and ICT training for staff and prosecutors										
Reduce the current shortage of prosecutors	Develop an active recruiting policy to attract qualified graduates.		25,000 Euro	25,000 Euro	25,000 Euro						75,000 Euro

Component: Prosecution		Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)								Total Costing
		2004	2005	2006	2007	2008	2009	2010	Total	
Objective	Action									
	Review the structural system of the prosecution									
	Provide furniture and equipment to every prosecutor (desk, chair, telephone, typewriter (or computer) paper, pens etc.	300,000 Euro	300,000 Euro	300,000 Euro	300,000 Euro	300,000 Euro	300,000 Euro	300,000 Euro	1,800,000 Euro	1,800,000 Euro
	Provide the prosecutors with legal information and professional books	20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	120,000 Euro	120,000 Euro
	Subscribe the prosecution offices to the Ngarit Gazeta.	20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	120,000 Euro	120,000 Euro
Total Prosecution										12,910,000 Euro

Component: Police		Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
			2004	2005	2006	2007	2008	2009	2010		Total
Improve police capacity to manage information	Retain an international expert to do a needs assessment and plan and implement a test project.	3 (I)STE 9 (L)STE								3 (I)STE 9 (L)STE	37,500 Euro 4,500 Euro
	Procure necessary hardware and software for the pilot project.	50,000 Euro								50,000 Euro	50,000 Euro
	Recruit ICT specialists internally to facilitate implementation and monitoring of pilot project	36 (L)LTE	36 (L)LTE							108 (L)LTE	54,000 Euro
	Develop and provide in house training to all police staff on use of the IT installed										30,000 Euro
	Evaluate the project. Retain the services of an independent evaluator.				5,000 Euro					5,000 Euro	5,000 Euro
	Adjust the project as necessary.										

Component: Police										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)						Total Costing		
		2004	2005	2006	2007	2008	2009		2010	Total
(Reinforce and improve the existing communication structure)	<p>Purchase necessary equipment, radios, cell phones, computers.</p> <p>Maintain and support new equipment. This may require recruitment of internal staff.</p>									
Improve police effectiveness by increasing their mobility	<p>Conduct a needs assessment in each police service with respect to mobility needs. The assessment should focus on improving response time while ensuring police safety and it should consider alternatives to the purchase of motor vehicles, like motorcycles, bicycles, foot patrols, and options like establishing satellite offices in high need or remote areas.</p>									50,000 Euro

Component: Police										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
(Improve police presence and capacity)	Design and implement a retention strategy for existing officers and new recruits. This may include increasing salary and benefits of officers.									
Improve partnerships with other partners in the criminal justice system	Implement regular (weekly) local case management meetings between police, courts and prosecutors. These meetings should be attended by police who are empowered to make policy and practice decisions.		15,000 Euro	15,000 Euro	15,000 Euro	15,000 Euro	15,000 Euro	15,000 Euro	90,000 Euro	90,000 Euro
Use the militia wisely	Federal and Regional Police should, together with Regional Justice Bureaus and militia, study what the existing and future role of the militia should be. Develop and deliver training modules to all militia in the country.		30,000 Euro	30,000 Euro	30,000 Euro	30,000 Euro	30,000 Euro	30,000 Euro	120,000 Euro	120,000 Euro

Component: Police		Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing
Objective	Action	2004	2005	2006	2007	2008	2009	2010	Total
(Use the militia wisely)	Amend legislation to give police greater responsibility for controlling, supervising and training militia.								
Implement Community Policing	Each police service in the country should take steps to improve their image as public servants:								
	Design and purchase new uniforms, name tags and protective equipment.	500,000 Euro							500,000 Euro
	Create a public information counter in all police stations	10,000 Euro	10,000 Euro	10,000 Euro	10,000 Euro	10,000 Euro	10,000 Euro	10,000 Euro	60,000 Euro
	Each police service should implement a pilot project for community policing in one geographic area that they police. A number of different projects should be tested and evaluated.	10 * 20,000 Euro	10 * 20,000 Euro	10 * 20,000 Euro					400,000 Euro

Component: Police											
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing		
		2004	2005	2006	2007	2008	2009	2010		Total	
(Implement Community Policing)	Hold a national police conference on community policing philosophy and practice.		50,000 Euro							50,000 Euro	50,000 Euro
	Hold an annual meeting of chiefs of police during which the topic of community policing should be a standing discussion item.		20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro		120,000 Euro	120,000 Euro
Improve police accountability	Adopt and enforce a national code of police ethics. An expert should be retained to prepare a draft, which should then be considered by all police for adoption.		5,000 Euro							5,000 Euro	5,000 Euro
	Establish an independent body to handle complaints against police; - in consultation with police, defence counsel and the public, draft requisite legislation		50,000 Euro							50,000 Euro	50,000 Euro

Component: Police		Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
Objective	Action	2004	2005	2006	2007	2008	2009	2010	Total	
		(Improve police accountability)	<ul style="list-style-type: none"> - prepare a procedure manual for making and reviewing complaints - appoint or select members - train members and police - develop a public information campaign - monitor and evaluate the effectiveness of the process <p>Develop a clear policy on the use of force. Retain an expert to draft a proposed national policy.</p> <ul style="list-style-type: none"> - Purchase new weapons and restraint equipment as necessary - Provide training on the new police to all existing police. - Incorporate the new policy into recruit training. 							
			5,000 Euro						5,000 Euro	5,000 Euro
			100,000 Euro						100,000 Euro	100,000 Euro
			300,000 Euro						300,000 Euro	300,000 Euro

Component: Police											
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing		
		2004	2005	2006	2007	2008	2009	2010		Total	
Improve police training	Conduct a national workshop (perhaps concurrently with that being organised on community policing) to develop a national vision of the future of policing and police education.		25,000 Euro							25,000 Euro	25,000 Euro
	Rebuild some of the police training centres.		1,000,000 Euro							1,000,000 Euro	1,000,000 Euro
	Develop a new police training curriculum that is grounded in the day to day work of the police.		250,000 Euro							250,000 Euro	250,000 Euro
	Support the efforts of the police college to improve its services, perhaps by providing training to their staff on curriculum development and by retaining additional staff and equipment as needed.										

Component: Police										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
(Improve police management)	<p>prepared and discussed at a national level.</p> <p>Training on the new management model selected should be provided to all high and middle police managers. A training module on this should also be given to line staff and new recruits.</p>	50,000 Euro							50,000 Euro	50,000 Euro
Improve forensic capacity	<p>Implement the existing plan to upgrade the forensic laboratory</p> <p>Computerise fingerprints</p> <p>Conduct a study on the long term forensic needs of the police to determine how best to provide forensic services at a regional level</p>	2,000,000 Euro							2,000,000 Euro	2,000,000 Euro
Total Police										6,381,000 Euro

Component: Prisons										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)						Total Costing		
		2004	2005	2006	2007	2008	2009		2010	Total
Coordinate reforms in accordance with agreed upon national standards. Effective utilisation of scarce resources	<p>Establish a national committee comprised of federal and regional representatives to guide prison reforms.</p> <p>Budget for travel to regular meetings (monthly at the beginning), rental of meeting facilities, photocopying and long distance telephone charges, internet communication between members</p>	250,000 Euro							250,000 Euro	
Establish basic principles to guide reform	<p>Conduct a meeting or series of meetings with stakeholders with the goal of achieving consensus on the principles to be applied to the reform. A foreign expert in prison reform should facilitate these meetings.</p>	1 (I)STE 50,000 Euro							1 (I)STE 50,000 Euro	12,500 Euro 50,000 Euro

Component: Prisons										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
(Establish basic principles to guide reform)	Prepare and disseminate a document outlining the principles agreed upon.		15,000 Euro							15,000 Euro
Reforms based upon accurate data	Retain an expert to design and conduct a survey of the population in detention in police and prison cells.		3 (L)STE							3 (L)STE
	Retain an expert to develop a plan for the regular collection of data about prisons		3 (L)STE							3 (L)STE
Prison Reform is financially affordable and morally acceptable	Develop a communication and consultation strategy which will operate prior to the commencement of major reform and concurrent with implementation.		20,000 Euro							20,000 Euro
	Train or retain a communications expert.		12 (L)STE	12 (L)STE	12 (L)STE	12 (L)STE	12 (L)STE	12 (L)STE	12 (L)STE	72 (L)STE
Improve the quality of prison services and administration	Review and amend existing laws. Pass new legislation as required.									36,000 Euro

Component: Prisons											
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)								Total Costing	
		2004	2005	2006	2007	2008	2009	2010	Total		
(Improve the quality of prison services and administration)	Design a recruitment policy, which reflects the desired change in attitude and philosophy of all employed in prisons.		5,000 Euro							5,000 Euro	5,000 Euro
	Deliver orientation and on-going in-service training that stresses and reinforces the new philosophy of corrections in the country.		250,000 Euro							250,000 Euro	250,000 Euro
	Send prison trainers on a study tour to learn about best practices in curriculum development and training methodology.		50,000 Euro							50,000 Euro	50,000 Euro
	Prisons should provide scholarships to students who wish to pursue studies in penology and corrections, criminology, psychology, sociology and social work.		500,000 Euro							500,000 Euro	500,000 Euro

Component: Prisons										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
(Improve the quality of prison services and administration)	Efforts should be made to encourage scholarship in these areas and the brightest students should be recruited for positions as managers, parole officers and community corrections officers.									
Reduce overcrowding of prisons	Retain expert assistance to design effective case management and rehabilitative strategies for convicted offenders.		30,000 Euro							30,000 Euro
	Make alternatives to imprisonment available. Create a probation and parole service. These initiatives will require new staff, new facilities, specialized training, record keeping and communication mechanism and the like be considered.		1,500,000 Euro							1,500,000 Euro

Component: Prisons										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)						Total Costing		
		2004	2005	2006	2007	2008	2009		2010	Total
(Prisons act in accordance with the rule of law)	Regulate the activities of Prisons Committees. Ensure that parole and discipline are meted out only in accordance with clear and transparent procedures prescribed in law or policy. A mechanism for handling grievances and complaints by or on behalf of prisoners, must be developed.									
Improve prison facilities	Delay building new prisons until there is a clear vision of how they are to operate in the future. New prisons should be constructed with a view to improving current living and sanitation conditions.		3,000,000 Euro							3,000,000 Euro

Component: Prisons									
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing
		2004	2005	2006	2007	2008	2009	2010	
Improve living conditions for offenders and separate offenders to facilitate security management and rehabilitative programming	<p>Juvenile offenders must be held separately. Facilities must be designed to meet the special needs of juvenile offenders. They need to be properly staffed and equipped.</p> <p>Women prisoners should never be guarded by men and should be kept separate from men. Female correction officers should be recruited and trained. A study should be conducted on how best to meet the rehabilitative needs of female prisoners, including how best to deal with the children of offenders held in custody.</p>		2,000,000 Euro						2,000,000 Euro
			500,000 Euro						500,000 Euro

Component: Prisons											
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing		
		2004	2005	2006	2007	2008	2009	2010		Total	
(Improve living conditions for offenders and separate offenders to facilitate security management and rehabilitative programming)	Policies must be developed about the handling of mentally ill, dangerous and vulnerable offenders. It may be necessary to separate these offenders from the general population.		20,000 Euro							20,000 Euro	20,000 Euro
Improve medical care	Improve hygienic and sanitary conditions. Determine needs and purchase adequate supplies. Supplies should include, safe drinking water, bathing and shower facilities, laundry facilities, adequate mattresses and bedding, proper clothing, soap, proper latrines, materials to eradicate vermin and insects. Increase the existing budget of 2 ETB/day/prisoner to enable the purchase of adequate nutritious food for inmates.		250,000 Euro	250,000 Euro	250,000 Euro	250,000 Euro	250,000 Euro	250,000 Euro	250,000 Euro	1,500,000 Euro	1,500,000 Euro
			200,000 Euro	200,000 Euro	200,000 Euro	200,000 Euro	200,000 Euro	200,000 Euro	200,000 Euro	1,200,000 Euro	1,200,000 Euro

Component: Prisons												
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)								Total Costing		
		2004	2005	2006	2007	2008	2009	2010	Total			
(Improve medical care)	Develop clear and cogent policies on the treatment of ill offenders including those with communicable diseases.		20,000 Euro								20,000 Euro	20,000 Euro
	Ensure that all prisons have ready access to a nurse or physician who can attend to the medical needs of prisoners.		50,000 Euro	50,000 Euro	50,000 Euro	50,000 Euro	50,000 Euro	50,000 Euro	50,000 Euro		300,000 Euro	300,000 Euro
	Ensure that there is an adequate budget in all prisons for the purchase of drugs and medical supplies necessary for the care of prisoners.		250,000 Euro	250,000 Euro	250,000 Euro	250,000 Euro	250,000 Euro	250,000 Euro	250,000 Euro	250,000 Euro	1,500,000 Euro	1,500,000 Euro
Implement rehabilitative philosophy	Develop protocols with local hospitals for the treatment of prisoners.											
	Establish vocational training opportunities within institutions.		100,000 Euro	100,000 Euro	100,000 Euro	100,000 Euro	100,000 Euro	100,000 Euro	100,000 Euro	100,000 Euro	600,000 Euro	600,000 Euro

Component: Prisons										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)						Total Costing		
		2004	2005	2006	2007	2008	2009		2010	Total
(Implement rehabilitative philosophy)	Establish and make available basic literacy training programs in all prisons. Establish specialized rehabilitative/treatment programs targeted at the criminogenic needs of offenders. For example, alternatives to violence program, addictions treatment, sex offender treatment, treatment for depression.									
Improve accountability	Provide access to legal services to all prisoners. Create an independent body, in addition to regular internal inspections by prosecutions or others, that has the power to regularly inspect prisons and visit prisoners.		30,000 Euro	30,000 Euro	30,000 Euro	30,000 Euro	30,000 Euro	30,000 Euro	30,000 Euro	180,000 Euro
Total Penitentiary System										14,541,500 Euro

Component: Legal Education										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
Strengthen co-operation of Ethiopian law schools between themselves; between them and the legal and interdisciplinary professions and between them and the foreign law schools	Create committees of inter-relationship (all meetings, seminars and symposia shall be organised towards creating the links)		20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	20,000 Euro	120,000 Euro	120,000 Euro
Remedying the lack of research and publication on Ethiopian law	Increase the salary of teachers/researchers Train the teachers/researchers		1 (I)STE 2 (L)STE 1 months	1 (I)STE 2 (L)STE 1 months	1 (I)STE 2 (L)STE 1 months	1 (I)STE 2 (L)STE 1 months	1 (I)STE 2 (L)STE 1 months	1 (I)STE 2 (L)STE 1 months	6 (I)STE 12 (L)STE 6 months	75,000 Euro 36,000 Euro 90,000 Euro
Strengthening university law libraries	Organise study tours abroad Abide by the contracts signed with the teachers/researchers Deliver all laws and proclamations to law libraries		50,000 Euro	5,000 Euro	5,000 Euro	5,000 Euro	5,000 Euro	5,000 Euro	100,000 Euro	30,000 Euro

Component: Legal Education											
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing		
		2004	2005	2006	2007	2008	2009	2010		Total	
(Strengthening university law libraries)	Subscribe all libraries to the Negarit Gazeta		2,000 Euro	2,000 Euro	2,000 Euro	2,000 Euro	2,000 Euro	2,000 Euro	2,000 Euro	12,000 Euro	12,000 Euro
	Provide every law library with the necessary equipment and furniture e.g. computers, books and internet access points		300,000 Euro	300,000 Euro	300,000 Euro	300,000 Euro	300,000 Euro	300,000 Euro	300,000 Euro	1,800,000 Euro	1,800,000 Euro
	Train library personnel in archiving, indexing and documenting		1 (I)STE 3 (L)STE 2 seminars	1 (I)STE 3 (L)STE 2 seminars	1 (I)STE 3 (L)STE 2 seminars	1 (I)STE 3 (L)STE 2 seminars	1 (I)STE 3 (L)STE 2 seminars	1 (I)STE 3 (L)STE 2 seminars	1 (I)STE 3 (L)STE 2 seminars	6 (I)STE 18 (L)STE 12 seminars	75,000 Euro 9,000 Euro 96,000 Euro
Develop law school curricula that meet the needs of the current Ethiopian society	Upgrade the management and organisation of law libraries		6 months (I)LTE							6 months (I)LTE	75,000 Euro
	Initiate one pilot to automate one of the law libraries		24 months (L)LTE 50,000 Euro							24 months (L)LTE 50,000 Euro	14,400 Euro 50,000 Euro
	Establish a curriculum commission responsible for developing and revision that		30,000 Euro					30,000 Euro		60,000 Euro	60,000 Euro

Component: Legal Education													
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)						Total Costing					
		2004	2005	2006	2007	2008	2009		2010	Total			
(Develop law school curricula that meet the needs of the current Ethiopian society)	will ensure that the curriculum has an objective and is dynamic												
	Train the curriculum designers of the different law schools		6 months of (I)STE 9 (L)STE 10,000 Euro			6 months of (I)STE 9 (L)STE 10,000 Euro					6 months of (I)STE 18 (L)STE 20,000 Euro	75,000 Euro	
	Send curriculum designers for study visits abroad in order to get training in curricula designing techniques		50,000 Euro			50,000 Euro						100,000 Euro	
	Hold annual meetings of curriculum designers of the different law schools											10,000 Euro	10,000 Euro
	Interrelate with the legal professions such as the Bar Association, courts and the prosecution and with other disciplines that are relevant to the curricula											10,000 Euro	10,000 Euro

Component: Legal Education										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
Improve and modernise teaching methods	Establish a Working Group of MoE, Universities and external experts on teaching and evaluation methods at law schools		12 (L)STE 0,5 (I)STE	12 (L)STE 0,5 (I)STE	12 (L)STE 0,5 (I)STE	12 (L)STE	3 (L)STE	3 (L)STE	45 (L)STE 1 (I)STE	25,500 Euro 12,500 Euro
			3 seminars 1 (L) and 0,5 (I)STE	3 seminars 1 (L) and 0,5 (I)STE	3 seminars 1 (L) and 0,5 (I)STE	3 seminars 1 (L) and 0,5 (I)STE	3 seminars 1 (L) and 0,5 (I)STE	3 seminars 1 (L) and 0,5 (I)STE	6 seminars 2 (L)STE 1 (I)STE	60,000 Euro 1,000 Euro 12,500 Euro
			3 seminars 6 (L) and 1,5 (I)STE	3 seminars 6 (L) and 1,5 (I)STE	3 seminars 6 (L) and 1,5 (I)STE	3 seminars 6 (L) and 1,5 (I)STE	3 seminars 6 (L) and 1,5 (I)STE	3 seminars 6 (L) and 1,5 (I)STE	3 seminars 6 (L) and 1,5 (I)STE	9 seminars 18 (L)STE 4,5 (I)STE
			30,000 Euro						30,000 Euro	30,000 Euro
Strengthen the Agency of Quality Control	Create a specialised body that assures the quality of education and defines the quality criteria for the assessment of the legal education		10,000 Euro	10,000 Euro	10,000 Euro	10,000 Euro	10,000 Euro	10,000 Euro	60,000 Euro	60,000 Euro

Component: Legal Education										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total Costing	
		2004	2005	2006	2007	2008	2009	2010		Total
Ensuring that law schools have the necessary facilities	Survey the needs of all law schools in the country such as buildings (classrooms), furniture, equipment such as photocopier machine, computers, printers and faxes. Meet the needs of each law school on the basis of the survey	3 (L)STE	2,000,000 Euro						3 (L)STE	1,500 Euro
Develop a career planning system	Bring national and international experts together to develop a career planning system that will strengthen the law schools and help them in retaining their best qualified teachers	1 (I)STE 9 (L)STE	5,000 Euro						12,500 Euro 4,500 Euro 5,000 Euro	22,000 Euro
Strengthen the management of the law schools	Study tours to Europe (e.g. Sweden) for key persons at law schools to ensure international exposure	50,000 Euro		50,000 Euro					100,000 Euro	100,000 Euro

Component: Legal Education										
Objective	Action	Time frame and expertise in local (L) and international (I) man/month (Short Term Expert = STE; Long Term Expert = LTE)							Total	Total Costing
		2004	2005	2006	2007	2008	2009	2010		
(Strengthen the management of the law schools)	Conduct training in improving law school management and administration		6 (L)LTE 2 (I)STE		6 (L)LTE 2 (I)STE				12 (L)LTE 4 (I)STE	6,000 Euro 50,000 Euro
	Survey on shortage of staff members (instructors and administrative personnel) in every law school		3 (L)STE					3 (L)STE	3 (L)STE	1,500 Euro
Total Legal Education										
									5,403,400 Euro	

Annex 1

List of Stakeholders met during the Missions

NB: the list may contain names of representatives of international organisations

Working Group on Information Flow

- Addis Ababa City Administration Appellate Court; Ato Shemelis Moges, President
- Ethiopian Bar Association; Ato Siraj Abdela and other members of the Executive Committee of the Bar Association
- Ethiopian Women Lawyers Association; Woizero Meaza Ashenafi, Executive Director
- Ministry of Justice; Ato Ali Suleiman, Vice Minister
- Department of Information Systems (database) at the Ministry of Justice; Ato Teshome, Department Head
- Federal Supreme Court of Ethiopia, Ato Kemal Bedri Kelo, President, Menberetsehai Tadesse, Vice President
- Court Administration Reform Project Office, Ato Gebrewold Lemma, Chief Project Manager
- Federal Penitentiary Commission; Ato Berhane Melka, Chief Administrator and other officials of the Federal Penitentiary Commission
- The Registrar of the Federal Supreme Court; Ato Tegene Getaneh, Chief Registrar
- Oromiya Regional State Supreme Court; Ato Teshale Aberra, President
- Federal Police Commission; Ato Workneh Gebeyehu (Commissioner), Ato Tsegaye Dada (Assistant Commissioner), Ato Tuemay Aregawi and other officials
- Federal Prosecutor's Office (Addis Ababa Branch), Ato Sisay Lemlem, Chief Prosecutor for Addis Ababa
- Alumni Association of the Addis Ababa University Faculty of Law; Ato Seifu Feyisa, Coordinator of the Legal Aid Center

- Berhanena Selam Printing Enterprise (Negarit Gazeta); Woizero Muluwork G/Hiwot, General Manager
- Federation Council; Dr.Mohamed Siraye (Deputy Speaker), the Head of the Secretariat and members of the Standing Committees
- Federal First Instance Court; Ato Desalegn Berhe, President
- Legal Aid Center of the Ethiopian Bar Association; Ato Fekade Selassie (Coordinator) and Sultan Kasim (a volunteer law student)
- House of Peoples Representatives of the FDRE; Dr. Petros Olango, Deputy Speaker of the House
- Ato Belete Reta, Project Coordinator, Action Professionals' Association for the People (APAP)
- Ato Lema Bekele Judge and staff of the Woreda Court of Akaki Woreda, Dukem town
- Dr. Petros Olango, Deputy Speaker of the House of Peoples Representatives of the FDRE (on the topics of Ombudsman and Human Rights Commission)
- Woizero Netsannet Asfaw, State Minister of Information
- Ato Mekonnen Workie, Head Public Relations Service, Ministry of Justice
- Ato Mekkonen Batisso, Planning department, Ato Dessaligne Bekele, Statistics Department, Ministry of Justice
- Ato Nagash Gessese, Secretary General, and Ato Abebe Workie, Ethiopian Human Rights Council (EP)
- Ato Kifle Mulat, President of the Ethiopian Free Press Journalists Association

Working Group on the Judiciary

- Federal Supreme Court, Ato Menberetsehai Tadesse, Vice-President, judges and members of the staff
- Tigray Regional State Supreme Court in Mekelle, Ato Haile Abrha, Vice-President, and members of the staff
- Mekelle Zone High Court and Woreda Court, judges and members of the staff
- Oromia Regional State Supreme Court, Ato Teshale Abera, President, judges and members of the staff
- Amhara Regional State Supreme Court, Ato Tegegne Kebede, President, judges and members of the staff
- Bahir Dar Zone High Court and Woreda Court, Judges and staff members
- Federal High Court- (Addis Ababa) Ato Wubeshet Kibru, President, judges and members of the staff

- Federal First Instance Court-(Lideta), Ato Desalegn Berehe, President, judges and members of the staff
- Addis Ababa City Administration Municipal Appellate Court, Judges and members of staff
- Addis Ababa City Administration Municipal First Instance Court
- Somale Regional State Supreme Court, Ato Abdukahim Mohamed, President, and the Registrar of the Court
- Jijiga Zone High Court and Woreda Court, Judges and members of staff
- Jijiga Sharia Supreme Court, court staff
- Ato Mandefrot Belay, Justice System Reform Program Director, Ministry of Capacity Building, Addis Ababa
- Mrs. Laura Bourassa, Justice Reform Expert, Ministry of Capacity Building, Addis Ababa
- Mr. Dominique Francke, Magistrat, Advisor for Justice Sector in Ethiopia, French Embassy, Addis Ababa
- Mr. Rob Vermaas, Ambassador of the Netherlands in Ethiopia, Addis Ababa
- Ms. Antoinette H. Gosses, Head Development Cooperation, Embassy of the Kingdom of The Netherlands, Addis Ababa
- Ms. Cecile Vink, Second Secretary, Embassy of the Kingdom of The Netherlands, Addis Ababa
- Judge Seyoum, Chairman of the Administrative Tribunal, Federal Civil Service Commission Office at Arat Kilo, Addis Ababa
- Ms. Jacynthe Rivard, First Secretary (Cooperation), the Canadian Embassy, Addis Ababa
- Swedish Embassy
- Mr. Abera H. Mariam, A/C Director of the Action Professionals' Association for the People, (APAP), Addis Ababa
- Southern Nations, Nationalities and Peoples Regional State Supreme Court, Ato Frehiywot Samuel, President
- Sidamo Zone High Court, President, and Awassa Woreda Court
- Mr. Antonius B. Broek, Deputy Resident Representative, United Nations Development Programme, Addis Ababa.

Working Group on Law Making

- Ato Zenebe Burka, Head of the legal drafting Department, Ministry of Justice
- Dr Fasile Nahum, director, JLSRI and advisor to the Prime Minister
- Ato Mandefrot Belay, director of the Justice System Reform Program, Ministry of Capacity Building

- Ato Tamre Leben, Head of the Legal Department of the Ministry of Finance and Economic Development
- Ato Getachew Setotaw, head Library Service, JLSRI
- Dr. Petros Olango, deputy speaker of the House of Peoples' Representatives
- Ato Nigusu Lema, vice chairman of the legal affairs standing committee, Federal Parliament
- Ato Eshete Gebre, member of the legal affairs standing committee, Federal Parliament
- Ato Hailu Mehari, member of the legal affairs standing committee, Federal Parliament
- Ato Teshom Eshatu, chairman of budget and finance standing committee
- Ato Asnake Tadesse, head of parliament secretariat, Federal Parliament
- Ato Million Habte, director of AACC, Arbitration Institute and Legal Service, Chamber of Commerce
- Ato Damozie Mame, legal advisor, Oromia Regional State Council
- Ato Kebede Baltuma, social affairs advisor, Oromia Regional State Council
- Ato Zeyni Mohammed, secretary general of the Oromia Regional State Council
- Mr. Dominique Francke, French Magistrate, advisor to the Federal Ministry of Justice
- Mr. Stephan Ballande, advisor to the Ministry of Justice
- Ato Nicodemus, Head of Consolidating work at the Ministry of Justice
- Ato Fikru Gnakal, Speaker of the Southern Nations Nationalities and Peoples' Regional Council
- Ato Geremew Tsadik, legal advisor, Amhara Regional Council Office
- Ato Gedefaw Arega, head of secretariat, Amhara Regional Council Office
- Ato Getachew Abate, head of department of printing – the Berhane Selam Printing Enterprises (Negarit Gazeta)
- Woizero Azengash G. Meskel, head of “pre-press” - computer department - the Bernhane Printing Enterprises
- Ato Adamm Haibe, head of commercial department - the Bernhane Printing Enterprises
- Ato Getachew Kitaw, President, The Ethiopian Bar Association
- Woizero Meaza Ashenafi, President of the Ethiopian Women Lawyers Association (ELWA)
- Ato Ginbo Mekonnen, Head of Legal Service Department, Ministry of Federal Affairs
- Ato Seid Odyo, Legal Expert at the Regional State Council

- Ato Ibrahim Idriss, director-general, Legal department, Ministry of Foreign Affairs
- Ato Mesfin Lama, head of legal services in the office of the Council of Ministers
- Ato Tesfaye Abera, research center head, of the House of Peoples' Representatives
- Ato Samual Alamayu, Secretary of the House of the Federation
- Mr. Dominique Francke, French Magistrate, advisor to the Federal Ministry of Justice
- Mr. Antonius Broek, deputy resident representative, and other staff members of UNDP
- Mr. Wens, European delegation
- Mr. Drubniak, French Trade Commissioner,

Working group on Legal Education

- Prof. Andreas Eshete, President of the Addis Ababa University
- Asst. Professor Getachew Abera, Dean of the Faculty of Law (A.A.U)
- Dr. Abebe H\Geberel, Vice President of ECSC
- Ato Meseret Tesfu, Dean of the Law Faculty, ECSC
- Ato Gebreamlak Gebregiorgis, lecturer, ECSC
- Ato Samuel Teshole, lecturer, ECSC
- Ato Getachew Kitaw, President, Ethiopian Bar Association and Several other members of the executive committee of the Bar
- Woizero Meaza Ashenafi, Executive Director, Women Lawyers Association
- Ato Belete Demesse, Head of the Department for program and research, Ministry of Education
- Ato Gizachew Adugna, Vice President, Bahir Dar University, Head of the Department of Law and two other staff members
- Ato Ali Mohammed, Head of the Amhara State's Justice Bureau
- Dr. Damte Woldemariam, President, Jimma University
- Dr. Solomon Genet, Vice President, Jimma University
- Ato Challi Jira, Associate Professor and Head of Dep. of Health, Planning and Health Service Management, Program of Community Health, and Head of External Relations Office and other staff at the university level, Jimma University
- Mr. Shipi M. Gowok, coordinator/head of the Faculty of Law, Jimma University
- Dr. H. Padma senior lecturer at the Law Faculty, Jimma University
- Prof. Zenabu G/Mariam, President, Debu University

- Dr. Admasu Tsegay, Vice President for Academic Affairs, Debu University
- Ato Demissew Tessema, Dean of the faculty of law, Debu University
- Ato Mandefrot Belay, Director of the JSRP.
- Ato Menberetsehai Tadesse, Vice President of FSC
- Ato Wondwosen Tamrat, President, St. Mary college
- Ato Danel Haile, Dean, Unity University College.
- Ato Getahun Kassa, associate dean, Faculty of Law, Mekele University and staff of the Faculty
- Mr. Wray Witten, former dean, Faculty of Law, Mekele University
- Ato Araya Bayane, Woreda Court Judge, Mekele
- Dr. Teshome Yezengaw, Vice Minister, Ministry of Education
- Mr. Antonius B. Broek, Deputy Resident Representative, UNDP, Ethiopia
- Mr. Max Bjuhr, counselor, Embassy of Sweden, Addis Ababa
- Mr. Erik Korsgren, counsellor, Sida, Embassy of Sweden, Addis Ababa
- Mr. Alf-Age Hansen, First secretary, Norwegian Embassy, Addis Ababa

Working Group on Law Enforcement

Public Prosecution Service

- Ato Harka Haroye, Federal Minister of Justice
- Dr. Gebreab Barnabas Minister of state, Ministry of Federal Affairs
- Ato Mandefrot Belay, Director of the Justice System Reform Program
- Ato Dewano Kider, Deputy Head, Justice Bureau of Oromia Regional State
- Ato Sisay Lemlen, Federal First instance and high Court Chief Public Prosecutor
- Ato Workneh Gebeyehu, Federal Police Commissioner
- Ato Melese Marimo, Deputy President and head of the Justice and administrative Affairs, Bureau, SNNPS
- Ato Ali Mohammed, Head of Justice Bureau, Amhara Regional State
- Ato Zenebe Burka, Head of the legal draft department of the Ministry of Justice;
- Mr. Dominique Francke, French Magistrate and advisor to the Federal Ministry of Justice
- Ato Menberetsehay Tadesse, Vice President of the Federal Supreme Court
- Ato Webeshet Kebru, President of the Federal High Court
- Ato Ameha Mekonnen, Federal Chief Public Prosecutor of A.A. First Instance and High Court
- Ato Sissay Lemlen, Deputy Federal Chief Public Prosecutor of A.A. First Instance and High Court

- Lieutenant Zelalem W/Mariam Head of Police Investigation Department (A.A. City Administration Police Commission)
- Mr. Dominique Francke, advisor to the Federal Minister of Justice

Penitentiary System

- Dr. Gebreab Barnabas Minister of State, Ministry of Federal Affairs of the Federal Democratic of Ethiopia
- Ato Harka Haroye, Minister of Justice of the Federal Democratic Republic of Ethiopia
- Ato Mandefrot Belay, Director of the Justice System Reform Program
- Ato Melese Marimo, Deputy President and Head of the Justice and Administrative Affairs, Co-ordination Bureau of the Southern Nations, Nationalities and Peoples Regional State
- Ato Birko Melese, Head of Amhara State Prison Administration
- Ato Berhane Melka, Head of the Federal Prison Administration
- Ato Molalegn, Head of the federal prison in Addis Ababa
- Ato Ali Umar, Head of the Prison Administration, Office of Administration and Justice Affairs, of Oromia National Regional State
- Ato Abey Abebe, Police Lieutenant, Head of the Addis Ababa Prison Administration
- Mr. Marco Brudermann, Head of Delegation of the International Committee of the Red Cross/ICRC
- Central Prisoners Committee at the Central Federal Prison in Addis Ababa
- Ato Gadissa Gizaw, member of the Federal Prison Commission
- Ato Alebachew Tegabu, Head of Aleltu Prison Warders' Training Centre

Police

- Ato Harka Haroye, Federal Minister of Justice
- Dr. Gebreab Barnabas Minister of state, Ministry of Federal Affairs
- Ato Workneh Gebeyehu, Federal Police Commissioner
- Ato Hassen Shifa, Deputy commissioner, Federal Police Commission
- Ato Mandefrot Belay, Director of the Justice System Reform Program
- Ato Dewano Kider, Deputy Head, Justice Bureau of Oromia Regional State
- Ato Sisay Lemlen, Federal First Instance and High Court Chief Public Prosecutor
- Ato Zelalem W/Mariam, Police Lieutenant, Head of the Investigation Section of the Addis Abeba Police
- Ato Lemma Gezew, Police Lieutenant, Commander of the Akaki Woreda Police Station, East Showa Zone, City of Dukan, Oromia Regional State

- Ato Tsegaye Dadi, Assistant Commissioner, Deputy Director of the Ethiopian Police College
- Ato Melese Marimo, Deputy President and Head of the Justice and Administrative Affairs, Co-ordination Bureau of the Southern Nations, Nationalities and Peoples Regional State
- Major Befekadu Tollera, Commissioner of Addis Ababa City Police Commission

Annex 2

List of Experts

Working Groups

1) Working Group on Information Flow

International experts

- Justice Jean-Jacques Heintz, France
- Judge Patrice de Charette, France

Local experts

- Ato Mehari Alemayehu, Consultant and Attorney at Law (Addis Ababa, Ethiopia)
- Ato Mekete Bekele, Lecturer at the Law Faculty, Addis Ababa University (Ethiopia).

2) Working Group on the Judiciary

International experts

- Judge Paul Broekhoven, Netherlands,
- Judge Rosa Jansen, Netherlands,

Local experts

- Ato Binalfew Nega, Attorney at law and former judge of the Federal First Instance Court and the Federal High Court of Addis Ababa, Ethiopia,
- Ato Solomon Areda, Judge at the Federal High Court in Addis Ababa, Ethiopia,
- Ato Goshirad Tsegaw, Judge at the Federal First Instance Court in Addis Ababa, Ethiopia
- Ato Bekele Tsegaye, Head Court Administration Reform Sub-Program of the Justice System Reform Program Office, former public prosecutor, Ethiopia.

3) Working group on Law Enforcement

Prosecution Service

International expert

- Jan Zwinkels, LL M, Netherlands

Local experts

- Ato Ewnetu Akama, Attorney, Ministry of Justice
- Ato Fasil Tadese, Attorney, Ministry of Justice.

Penitentiary

International expert

- Dr. Gerard de Jonge, Netherlands

Local experts

- Ato Mekuriaw Tesfaw, Head of the Law Enforcement Organs Capacity Building Sub-Program, in the Justice System Reform Program Office
- Ato Gadissa Gizaw, member of the Federal Prison Commission
- Ato Shiferaw Amenu, former federal police officer and currently a private lawyer in Addis Ababa, Ethiopia

Police

International experts

- Michiel Holtackers, MA, Netherlands
- Dr. Dirk van Vierssen, Netherlands

Local experts

- Ato Shiferaw Amenu, former federal police officer and currently a private lawyer in Addis Ababa, Ethiopia

4) Working Group on Legal Education

International experts

- Dr. Roland Haglund, Sweden
- Prof. Joakim Nergelius, Sweden
- Marnella Piet, MA, Netherlands

Local experts

- Ato Yegremew Adal, Asst. Prof. Addis Ababa University (Addis Ababa Ethiopia)
- Ato Abebe Mulatu, Senior Researcher and Head of Department at JLSRI (Addis Ababa, Ethiopia)

- Ato Getachew Assefa, Lecturer at Ethiopian Civil Service College, (Addis Ababa, Ethiopia)

5) Working Group on Law Making

International experts

- Dr. Paul Falcone, France
- Dr. Roland Haglund, Sweden
- Jan Janus, LL M, Netherlands

Local experts

- Ato Abebe Mulatu, Senior Researcher and Head of Department at JLSRI, (Addis Ababa, Ethiopia)
- Ato Sisay Tadesse , Head Legal Reform sub-program in the Justice System Reform Program Office

CILC

- Dr. Roger Briottet, Team Leader
- Abdeljalil Taktak, LL M, Senior Project Manager and Program Director of the Baseline Study
- Kees Kouwenaar, MA, Director
- Marja Lenssen, MA, Project Manager

Annex 3

Decision of the Council of Ministers of October 13, 2003

Introduction

The purpose of this manual on the working procedures of the council of ministers is to enable the council to render its tasks and functions assigned to it by the Constitution in an efficient and proper way.

The basic reasons that necessitate this directive are: To enable government officials to clearly identify their tasks and duties, to make clear constitutional rights, Government directives and execution procedures, to make these rules as standard working procedures of the executive branch of government and to enable citizens know how government does its duties or to provide the people with a source of information on how the government operates.

The F.D.R.E. constitution, after being drafted by the constitutional Assembly that was established under Proclamation 24/1993 and approved by the representatives of the whole people in December 1995 has been promulgated and came in to effect as proclamation no. 1/1995 as of August 1995.

The nations, nationalities and peoples of Ethiopia as the sovereigns powers has been recognized; their sovereignty is expressed through their elected representatives who exercise power and democratic participation. This is one of the major principles of the Constitution. The other important principle of the Constitution is the unrestricted protection and enjoyment by the people of democratic and human rights. Accountability of the government in all its activities to the people is the other major principle of the constitution.

The Ethiopian nations, nationalities and peoples, using their right to self determination have established their common political establishment that adopts the parliamentary system of Government.

The Federal Democratic Republic of Ethiopia composes the Federal Government and states. The states are organized on the basis of language and ethnicity, taking their settlement area as the basis. The federal government and the states enjoy legislative, executive and judicial power. The House of Peoples Representatives, which is the legislative organ of the Federal Government is the representative of the whole people of Ethiopia and the state legislative councils are accountable to the respective people of the state.

The power of the federal government and the states is identified by the constitution. The states are bound to respect the powers of the federal government and the federal government shall also respect the powers of the states.

All powers, which are not expressly given to the federal government, are the powers of the states under the constitution. The states have the power to make their own constitutions, to design their economic and development plans and to execute them, to administer land and natural resources on the basis of federal law, to levy and collect tax in areas that fall within their competence, to organize their own police force and other powers.

Under Art. 55 of the F.D.R.E. constitution the power of law making on federal level is that of the House of Peoples' Representatives. A bill that is approved by the House will be a law after being signed by the president and published in the Federal Negarit Gazette. The council of ministers has also the competence of issuing regulations on the basis of power delegated to it by the House under a proclamation.

Federal executive power resides in the Prime Minister and the Council of Ministers who are accountable to the House of Peoples' Representatives.

The Council of ministers is directly accountable to the Prime Minister, however, the council is accountable to the House on its decisions. The different Federal government Ministries have common and individual powers and duties as provided under Proclamation 4/1995 as amended by 256/2003.

Various Proclamations and directives have been issued to require government to make its activities transparent and to be accountable. The Federal anti corruption law (Procl. 236/2001) and the anti-corruption special procedure law (Procl. 237/2001) are a case in point.

The Civil Service Reform Program that has the purpose of making the civil service efficient, responsible and accountable has been launched.

Thus, to enable the Federal Democratic Republic of Ethiopian Council of Ministers do its functions efficiently and properly and implement the principles of the constitution, the following working procedure has been adopted.

PART I GENERAL

1. Members of the Council and Substitutes

1. The members of the council of ministers as provided under Procl. 256/2002 Art. 3(1) are:
 - a) the Prime Minister
 - b) the Vice Prime Minister
 - c) ministers that lead line Ministries
 - d) others who are selected by the Prime Minister to Participate as members
2. Where a minister is not able to attend a meeting of the council, he shall be represented according to Procl. 256/2002 Art. 3(2) and (3).

2. Accountability of the Council

Pursuant to Art-76(2) and (3) of the constitution

1. The council is accountable to the Prime Minister
2. The council is accountable to the House of Peoples' Representatives as regards its own decisions.

3. Duties and Functions of the Council

1. Notwithstanding the powers and duties of the council provided under Art. 76 of the constitution, the council shall have the power:
 - a) to issue directives on how to make execution reports and preparation of plans

- b) to evaluate and approve the annual work plans of ministries; evaluate their performance in light of their plans and give the necessary directives;
 - c) to debate on policy issues, to issue new policies and amend old ones as necessary.
 - d) to submit draft bills with clarification to the House of Peoples' Representatives.
 - e) to issue Regulations and Directives
 - f) to discuss on foreign working visits of members of the council and give direction; and to discuss the report after the visit;
 - g) to discuss on working visit of high level foreign delegates and give necessary directions to the relevant (concerned) members of the council, to debate and hear reports on their visits.
2. Where it is not possible to apply (1), (4), (5) above, the job shall be done by consulting with the Prime Minister.

4. Structure of the Council

The council shall have:-

- 1) a council
- 2) Permanent and ad hoc committees as necessary
- 3) Minister of Cabinet Affairs and departments organized under it.

PART II WORKING PROCEDURE OF THE COUNCIL

5. General Principles

1. The council is the highest executive organ of government, has the duty of issuing policies and follow up their implementation.
2. The council shall arrive a decision after members have aired their opinions in a free and fair manner and every member shall be obliged to respect and implement the decisions of the council.
3. A member of the council before tabling a matter for decision, shall consult with all concerned with the matter and hear their opinions and advises.
4. Notwithstanding the duty of government to provide free access to government documents, under the freedom of Information Law, all discussions of the council and the committees and documents submitted to them shall remain confidential under Art. 66 and Annex 2 of this manual.

5. Proposals that are to be submitted to the council for its decision shall be based on well researched facts that compose all information necessary to enable the council reach an informed decision that takes the public interest into account.
6. The decision of the council shall reflect that all relevant matters have been thoroughly investigated, and government policies and procedures have been adhered to.
7. The Council shall adopt a democratic, participatory transparent and accountable working process.

6. Collective and individual responsibility of the members

1. Each member is individually accountable and responsible as regards his duty and function provided by Law, and is also collectively responsible and accountable as regards the duties and powers of the council.
2. Every member of the council.
 - a) shall be bound by the decision of the council;
 - b) shall implement the decision of the council in cooperation with other members and sometimes may even implement decisions on behalf of other members.
 - c) shall give his support to the decision of the council in public debates or other fora
 - d) shall consult the Prime Minister or the Minister of Cabinet Affairs, where he is not certain that his planned recommendations on matters that are within his competence are not in line with the views of the council. When he finds that his views are not in line with that of the council, he shall not take any measure or pass any decision without finding out the opinions of concerned members of the council and presenting his proposition to the council.
3. Members shall make sure that the public is not communicated on matters of policy issues or other matters before their adoption by the council.
4. Minister members shall first consult and get the go-ahead from the Prime Minister before they give communications to the public on issues that they have planned to table for the council's decision.
5. Members of the council shall not make speeches or air their opinions to the public on issues that are not within their domain by law, without first getting permission from the Prime Minister.

7. Discussions and Decisions of the Council

1. The councils' meeting is not open for all except those who are members or substitutes, or those persons who are permitted in the council to participate.
2. The discussions, procedure and content of the debate of the council, arguments and proposals forwarded by members shall be held in secret. The decision of the council shall be held in secret until it is signed by the Cabinet Affairs Minister and received by the concerned bodies.
3. Any matter that is submitted to the council orally or in writing shall be decided in writing. Where a Minister withdraws his proposals from the agenda, it shall be mentioned in the council's decision.
4. The Cabinet Affairs Minister shall prepare a brief that only indicates the decision of the council in not more than three days from the making of the decision by the council to the concerned members in their personal address in a carefully prepared envelopes.
5. Ministers and all their subordinates have the responsibility of communicating in writing with other concerned minister and officials as to the proposed method of implementing the decision.

8. Minute of the Council

1. The Minister of Cabinet Affairs shall prepare a minute that consists the contents of the discussion and shall cause the discussion to be recorded and video recorded when necessary.
2. The Minute shall contain.
 - a) the meeting place, date and the starting time;
 - b) list of the members present;
 - c) the list of members absent and the cause of their absence;
 - d) the list of other persons and the reason why they are present;
 - e) the agenda;
 - f) a brief explanation on the subject that is to be discussed;
 - g) the discussion of the meeting and dissenting opinions with the name of the dissenter;
 - h) the decisions of the meeting, the time limit for the execution of the decision and the office or official that is assigned to follow the implementation of the decision; and
 - i) the situation how, and the time that the meeting came to an end.
3. The minute shall be distributed only to members and if any one has suggestions on the minute, that must be made to the Cabinet Affairs Minister before the next meeting. In the next meeting the minute

- shall be amended and corrected and after approval by the council shall be signed by the chairman and the Cabinet Affairs Minister.
4. Every member may look into the approved minute whenever he wants through the Cabinet Affairs Minister.

PART III

MATTERS THAT ARE TO BE SUBMITTED TO THE COUNCIL AND PRIOR CONSULTATIONS

9. Matters that are to be Submitted to the Council

1. Every member of the council shall:
 - a) submit matters that need to be discussed under Art. 77 of the constitution by the council under the procedure that is laid in this manual;
 - b) solicit advice from the chairman or the Cabinet Affairs Minister when he is in doubt as to whether a subject is liable to discussion in the council.
2. Notwithstanding sub article of 1 of this Article, the following matters shall be submitted to the council:
 - a) policy issues that are new or that amend the existing ones
 - b) without prejudice to the powers of the Ministry of Finance and Economic Development and National Bank of Ethiopia, matters that affect the financial policy of the government, matters that have serious financial implications, or proposals which require additional budget;
 - c) matters that concern fundamental structural changes and procedures of government;
 - d) annual plan and performance reports of ministries and departments or offices that are accountable to the Prime Minister's Office Those reports that are particularly identified by the chairman will be discussed in the council, however;
 - e) new draft laws or amendments that were priorily allowed by the council;
 - f) Matters that affect the duties and powers of different ministries;
 - g) International, continental, regional or bi-lateral contracts and agreements;
 - h) Reports that are prepared for public discussion on government policy or the distribution of reports affecting the functions of other government departments;
 - i) Matters that may be raised by the council;

3. Documents that are submitted to the council shall be of high standard in analysis, content and language. They shall be concise, precise and clear.
4. Any new proposed law or new policy or amendment that calls for fundamental change shall be discussed with the Prime Minister before the draft is prepared.
5. Draft law that is submitted to the council shall be prepared in Amharic and English and shall be supported by a brief commentary that elaborates on the essence of the law.
6. The Minister of Cabinet Affairs shall determine the number of copies of a document that may be submitted to the council.
7. Though matters for discussion are submitted to the Minister of Cabinet Affairs, the chairman of the council shall decide the time for their discussion in the council.
8. Where the council or the chairman finds it necessary, it may direct that an issue before being discussed in the council, shall be studied by the pertinent standing committee in the council or by an ad hoc committee.

10. Prior Consultation

1. General Conditions
 - a) a Ministry or Department that submits matters to the council shall first gather opinions from all relevant federal and state government bodies and from civic organizations on the issue before submitting the same;
 - b) the Ministry or Department has to satisfactorily do the above function and has to develop the issue before submitting it to the council;
2. Consultation with the Public

The ministry that submits proposals to the council shall not release information on previous discussions of the council on the issue to the public while consulting on the issue with the public.
3. Consultation with Government Organs
 - a) before an issue is submitted to the council, it must be discussed in the concerned government bodies;
 - b) where a proposal is submitted to the council it shall be supported by a document that clarifies on the bodies that participated and the result of the consultation;
4. Preparation of and Consultation on Document for Discussion and Policy Documents

- a) Before a green paper or white paper that is to be discussed with the public is prepared, the council or the Prime Minister shall be informed and decide on the matter. To enable them decide on the preparation, a report that show:
 - (i) the importance of the documents;
 - (ii) the method of consultation to be conducted;
 - (iii) the alternatives; and
 - (iv) the time table for publicity of the documents;shall be submitted.
- b) A green paper shall be prepared by the highest official of the department that submits the proposal. Where the official does not accept the proposals made in the consultation, this must be mentioned in the preface of the introduction and on top of the document a statement "for discussion only" shall be indicated.
- c) Green papers and white papers shall be distributed to all concerned government bodies, higher education institutions, trade unions, professional associations, and to different civil associations for discussion.
- d) A report that contains the arguments for and against the green and white papers in the public discussion shall be submitted to the council.

PART IV

THE POWERS AND DUTIES OF THE CHAIRMAN MEMBERS COMMITTEES AND THE MINISTER OF CABINET AFFAIRS

11. Chairman of the Council

1. Pursuant to Art. 74(1) of the Constitution, the Prime Minister shall be the chairman of the Council and he:-
 - a) shall chair the meetings of the council, represent and organize the council
 - b) shall observe whether the council delivers its function according to this manual and other laws.
 - c) shall identify issues or agendas that will be discussed in the council, without prejudice to the powers of members to identify agendas.
 - d) shall give permission to personnel, foreign and national experts and officials, to appear before the council to clarify issues and to give their opinions.

- e) may refer any matter to a committee of the council or consultative team of the council where he finds it necessary.
 - f) shall cause the members to vote upon an issue discussed in the council.
 - g) shall observe the implementation of the council's decisions, and directives.
 - h) may communicate the decisions of the council to the media, when he finds it necessary.
 - i) shall decide on the working procedure of the council.
2. The deputy Prime Minister shall chair the council in the absence of the Prime Minister.

12. Members of the Council

Every member shall:-

1. Carefully identify matters that fall beyond his competence and major policy issues that need to be discussed by the council and shall submit annual plan and performance reports of his office.
2. Identify matters whether they are amenable to submission to the council, shall consult with members of the council when he is in doubt as to whether the issue is liable to submission to the council or not.
3. Give priority to the council's meetings more than his other functions and shall actively participate in the debates.
4. Give prior notice to the Prime Minister or the Minister of the Cabinet Affairs when he is faced with problems beyond his control.

13. Committees

1. Special committees, that would discuss and deliberate upon complex and technical issues and that give opinions to the council may be established by the council
2. The chair persons of the committees shall be only ministers that are assigned by the council or the prime minister. None voting members of the committee may, however, be assigned by the council or the chairman.
3. The committees would be ad-hoc or permanent committees on the basis of their expertise. Their duties and functions will be determined by the council.
4. Committees may deliberate upon matters that are referred to them by the council through the cabinet affairs minister. They shall report to the cabinet affairs minister.

5. Committees shall keep all documents, discussions and arguments they conduct secret.

14. Minister of Cabinet Affairs

The minister of cabinet affairs shall be in charge of procedural, logistic and operational matters of the council and is accountable to the prime minister. He shall have also the following powers and duties:-

1. organize the working programs and agenda of the council;
2. distribute items of the agenda and relevant documents when decided by the chairman to members of the council;
3. handle the minute of the council, ensure that the minutes are properly handled by the employee of the secretariat;
4. ensure that decisions of the council are distributed to the members while ascertaining their confidentiality;
5. ensure that matters submitted to the council are of the standard required under Art. 9(4) of this manual;
6. ensure that the facility of the meeting places are well organized and the necessary materials and provisions are fulfilled;
7. handles and administers the files and documents of the council appropriately;
8. advice government departments that submit proposals to the council on the documents and proposals;
9. assist the council and the committees on technical matters;
10. ensure that departments established under it perform their function efficiently;
11. communicate on the daily activities of the council to the media, unless a different order is given by the council;
12. ensure that the order of execution of the tasks of the council set by the chairman is complied with;
13. perform other functions assigned to him by the chairman or the council;

PART V

MEETING PROCEDURE OF THE COUNCIL

15. Meeting Program

1. The council shall meet ordinarily once in a week. Extraordinary meetings may be held whenever necessary. Meetings to evaluate performance shall be conducted quarterly. The weakly meeting may be cancelled by the chairman.

2. Extra ordinary meetings may be called by the chairman or by more than half of the members of the council.

16. Seat

The Cabinet Affairs Minister shall assign the seat of the members of the council and others who attend a meeting.

17. Approval of Agendas

1. The agendas shall be sent to members of the council at least three days before a meeting.
2. The council shall approve the agendas and their order by a majority vote.

18. Quorum

1. More than half of the members shall form a quorum.
2. When the cabinet Affairs Minister ascertains the fulfillment of the quorum, the chairman shall cause the council to start.

19. Initiating Discussion (debates)

1. Discussion or debate on a subject may be initiated after a member of the council or the committee that studied the matter gives a brief report.
2. After the presentment of the brief report under sub- art 1 of this article, if a discussion is found to be necessary and supported by the council, debate on the matter may continue.

20. Order of Speakers

1. Where a member seeks to speak he shall raise his hands to the chairman.
2. The chairman shall determine the order of speakers accordingly.
3. No member may interfere while another is speaking. But if a member wants to remind the chairman as to order or procedure, information or clarification he may raise his hands and may get permission to speak.

21. Experts

1. The member of the council who submitted the matter for the council's decision may bring with him experts or responsible officials who know more about the subject on permission of the chairman.
2. The council may call upon concerned officials or others to elaborate on a point under discussion.

3. Experts who have been called upon to elaborate on an issue shall not participate in the discussion other than answering questions and clarifying the issues under discussion. They shall keep the discussion they heard in the meeting they participate secret.

22. Recommendations

1. The chairman, when convinced that sufficient discussion has been conducted on the issue may propose a recommendation or may invite members to recommend.
2. The following recommendations shall have priority over all other types of recommendations:
 - a) the re-doing of the subject or more research on the subject.
 - b) postponing the matter for an indefinite period.
 - c) adjourn the meeting.
 - d) postponing the debate.
 - e) transfer to the next issue.
 - f) wind up discussion on issue.
3. A recommendation may be submitted in a written form.
4. Where a recommendation is seconded by at least one member, it shall be voted upon.
5. Where more than one recommendations are submitted, a majority vote shall decide on the better proposition.

23. Amendment

1. Every member of the council may propose an amendment in writing or orally on a matter under discussion.
2. The chairman may ask the member who presented his proposals orally to put it in writing.
3. The amendment shall be considered as part of the issue under discussion only where the member who has first submitted the matter has accepted it.

24. Withdrawing Propositions

A member who forwarded amendments or recommendations may withdraw his propositions before voting is conducted on the issue.

25. Etiquette

Any meeting of the council shall be conducted in a sense of respect, and decency among members and the discussion shall be relevant to the issue at hand.

26. Ending Debates

1. The chairman or any member may propose an end to a debate when believing that the issue has been discussed thoroughly.
2. Where there is an objection to the ending of the debate, a majority vote will decide.

27. Order of Matters that Need Recommendation

Voting on a discussed which shall be according to the following order:-

1. Amendments on words or phrases or sentences may be first where the discussion is article by article.
2. The article by article discussion comes second.
3. General matters on the subject.

28. Decision Making

1. The council shall decide unanimously but if this is not possible it may decide by a majority vote.
2. Where there is a tie additional time for consultation between members may be taken. If after the consultation the result is the same as previously, the chairman shall be a tie breaker.
3. The voting method may be decided by the council to be in open ballot or by a secret ballot.
4. Members shall be given a chance to elaborate on why they vote for or against or abstain.
5. A two third majority of the council may decide that a matter already decided be discussed again.

PART VI PROCEDURE FOR POLICY AND LAW MAKING

1 POLICY MAKING PROCEDURE IN THE COUNCIL

29. Principle

The council shall make policy according to Arts. 26-31 of this manual.

30. Initiating Policies

Each ministry shall have the power to initiate policies on matters concerning his office pursuant to Art.10(1) (a) of proclamation 4/1995.

31. Consultation with Government Departments

1. The minister who initiated a policy that will be submitted to the council shall be responsible to consult with government departments prior to submission.
2. When initiating a policy, a minister shall make sure that all functions and duties of other ministries and all laws are taken into considerations.
3. Consultation with government departments;
 - a) the policy document shall be sent to government departments in order to give them a chance to comment upon it.
 - b) face to face discussion on the policy documents may also be an option.
4. The minister that initiated the policy or law shall ensure that the document will not be rejected on grounds of insufficiency.
5. The document shall be submitted in a manner that show the consultations and with whom such consultations were made, whether the parties to the consultation accepted or disagreed with the policy, and if there is any, the opinion they aired.
6. Where the proposal is concerned with government expenditure, or has financial or budgetary implications a consultative meeting must be held with the Ministry of Finance and Economic Development.
7. The ministry that submits policy proposals shall strive to submit a proposal that is approved or supported by all those who discussed the document.
8. A proof that evidence the conduct of the consultative meetings must be annexed when presenting the document to the council.
9. The Minister of Cabinet Affairs may return back the document to the submitting Ministry where it finds that the document has not been discussed thoroughly in consultative meetings.

32. Consultation with Groups for a Common Aim

1. In the process of the designing of a policy, consultation meetings with groups organized under a common aim may be conducted.
2. Such consultative meetings may be held after the council has debated upon it.
3. Where consultation is required by law, the minister shall ensure that such consultation has been sufficiently conducted.

33. Consultation with Ministers

1. Every minister shall discuss the document with other ministers where the document has contents which are controversial or which have implications in the powers and duties of other ministers.
2. Where consultation with other departments or ministries is required by law, the minister shall ensure that such consultation is held prior to submission.

34. Ensuring the Constitutionality of Law's

Where any policy document is designed, it shall be ascertained that the policy is in tune with the constitution and the compliance of the document with constitution shall be pointed out.

35. Policy Recommendations by Other Federal Government Agencies

Articles 29-34 of this manual shall be applicable where policy proposals are submitted by other executive departments of the Federal Government.

2 INITIATION OF LAWS BY THE COUNCIL

36. Announcing the plan of the government on its policies and laws.

1. Pursuant to Art. 71(1) of the constitution the federal government shall submit its plans on new policies and laws to the president of the state at the annual joint meeting of the Houses so that its plans will be announced in the schedule of legal matters.
2. The government's plans on new policies shall be official.

37. Legal Matters

1. Matters that need new legislation in prioritized order, and the drafting stage of the laws, the procedure of follow up shall be mentioned in the schedule of legal matters.
2. The schedule shall be concerned with primary legislations like proclamations and not with secondary legislations like regulations and directives.
3. The program shall show;
 - a) the shifting of priorities of government;
 - b) areas that need legislation;
4. The implementation of the program shall be ensured.

38. How a schedule is Prepared

1. Every minister shall submit matters that need legislation at the beginning of the year to the cabinet Affairs Minister so that they would be part of the program.
2. On the basis of such information gathered, the cabinet Affairs Minister shall prepare the schedule.
3. Ministers have the right to submit matters that need legislation any time or they may request the change of the order of priority.
4. Matters that need legislation may be submitted before the policy document is prepared and public debate is conducted.
5. Matters that raise serious policy issues or that require an extended drafting activity shall be submitted at the beginning of the year so that it will be contained in the program.
6. Proposals for new legislation or proposals for change of order of priority shall be studied by the council's legal affairs consultative team.
7. The consultative team shall prepare an order of priority for matters that need legislation according to their nature of seriousness.
8. The schedule shall be approved by the council.
9. The council shall fix the time to evaluate the implementation of the annual program or schedule according to plan.

39. Follow up of the Implementation of the Schedule

1. The consultative committee may relegate or even cancel matters that are not implemented according to the schedule.
2. The concerned ministries shall communicate the consultative team on matters that need legislation that entered in the schedule whenever they intend changes in content, and coverage.
3. The consultative team may report to the council on the status of the schedule.
4. Ministers shall consult on the drafting stage of a proposed law and they may require the responsible minister to provide them information.
5. The concerned minister shall follow up the drafting stage of a bill that is referred to a committee of the council.

40. Preparation and approval of Drafts

The process of drafting shall follow the following procedure:-

1. Decide upon a policy issue that needs legislation.
2. Design the policy.
3. Conduct consultations.

4. Prioritize the seriousness of the draft bill.
5. Submit the proposed policy to the council for approval.
6. Draft additional directives for the draft, conduct additional consultations.
7. Prepare the draft bill.
8. Ensure that the draft is prepared in a manner that would be submitted to the council.
9. Submit the draft bill to the council; the council may discuss the bill article by article or it may refer it to a pertinent committee on first reading.
10. The committee shall study the draft and report to the council.
11. The council shall discuss the draft and the report of the committee and may approve the bill.

41. The Process of Designing Policy

1. When designing new policies ministries shall ensure that the subject has not been dealt with previous legislation.
2. Where a legislation is found to be necessary to implement a policy, the concerned ministry shall start designing the policy at a time when the proposed legislation could be entered in the schedule.
3. Where the proposed legislation is approved to be entered in the schedule, the ministry shall finalize designing the policy and refer it to the concerned committee and the council.

42. Consultation.

1. When a draft bill is prepared the relevance of the following consultations may be taken into account.
 - a) Consultation with members of the council;
 - b) Consultation with ministerial departments;
 - c) Consultation with Ministry of Justice;
 - d) Consultation with the legal affairs committee
 - e) Consultation with non governmental organizations;
2. Ministers may discuss a draft bill with their colleagues before they submit it to the council.
3. Where a draft bill that is prepared by a ministry affects matters that are within the competence of another ministry there shall be joint consultations between these ministries.
4. While the policy direction is in the process of designing and before a direction for the draft bill is prepared, the proposed legislation shall be discussed in the concerned ministries so that the following are adhered to:

- a) The approval of the draft on schedule.
 - b) Avoid the need of amendment before the law is drafted and avoid completely.
5. Draft bill that is submitted to the council:
 - a) shall not contradict with the provisions of the constitution.
 - b) where it contains provisions that entail new punishments or where it criminalize certain acts or where it amends existing laws, consultation with the Ministry of Justice shall be conducted to ensure the compatibility of the provision with the Penal Code.
 6. Where a draft bill is a public law, it shall be sent to the legal affairs committee for its opinion before it is submitted to the council. This shall be decided by the concerned Ministry.
 7. Where the draft bill establishes new institutions or where the draft affects existing ones, a consultation shall be conducted with the Prime Minister's office.
 8. Without prejudice to sub-art 10 of this article, the initiating Minister may conduct public debate and discussion on the draft with stakeholders or with the public at large before the draft is submitted to the council.
 9. To implement sub art 8 of this article:
 - a) the relevance of the discussion shall be studied at the initial stage of drafting.
 - b) the time needed to conduct the consultation must be within the time frame allotted to the drafting.
 10. A draft bill at any stage shall be held in secret; however,
 - a) if it is allowed by the consultative procedure of the council; and
 - b) where the concerned minister or department officer agrees;
 The contents of the draft may be disclosed to individuals or to bodies outside government.

43. Drafting a bill

1. Drafts are prepared by the experts in the initiating departments.
2. The main function of the drafters is to prepare drafts that reflect government policy in a clear and precise language.
3. Drafters shall draft bills on the basis of directives given to them by the high official of their department.
4. Every draft bill shall be prepared in Amharic and English.
5. The legal Affairs consultative team:
 - a) shall ensure that the draft fulfill the requirements set under sub-art 2 of this articles.

- b) shall cause the draft to be corrected in consultation with the concerned ministry.
- c) shall ensure that the draft is corrected and prepared in the appropriate form before it is submitted to the council.

44. Directives on draft bills

1. Every draft shall be based on the directives that is given for its preparation.
2. No directive on drafting shall be given on a legal matter that has not yet entered in the legal affairs schedule or that has not yet been discussed and debated.
3. The initiating department shall ensure that the directive for the draft and the draft itself are in complete agreement with government policy.
4. The list of directives for draft bills shall be determined by a special directive of the council.
5. Before the drafting is begun, the relevant committee in the council or the council's drafting committees shall approve the directive on the draft.

45. Investigating draft bills

1. Before a draft bill is submitted to the council
 - a) the relevant committee shall approve the correctness of the policy content of the draft; and
 - b) ensure the fulfillment of the required standard under Art. 9(4) of this manual shall be investigated by the legal affairs consultative team.
2. The consultative team shall ensure that the draft conforms to the principle of legality.
3. After complying with sub article 1 and 2 of this article, the consultative team shall submit the draft to the council for its decision.
4. Where a major change in the policy that is already approved by the council is proposed in the course of the drafting of the bill, the matter shall be referred to the council and the policy shall be approved again.

46. Ensuring constitutionality and principle of legality

1. Every Minister shall express that the matter he is proposing conform to the constitution, the principles of legality, and international treaties and obligations.

2. The Minister of Justice shall communicate the council where it finds that a certain draft possibly contradict with the constitution.
3. Where the draft is submitted by the Ministry of Justice the activity mentioned under sub art (6) of this article shall be preformed by the legal affairs consultative team.

3 THE PROCEDURE OF ISSUING REGULATIONS BY THE COUNCIL

47. Preparing a plan

1. Every Ministry shall:
 - a) follow up the implementation of regulations
 - b) prepare a plan on the directives that will be issued in the year.
2. The plan under sub-art 1 shall include:
 - a) directive for draft regulation
 - b) directives for amendments of regulations and
 - c) other necessary regulations.
3. The plan shall be submitted to the legal affairs consultative team.

48. Process of preparing regulations

1. The process or preparing draft regulations shall include the flowing process:
 - a) determine that a regulation is required under a primary legislation;
 - b) design the policy that is the basis of the directives when necessary;
 - c) consult on the subject with concerned departments or bodies that would be affected by the regulations;
 - d) cause the policy to be approved by the council where the regulation requires a new policy;
 - e) draft the regulation;
 - f) submit the draft to the legal affairs consultative team to make sure that it is prepared in the appropriate format and standard.
 - g) approval of the draft by the council.
 - h) publication of the draft regulation in the Federal Negarit Gazette.
2. Where sub-art 1 (d) of this article is not applicable the officials of the department that submit the draft may order the drafting of the regulation.

3. A time limit shall be fixed for the implementation of the procedure under sub art 1 of this article.
4. The legal affairs consultative team shall cause that the draft regulation falls within the jurisdiction of the initiating department.
5. Where the draft regulation;
 - a) is not within the competence of the drafting department;
 - b) restricts individual rights unnecessarily, or
 - c) is not acceptable for any other legal reason;
 the consultative team shall inform the minister of justice and the minister that submit the draft regulation about the defects.

PART VII PROCEDURE CONCERNING FOREIGN TOURS, SUITS AGAINST MINISTERS, RESIGNATION AND DISMISSAL OF MINISTERS

1 FOREIGN TOURS

49. Principle

To ensure that foreign tours of ministers is beneficial to the country, the following procedure shall be followed: (Minister includes all ministers at all levels).

50. Tour objective

Ministers tour to foreign countries shall be:

1. to execute the mission of the government;
2. represent the country and to perform functions that protect the interest and reputation of the country;
3. to acquire experience that is beneficial to Ethiopia and the people.

51. Permission necessary

1. Every minister shall write an application of permission to the prime minister that shows the objectives of the tour. The necessary time for the tour, the names and position of the officials that accompany him, the cost of the tour and whether the cost is to be covered by the host country or not shall be clearly expressed in the application.
2. Where the relation of the country to be visited and our country is doubtful, the ministry of Foreign Affairs may be asked for his opinion through the Cabinet Affairs Minister before the permission is granted.

3. After a minister gets permission to go to a foreign country from the prime minister, he shall cause his visits to be discussed in the council.
4. The council shall discuss on the visit and shall give directives.
5. Every government mission shall inform the consulates and embassies of Ethiopia in the country to be visited about the working visit before the visit starts.

52. Information that need to be provided to the council on foreign tour of ministers.

Where a minister present the issue of a foreign tour to the council for discussion, the following information should be made available to the council.

1. that the prime ministers has granted permission;
2. the lists of countries and cities to be visited;
3. the time when the visit begins and ends;
4. the objective of the visit and the benefits that would be acquired;
5. the people with whom the minister will talk to;
6. the preparations made at the Ethiopian consulates and embassies to make the visit a success;
7. the officials and experts who would accompany them;
8. the amount of cost necessary for the visit and by whom it is to be covered;
9. who and how the cost would be covered;
10. whether they have assigned delegates that will run the office.

53. Personnel who Travel with Ministers

Officials and professionals who travel with ministers shall go and return with the ministers. But:-

1. Where the visit requires an assessing team; or
2. Where the experts and officials have additional duties after the return of the ministers.

they may depart early and return late.

54. Family Members who Travel with Ministers

Ministers may be allowed to take their family with them. The expense may be covered by the government.

55. Expense for Foreign Travel

The costs and per diems of ministers when traveling to foreign countries will be determined by the council on the basis of a directive.

56. Report

A minister who travel on a working tour shall report to the council within two weeks of his return. The report shall be brief and shall contain:-

1. Problems and solutions in the working visit.
2. The result of the visit.
3. Follow up functions and the responsible argue who should do the follow up.

57. Private Tour

1. Ministers may travel to a foreign country in private upon leave of the prime ministers.
2. A minister who finalized a working visit may ask permission form the prime minister, to extend his stay for private visit.

58. Foreign Visitors

1. Ministers who invite foreign visitors shall first consult with the prime minister and the foreign minister.
2. The working visit of foreigners procedure will be determined by a directive.

2 ON SUITS AGAINST MINISTERS**59. Principle**

Where ministers are sued on matters that relate to their officials functions the following articles (60-62) will be applied.

60. On activities that would be conducted where a minister is sued

1. Where a minister is criminally charged, the matter should be conducted according to the relevant law;
2. Without prejudice to the above sub article, where a minister is sued or criminally charged in relation to his official function, he has to notify immediately the prime minister and the council about the case.

61. Decision and directives of the council on the suit

1. The council shall decide whether the suit against the minister relates to his official duties or a private matter;
2. Where the council finds the suit against the minister relates to his officials function; the council may decide that

- a) the government should defend the Minister through the ministry of justice; or
 - b) that the minister may appoint his attorney and the fees may be covered by the government.
3. Where the suit against the minister relates to his private matter the council may decide that the costs of litigation be covered by the minister himself.
 4. Before the council reaches a decision, it may seek the advice of the Minister of Justice.

62. Payment of costs

1. The council shall decide how and from which department the costs of litigation may be covered where it decide, that the government shall bear the cost of litigation against the minister.
2. Where costs are awarded to the Minister, the payment shall be made to the relevant government department.

3 RESIGNATION AND DISMISSAL PROCEDURE

63. Resignation of Ministers

1. A minister may resign on his own will.
2. When a minister decided to resign, he shall write a resignation application to the prime minister.
3. He shall submit his application 60 days before the time that he plans to quit.
4. The prime Minister shall decide on the application within 30 days from receiving the application.

64. Dismissal procedure of Ministers

1. Every Minister
 - a) where penalized for a criminal offence;
 - b) where he becomes incapacitated or becomes unreliable, or where his is not able to do his job because of illness, he may be dismissed upon the decision of the prime minister.
2. Where a minister is dismissed, the prime Minister shall notify him about his dismissal.

65. Report

1. A minister shall transfer all things that are in his possession to his substitute, he shall also prepare report.

2. A Minister who resigned or dismissed shall get certificate for his services within a week from his request.

PART VIII MISCELLANEOUS

66. Protection of official documents

1. Where a document of the council has to be preserved it may be done so according to the degree of protection under annex 2 of this manual.
2. Protection mechanism
 - a) Documents may be categorized as “sensitive” and “in confidence” where protection of privacy and public interest is at stake.
 - b) Documents related to national security may be classified as “top secret” or “secret” or “confidential” or “restricted”.
3. There shall be a procedure of preserving and avoiding documents.

67. Effective date

This working procedure shall come into force as of Oct, 13, 2003.

Addis Ababa Oct. 13, 2003
Council of Ministers

Annex 1

Directive on how a document that is to be submitted to the council shall be prepared

1. Principle

1. Documents that are submitted to the council shall be of standard and shall contain all the necessary information to enable ministers arrive a decision.
2. The Cabinet Affairs Minister shall ensure that the documents fulfill the standard requirements provided in this directive.
3. Where the Cabinet Affairs Minister finds that a document does not fulfill the required standard he may point out the defects and return it to the submitting minister to redo it.

2. Length of documents

1. Those who prepare document that are to submitted to the council shall:
 - a) take into account that ministers have no time to read lengthy documents; and
 - b) consider the fact that ministers may not have the expertise or knowledge on the subject and so to enable them reach an informed decision; the documents shall contain all relevant information. The balance between the brevity of the document and provision of sufficient information must be maintained.
2. Where a document has more than 10 pages, the minister submitting the same shall prepare an executive summary.

3. Submission of documents

A document, in order to assist members of the council understand the issue easily, shall:

1. be brief and logically organized;
2. contain all the necessary information;
3. be written in a clear and understandable language;
4. be understandable by the reader even where he has no the expertise in the area;
5. be organized in a manner that clearly show the key issues;
6. be precise;
7. where necessary contain tables and diagrams;
8. contain clear ideas that need the decision of the council;

9. be divided into titles and sub-titles and in logically connected paragraphs and shall contain sentences that are not complex.

4. **Format of documents**

A document that is submitted to the council of ministers shall be in the following format.

1. *Title*

The title of the document shall be concise and precise.

2. *Summary*

A document may be supported by an executive summary where it is more than ten pages.

3. *Recommendation*

The required decision of the council shall be put on the first page briefly in one or two lines.

4. *Rationale*

The reasons for submitting a document to the council shall be briefly mentioned.

5. *Opinion*

The main body of the document shall be the opinion of the submitting ministry and shall contain all the possible alternatives, arguments for and against the opinion and points that are agreed upon.

6. *Consultation*

A document shall contain the departments that were consulted by the ministry that submit the document and the result of the consultation.

7. *Documents that are related to financial matters*

A document that relates to financial matters have to contain the opinion of the Minister of Finance and Economic Development before it is submitted to the council.

8. *Documents that relate to human rights and democratic rights*

A document shall indicate that the document conforms to the human and democratic rights provided in the constitution.

9. Documents that call for new laws

Where a document calls for a new law, this shall be clearly mentioned in the document.

10. Gender issues

A document on policy matters shall contain what consideration is given for gender equality.

11. Publicity

Where a certain method of publicity is intended, the document shall expressly provide the intended form of publicity.

12. Recommendation

- a. A document shall contain all recommendations with alternatives.
- b. The document shall contain the name of the department that execute the recommended decision. Abbreviations may not be used in a document.
- c. The recommendations may not contain new ideas, not mentioned in the body of the document.
- d. The recommendations shall be supported by the arguments.
- e. Recommendation on financial matters shall be prepared in special formats.
- f. Documents that are submitted to provide only information shall be brief.
- g. A good recommendation shall:
 - (i) indicate the required decision clearly;
 - (ii) correctly present the deal;
 - (iii) avoid ambiguity;
 - (iv) be understandable when read separately from the main document;
 - (v) provide alternative recommendations;
 - (vi) indicate the next functions to be performed and by whom;
 - (vii) indicate that previous decisions may be repealed where necessary.

Annex 2 Security classification

1.	Documents that relate to public interest or individual right.	
	Sensitive	Disclosing information that are sensitive affects public interest or individual rights.
	In confidence	Disclosing documents that are confidential to third parties adversely affects law and order.
2.	Documents that relate to national security	
	Top secret	Disclosing information that are top secret will affect and endanger national interest very seriously.
	Secret	Disclosing information that is secret will affect and endanger national interest seriously.
	Confidential	Disclosing information that is confidential will endanger national interest significantly.
	Restricted	Disclosing information that is restricted to a person not concerned will affect national interest adversely.

Annex 4

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (94) 12
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE INDEPENDENCE, EFFICIENCY AND ROLE OF JUDGES
*(Adopted by the Committee of Ministers on 13 October 1994
at the 518th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Having regard to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") which provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law";
Having regard to the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985;
Noting the essential role of judges and other persons exercising judicial functions in ensuring the protection of human rights and fundamental freedoms;
Desiring to promote the independence of judges in order to strengthen the Rule of Law in democratic states;
Aware of the need to reinforce the position and powers of judges in order to achieve an efficient and fair legal system;
Conscious of the desirability of ensuring the proper exercise of judicial responsibilities which are a collection of judicial duties and powers aimed at protecting the interests of all persons,
Recommends that governments of member states adopt or reinforce all measures necessary to promote the role of individual judges and the judiciary

as a whole and strengthen their independence and efficiency, by implementing, in particular, the following principles:

Scope of the recommendation

1. This recommendation is applicable to all persons exercising judicial functions, including those dealing with constitutional, criminal, civil, commercial and administrative law matters.
2. With respect to lay judges and other persons exercising judicial functions, the principles laid down in this recommendation apply except where it is clear from the context that they only apply to professional judges, such as regarding the principles concerning the remuneration and career of judges.

Principle I - General principles on the independence of judges

1. All necessary measures should be taken to respect, protect and promote the independence of judges.
2. In particular, the following measures should be taken:
 - a.* The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles, for example by inserting specific provisions in the constitutions or other legislation or incorporating the provisions of this recommendation in internal law. Subject to the legal traditions of each state, such rules may provide, for instance, the following:
 - i. decisions of judges should not be the subject of any revision outside any appeals procedures as provided for by law;
 - ii. the terms of office of judges and their remuneration should be guaranteed by law;
 - iii. no organ other than the courts themselves should decide on its own competence, as defined by law;
 - iv. with the exception of decisions on amnesty, pardon or similar, the government or the administration should not be able to take any decision which invalidates judicial decisions retroactively.
 - b.* The executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges.
 - c.* All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard

its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules.

However, where the constitutional or legal provisions and traditions allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria mentioned above.

These guarantees could be, for example, one or more of the following:

- i. a special independent and competent body to give the government advice which it follows in practice; or
- ii. the right for an individual to appeal against a decision to an independent authority; or
- iii. the authority which makes the decision safeguards against undue or improper influences.

d. In the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.

e. The distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing of lots or a system for automatic distribution according to alphabetic order or some similar system.

f. A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges.

3. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

Principle II - The authority of judges

1. All persons connected with a case, including state bodies or their representatives, should be subject to the authority of the judge.
2. Judges should have sufficient powers and be able to exercise them in order to carry out their duties and maintain their authority and the dignity of the court.

Principle III - Proper working conditions

1. Proper conditions should be provided to enable judges to work efficiently and, in particular, by:
 - a.* recruiting a sufficient number of judges and providing for appropriate training such as practical training in the courts and, where possible, with other authorities and bodies, before appointment and during their career. Such training should be free of charge to the judge and should in particular concern recent legislation and case-law. Where appropriate, the training should include study visits to European and foreign authorities as well as courts;
 - b.* ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities;
 - c.* providing a clear career structure in order to recruit and retain able judges;
 - d.* providing adequate support staff and equipment, in particular office automation and data processing facilities, to ensure that judges can act efficiently and without undue delay;
 - e.* taking appropriate measures to assign non-judicial tasks to other persons, in conformity with Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts.
2. All necessary measures should be taken to ensure the safety of judges, such as ensuring the presence of security guards on court premises or providing police protection for judges who may become or are victims of serious threats.

Principle IV - Associations

Judges should be free to form associations which, either alone or with another body, have the task of safeguarding their independence and protect their interests.

Principle V - Judicial responsibilities

1. In proceedings, judges have the duty to protect the rights and freedoms of all persons.
2. Judges have the duty and should be given the power to exercise their judicial responsibilities to ensure that the law is properly applied and cases are dealt with fairly, efficiently and speedily.
3. Judges should in particular have the following responsibilities:
 - a.* to act independently in all cases and free from any outside influence;
 - b.* to conduct cases in an impartial manner in accordance with their assessment of the facts and their understanding of the law, to ensure that a fair hearing is given to all parties and that the procedural rights of the parties are respected pursuant to the provisions of the Convention;
 - c.* to withdraw from a case or decline to act where there are valid reasons, and not otherwise. Such reasons should be defined by law and may, for instance, relate to serious health problems, conflicts of interest or the interests of justice;
 - d.* where necessary, to explain in an impartial manner procedural matters to parties;
 - e.* where appropriate, to encourage the parties to reach a friendly settlement;
 - f.* except where the law or established practice otherwise provides, to give clear and complete reasons for their judgments, using language which is readily understandable;
 - g.* to undergo any necessary training in order to carry out their duties in an efficient and proper manner.

Principle VI - Failure to carry out responsibilities and disciplinary offences

1. Where judges fail to carry out their duties in an efficient and proper manner or in the event of disciplinary offences, all necessary measures which do not prejudice judicial independence should be taken. Depending on the constitutional principles and the legal provisions and traditions of each state, such measures may include, for instance:
 - a.* withdrawal of cases from the judge;
 - b.* moving the judge to other judicial tasks within the court;
 - c.* economic sanctions such as a reduction in salary for a temporary period;
 - d.* suspension.
2. Appointed judges may not be permanently removed from office without valid reasons until mandatory retirement. Such reasons, which should be defined in precise terms by the law, could apply in countries where the judge

is elected for a certain period, or may relate to incapacity to perform judicial functions, commission of criminal offences or serious infringements of disciplinary rules.

3. Where measures under paragraphs 1 and 2 of this article need to be taken, states should consider setting up, by law, a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself. The law should provide for appropriate procedures to ensure that judges in question are given at least all the due process requirements of the Convention, for instance that the case should be heard within a reasonable time and that they should have a right to answer any charges.

Annex 5

Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the

elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors, Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration. Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

Annex 6

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION REC(2000)19 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE ROLE OF PUBLIC PROSECUTION IN THE CRIMINAL JUSTICE SYSTEM

*(Adopted by the Committee of Ministers on 6 October 2000
at the 72nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve a greater unity between its members;

Bearing in mind that it is also the Council of Europe's purpose to promote the rule of law; which constitutes the basis of all genuine democracies;

Considering that the criminal justice system plays a key role in safeguarding the rule of law;

Aware of the common need of all member states to step up the fight against crime both at national and international level;

Considering that, to that end, the efficiency of not only national criminal justice systems but also international co-operation on criminal matters should be enhanced, whilst safeguarding the principles enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms;

Aware that the public prosecution also plays a key role in the criminal justice system as well as in international co-operation in criminal matters;

Convinced that, to that end, the definition of common principles for public prosecutors in member states should be encouraged;

Taking into account all the principles and rules laid down in texts on criminal matters adopted by the Committee of Ministers,

Recommends that governments of member states base their legislation and practices concerning the role of public prosecution in the criminal justice system on the following principles:

Functions of the public prosecutor

1. “Public prosecutors” are public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.
2. In all criminal justice systems, public prosecutors:
 - decide whether to initiate or continue prosecutions;
 - conduct prosecutions before the courts;
 - may appeal or conduct appeals concerning all or some court decisions.
3. In certain criminal justice systems, public prosecutors also:
 - implement national crime policy while adapting it, where appropriate, to regional and local circumstances;
 - conduct, direct or supervise investigations;
 - ensure that victims are effectively assisted;
 - decide on alternatives to prosecution;
 - supervise the execution of court decisions;
 - etc.

Safeguards provided to public prosecutors for carrying out their functions

4. States should take effective measures to guarantee that public prosecutors are able to fulfil their professional duties and responsibilities under adequate legal and organisational conditions as well as adequate conditions as to the means, in particular budgetary means, at their disposal. Such conditions should be established in close co-operation with the representatives of public prosecutors.
5. States should take measures to ensure that:
 - a.* the recruitment, the promotion and the transfer of public prosecutors are carried out according to fair and impartial procedures embodying safeguards against any approach which favours the interests of specific groups, and excluding discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status;
 - b.* the careers of public prosecutors, their promotions and their mobility are governed by known and objective criteria, such as competence and experience;
 - c.* the mobility of public prosecutors is governed also by the needs of the service;

- d.* public prosecutors have reasonable conditions of service such as remuneration, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement and that these conditions are governed by law;
 - e.* disciplinary proceedings against public prosecutors are governed by law and should guarantee a fair and objective evaluation and decision which should be subject to independent and impartial review;
 - f.* public prosecutors have access to a satisfactory grievance procedure, including where appropriate access to a tribunal, if their legal status is affected;
 - g.* public prosecutors, together with their families, are physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their functions.
6. States should also take measures to ensure that public prosecutors have an effective right to freedom of expression, belief, association and assembly. In particular they should have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings in a private capacity, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organisation. The rights mentioned above can only be limited in so far as this is prescribed by law and is necessary to preserve the constitutional¹ position of the public prosecutors. In cases where the rights mentioned above are violated, an effective remedy should be available.
7. Training is both a duty and a right for all public prosecutors, before their appointment as well as on a permanent basis. States should therefore take effective measures to ensure that public prosecutors have appropriate education and training, both before and after their appointment. In particular, public prosecutors should be made aware of:
- a.* the principles and ethical duties of their office;
 - b.* the constitutional and legal protection of suspects, victims and witnesses;
 - c.* human rights and freedoms as laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms, especially the rights as established by Articles 5 and 6 of this Convention;
 - d.* principles and practices of organisation of work, management and human resources in a judicial context;
 - e.* mechanisms and materials which contribute to consistency in their activities.

Furthermore, states should take effective measures to provide for additional training on specific issues or in specific sectors, in the light of present-day

conditions, taking into account in particular the types and the development of criminality, as well as international co-operation on criminal matters.

8. In order to respond better to developing forms of criminality, in particular organised crime, specialisation should be seen as a priority, in terms of the organisation of public prosecutors, as well as in terms of training and in terms of careers. Recourse to teams of specialists, including multi-disciplinary teams, designed to assist public prosecutors in carrying out their functions should also be developed.

9. With respect to the organisation and the internal operation of the Public Prosecution, in particular the assignment and re-assignment of cases, this should meet requirements of impartiality and independence and maximise the proper operation of the criminal justice system, in particular the level of legal qualification and specialisation devoted to each matter.

10. All public prosecutors enjoy the right to request that instructions addressed to him or her be put in writing. Where he or she believes that an instruction is either illegal or runs counter to his or her conscience, an adequate internal procedure should be available which may lead to his or her eventual replacement.

Relationship between public prosecutors and the executive and legislative powers

11. States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to civil, penal or other liability. However, the public prosecution should account periodically and publicly for its activities as a whole and, in particular, the way in which its priorities were carried out.

12. Public prosecutors should not interfere with the competence of the legislative and the executive powers.

13. Where the public prosecution is part of or subordinate to the government, states should take effective measures to guarantee that:

- a. the nature and the scope of the powers of the government with respect to the public prosecution are established by law;
- b. government exercises its powers in a transparent way and in accordance with international treaties, national legislation and general principles of law;
- c. where government gives instructions of a general nature, such instructions must be in writing and published in an adequate way;
- d. where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law, the government being under a duty, for example:

- to seek prior written advice from either the competent public prosecutor or the body that is carrying out the public prosecution;
 - duly to explain its written instructions, especially when they deviate from the public prosecutor's advices and to transmit them through the hierarchical channels;
 - to see to it that, before the trial, the advice and the instructions become part of the file so that the other parties may take cognisance of it and make comments;
- e.* public prosecutors remain free to submit to the court any legal arguments of their choice, even where they are under a duty to reflect in writing the instructions received;
- f.* instructions not to prosecute in a specific case should, in principle, be prohibited. Should that not be the case, such instructions must remain exceptional and be subjected not only to the requirements indicated in paragraphs *d.* and *e.* above but also to an appropriate specific control with a view in particular to guaranteeing transparency.

14. In countries where the public prosecution is independent of the government, the state should take effective measures to guarantee that the nature and the scope of the independence of the public prosecution is established by law.

15. In order to promote the fairness and effectiveness of crime policy, public prosecutors should co-operate with government agencies and institutions in so far as this is in accordance with the law.

16. Public prosecutors should, in any case, be in a position to prosecute without obstruction public officials for offences committed by them, particularly corruption, unlawful use of power, grave violations of human rights and other crimes recognised by international law.

Relationship between public prosecutors and court judges

17. States should take appropriate measures to ensure that the legal status, the competencies and the procedural role of public prosecutors are established by law in a way that there can be no legitimate doubt about the independence and impartiality of the court judges. In particular states should guarantee that a person cannot at the same time perform duties as a public prosecutor and as a court judge.

18. However, if the legal system so permits, states should take measures in order to make it possible for the same person to perform successively the functions of public prosecutor and those of judge or vice versa. Such changes in functions are only possible at the explicit request of the person concerned and respecting the safeguards.

19. Public prosecutors must strictly respect the independence and the impartiality of judges; in particular they shall neither cast doubts on judicial decisions nor hinder their execution, save where exercising their rights of appeal or invoking some other declaratory procedure.

20. Public prosecutors must be objective and fair during court proceedings. In particular, they should ensure that the court is provided with all relevant facts and legal arguments necessary for the fair administration of justice.

Relationship between public prosecutors and the police

21. In general, public prosecutors should scrutinise the lawfulness of police investigations at the latest when deciding whether a prosecution should commence or continue. In this respect, public prosecutors will also monitor the observance of human rights by the police.

22. In countries where the police is placed under the authority of the public prosecution or where police investigations are either conducted or supervised by the public prosecutor, that state should take effective measures to guarantee that the public prosecutor may:

- a. give instructions as appropriate to the police with a view to an effective implementation of crime policy priorities, notably with respect to deciding which categories of cases should be dealt with first, the means used to search for evidence, the staff used, the duration of investigations, information to be given to the public prosecutor, etc.;
- b. where different police agencies are available, allocate individual cases to the agency that it deems best suited to deal with it;
- c. carry out evaluations and controls in so far as these are necessary in order to monitor compliance with its instructions and the law;
- d. sanction or promote sanctioning, if appropriate, of eventual violations.

23. States where the police is independent of the public prosecution should take effective measures to guarantee that there is appropriate and functional co-operation between the Public Prosecution and the police.

Duties of the public prosecutor towards individuals

24. In the performance of their duties, public prosecutors should in particular:

- a. carry out their functions fairly, impartially and objectively;
- b. respect and seek to protect human rights, as laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms;
- c. seek to ensure that the criminal justice system operates as expeditiously as possible.

25. Public prosecutors should abstain from discrimination on any ground such as sex, race, colour, language, religion, political or other opinion,

national or social origin, association with a national minority, property, birth, health, handicaps or other status.

26. Public prosecutors should ensure equality before the law, and make themselves aware of all relevant circumstances including those affecting the suspect, irrespective of whether they are to the latter's advantage or disadvantage.

27. Public prosecutors should not initiate or continue prosecution when an impartial investigation shows the charge to be unfounded.

28. Public prosecutors should not present evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to methods which are contrary to the law. In cases of any doubt, public prosecutors should ask the court to rule on the admissibility of such evidence.

29. Public prosecutors should seek to safeguard the principle of equality of arms, in particular by disclosing to the other parties – save where otherwise provided in the law – any information which they possess which may affect the justice of the proceedings.

30. Public prosecutors should keep confidential information obtained from third parties, in particular where the presumption of innocence is at stake, unless disclosure is required in the interest of justice or by law.

31. Where public prosecutors are entitled to take measures which cause an interference in the fundamental rights and freedoms of the suspect, judicial control over such measures must be possible.

32. Public prosecutors should take proper account of the interests of the witnesses, especially take or promote measures to protect their life, safety and privacy, or see to it that such measures have been taken.

33. Public prosecutors should take proper account of the views and concerns of victims when their personal interests are affected and take or promote actions to ensure that victims are informed of both their rights and developments in the procedure.

34. Interested parties of recognised or identifiable status, in particular victims, should be able to challenge decisions of public prosecutors not to prosecute; such a challenge may be made, where appropriate after an hierarchical review, either by way of judicial review, or by authorising parties to engage private prosecution.

35. States should ensure that in carrying out their duties, public prosecutors are bound by "codes of conduct". Breaches of such codes may lead to appropriate sanctions in accordance with paragraph 5 above. The performance of public prosecutors should be subject to regular internal review.

36. *a.* With a view to promoting fair, consistent and efficient activity of public prosecutors, states should seek to:

- give prime consideration to hierarchical methods of organisation, without however letting such organisational methods lead to ineffective or obstructive bureaucratic structures;
- define general guidelines for the implementation of criminal policy;
- define general principles and criteria to be used by way of references against which decisions in individual cases should be taken, in order to guard against arbitrary decision-making.

b. The above-mentioned methods of organisation, guidelines, principles and criteria should be decided by parliament or by government or, if national law enshrines the independence of the public prosecutor, by representatives of the public prosecution.

c. The public must be informed of the above-mentioned organisation, guidelines, principles and criteria; they shall be communicated to any person on request.

International co-operation

37. Despite the role that might belong to other organs in matters pertaining to international judicial co-operation, direct contacts between public prosecutors of different countries should be furthered, within the framework of international agreements where they exist or otherwise on the basis of practical arrangements.

38. Steps should be taken in a number of areas to further direct contacts between public prosecutors in the context of international judicial co-operation. Such steps should in particular consist in:

- a.* disseminating documentation;
- b.* compiling a list of contacts and addresses giving the names of the relevant contact persons in the different prosecuting authorities, as well as their specialist fields, their areas of responsibility, etc;
- c.* establishing regular personal contacts between public prosecutors from different countries, in particular by organising regular meetings between Prosecutors General;
- d.* organising training and awareness-enhancing sessions;
- e.* introducing and developing the function of liaison law officers based in a foreign country;
- f.* training in foreign languages;
- g.* developing the use of electronic data transmission;
- h.* organising working seminars with other states, on questions regarding mutual aid and shared crime issues.

39. In order to improve rationalisation and achieve co-ordination of mutual assistance procedures, efforts should be taken to promote:

- a.* among public prosecutors in general, awareness of the need for active participation in international co-operation, and
- b.* the specialisation of some public prosecutors in the field of international co-operation,

To this effect, states should take steps to ensure that the public prosecutor of the requesting state, where he or she is in charge of international co-operation, may address requests for mutual assistance directly to the authority of the requested state that is competent to carry out the requested action, and that the latter authority may return directly to him or her the evidence obtained.

EXPLANATORY MEMORANDUM

Introduction

Under the authority of the European Committee on Crime Problems (CDPC), the Committee of Experts on the Role of the Public Prosecution in the Criminal Justice System (PC-PR) was entrusted with studying the status of the Public Prosecution and its role in the criminal justice system, with a view to drafting recommendations.

The PC-PR met on seven occasions between October 1996 and November 1999.

The Committee drew up a questionnaire that was distributed to all member States. The replies constituted a basis for the Committee's work. A synthesis of such replies is appended to this memorandum.

At its last meeting, it approved the draft Recommendation and the draft Explanatory Memorandum thereto. At its 48th plenary session (June 2000) the CDPC examined these texts. It approved the draft Recommendation and submitted it to the Committee of Ministers. Furthermore, it adopted the Explanatory Memorandum.

At the 724th meeting of the Ministers' Deputies in October 2000, the Committee of Ministers adopted the text of the Recommendation and authorised the publication of the Explanatory Memorandum.

General considerations

Since its inception, the Council of Europe has worked tirelessly to establish and promote common principles in its member states' laws, systems and practices aimed at combating crime.

This is firstly because fighting crime demands the direct practical application of the principles on which the Council of Europe was founded and which it is expected to uphold, namely the rule of law, democracy and human rights. The second reason for its involvement is that “*the effectiveness of responses to crime depends greatly on their being harmonised within a coherent and concerted European crime policy*”.²

That requirement is all the more pertinent today with the existence of crime phenomena, such as organised crime and corruption, the international dimension of which is more and more important and with respect to which national machinery risks to prove insufficient³. That situation requires, other than redefining co-operation in criminal matters, the development of more closely approximated – or indeed common – principles and strategies.

It is a fact that European legal systems are still divided between two cultures - the split being evident both in the organisation of criminal procedure (which is either accusatorial or inquisitorial) and in the initiation of prosecutions (under either “mandatory” or “discretionary” systems). However, the traditional distinction is tending to blur as the different member states bring their laws and regulations more closely into line with what are now common European principles, in particular those laid down in the Convention for the Protection of Human Rights.

In the field of law enforcement - and the focus here is on the authorities responsible for prosecuting alleged offenders - it has taken longer for harmonisation to emerge as a concern, probably because the issue is a delicate one for the institutions in each state, with implications for the way that public authorities are organised.

None the less, several Council of Europe texts already offer guidance in matters related to the present Recommendation, and obviously the committee has given them its closest attention:

- Recommendation No. R (80) 11 concerning custody pending trial;
- Recommendation No. R (83) 7 on participation of the public in crime policy;
- Recommendation No. R (85) 11 on the victim’s position in the framework of criminal law and procedure;
- Recommendation No. R (87) 18 concerning the simplification of criminal justice, and specifically the section relating to discretionary prosecution;
- Recommendation No. R (87) 21 on assistance to victims and the prevention of victimisation;
- Recommendation No. R (92) 17 concerning consistency in sentencing;
- Recommendation No. R (94) 12 on the independence, efficiency and role of judges;
- Recommendation No. R (95) 12 on the management of criminal justice;

- Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence;

- Recommendation No. R (99) 19 concerning mediation in penal matters.

However, it is fair to say that, to date, the status, role and operating methods of authorities responsible for prosecuting alleged offenders have not been scrutinised in detail with a view to their harmonisation at European level.

In response to political upheaval in central and east Europe and to the thoroughgoing reforms undertaken in other countries (Italy, the Netherlands and France, for example), the Council of Europe has now made this question one of its priorities. It is clear from the fact that 25 states appointed representatives to the Select Committee of Experts set up to study the problem that the pursuit of harmonisation is both worthwhile and timely. But we would be wrong to see the task as a simple one, for a number of reasons:

Firstly, the very concept of an authority responsible for prosecuting alleged offenders is a dual one in Europe because its roots lie in two major systems founded on different bases:

- the French model of the “*ministère public*”, under which public officials have a virtual monopoly on prosecutions, within an inquisitorial system;

- the Anglo-Saxon model with its tradition of prosecutions being initiated either by victims or by the police, in an adversarial system.

Nowadays, all the member states possess a public prosecuting authority, known variously as the “state prosecutor”, the “prosecuting attorney” or the “public prosecutor”.⁴ In all criminal justice systems, this authority plays a key role, with differences depending on whether it is a long established or a more recent institution. The status and role of the Public Prosecution have also evolved considerably, reflecting the scale of the reforms undertaken in many member states over the last ten years.

Secondly, there are great differences in the institutional position of the public prosecutor from one country to another, firstly in terms of its relationship with the executive power of the state (which can range from subordination to independence), and secondly with regard to the relationship between prosecutors and judges: under some systems they belong to a single professional corps while in others they are entirely separate.

The committee considered that its job was neither to draw on features of both traditions in order to come up with some type of third option, nor to propose the unification of existing systems, nor to suggest a supranational model. Nor did it believe that it should merely seek the lowest common denominator. On the contrary, it took a dynamic approach and set out to identify the major guiding principles - common to both types of system - that ought to govern Public Prosecution as it moves into a new millennium.

At the same time it sought to recommend practical objectives to be attained in pursuit of the institutional balance upon which democracy and the rule of law in Europe largely depend.

Because the Recommendation is not legally binding, any form of words that otherwise could be interpreted to mean any obligation imposed on States must in fact be read to suggest that the State alone can implement the principle concerned.

Commentaries on individual recommendations

FUNCTIONS OF PUBLIC PROSECUTORS

1. Public prosecutors are public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.

In line with the Committee of Experts' terms of reference, the recommendation is exclusively concerned with the public prosecutor's role in the criminal justice system, although public prosecutors may also in some countries be assigned other important tasks in the fields of commercial or civil law, for example.

The wording "*the law where the breach of the law carries a criminal sanction*" denotes the criminal law in the broad sense. The term "criminal law" was rejected because many people tend to associate it exclusively with a Criminal (or Penal) Code, whereas today a growing and increasingly varied area of the law may be termed "criminal" not because it is embodied in any statute of a recognised "criminal" nature, but rather because the breach of its provisions systematically carries a criminal sanction.

It is the task of public prosecutors, as of judges, to apply the law or to see that it is applied. Judges do this reactively, in response to the cases brought before them, whereas the public prosecutor pro-actively "*ensures*" the application of the law. Judges sit on the bench and deliver decisions; public prosecutors are in the business of vigilance and action to bring cases to court. Operating neither on behalf of any other (political or economic) authority nor on their own behalf, but rather on behalf of society, public prosecutors must be guided in the performance of their duties by the public interest. They must observe two essential requirements concerning, on the one hand, the rights of the individual and, on the other, the necessary effectiveness of the criminal justice system, which the public prosecutor must, to some extent, guarantee. Here the committee wished to emphasise the concept of effectiveness because, whereas it is up to judges rather than public

prosecutors to decide individual cases concerning liberties in general and the rights of the defence in particular, it is public prosecutors, not judges, who are primarily responsible for the overall effectiveness of the criminal justice system with reference to the concept of the general interest.

Throughout the recommendation, the term “law” is used in its generally accepted sense, that of a body of legal rules emanating from different sources written and otherwise.

2. In all criminal justice systems, public prosecutors:

- **decide whether to initiate or continue prosecutions;**
- **conduct prosecutions before the courts;**
- **may appeal or conduct appeals of all or some court decisions.**

It is clear from an analysis of public prosecutors’ specific duties in the different member states, that they can be seen as forming a series of concentric circles. The inner circle contains the duties common to prosecutors in all criminal justice systems - the “core” tasks that have been the main focus of the committee’s deliberations.

Firstly, public prosecutors play the lead role in initiating and continuing prosecutions, although that role differs depending on whether the principle at work derives from a mandatory or discretionary system.

Secondly, the formal business of conducting a prosecution and arguing the case in court is the public prosecutor’s prerogative.

Lastly, the right of appeal against court decisions is intimately bound up with the public prosecutor’s overall function because it is one of the means of ensuring the application of the law while at the same time helping to make the system more efficient, particularly with regard to consistency in court rulings and, by extension, in law enforcement. On this point, the committee wished public prosecutors to be afforded substantial scope for appeals, which is not always the case under certain central and east European legal systems.

Moreover, this proposal cannot be seen in isolation from the recommendation’s provisions concerning the relationship between public prosecutors and judges.

3. In certain criminal justice systems, public prosecutors also:

- **implement national crime policy while adapting it, where appropriate, to regional and local realities;**
- **conduct, direct or supervise investigations;**
- **see to it that victims are effectively assisted;**
- **decide on alternatives to prosecution;**
- **supervise the execution of court decisions;**
- ... etc.

Listed here - albeit not exhaustively - are those of the public prosecutor's tasks that lie within the second circle. For institutional reasons they are not found in all legal systems and for the same reasons there is currently no consensus on whether they ought to apply generally.

None the less, they concern what is an extremely important aspect of several major continental European legal systems.

The implementation of crime policy as determined by the legislative authority and/or the executive is one of the public prosecutor's main tasks in many countries. The adaptation of national policy to regional and local realities does not imply freedom on the part of public prosecutors to depart from the priorities fixed in the central strategy or to jeopardise its consistent application. Quite the reverse: adaptation to regional and local conditions is a prerequisite if such priorities are to be applied properly.

With regard to investigations, the role assigned to the public prosecutor falls in every case between two extremes - one being the complete absence of authority to initiate investigations and the other the case where the prosecutor is fully empowered to investigate. In some countries the public prosecutor normally acts only when its attention has been drawn - usually by the investigating police authority - to apparent violations of criminal law. In other countries, the public prosecutor can make the first move and has its own active role in identifying breaches of the law - part of its task in these circumstances being to direct investigations. However, rather than merely recording these differences, the recommendation makes a number of specific points in relation to them (see paragraph 21 and following).

It also devotes specific attention to the question of support for victims (see paragraphs 33 and 34).

With regard to the public prosecutor's role in selecting alternatives to prosecution - an increasingly significant aspect of all systems, including those where the principle of mandatory prosecution applies - the committee chose not to break any new ground, but simply to refer to Recommendation (87) 18 concerning the simplification of criminal justice, which sets out in detail aims to pursue and methods to follow.

As regards the execution of court decisions, the public prosecutor's role varies depending on the systems. In certain cases, the public prosecutor himself orders that the court decision be executed; in other cases, he supervises the execution; in all cases, his role is particularly important where a custodial sentence is involved.

Lastly, in many member States, the Public Prosecution is given other essential tasks, such as:

- its role in recommending an appropriate sentence⁵.

- its role in co-operation in criminal matters, the importance of which justifies recommendations 37, 38 and 39 ahead.

SAFEGUARDS PROVIDED TO PUBLIC PROSECUTORS FOR CARRYING OUT THEIR FUNCTIONS

4. States should take effective measures to guarantee that public prosecutors are able to fulfil their professional duties and responsibilities under adequate legal and organisational conditions as well as adequate conditions as to the means, in particular budgetary means, at their disposal. Such conditions should be established in close co-operation with the representatives of the public prosecutors.

Like judges, public prosecutors can only perform their duties and properly discharge their professional responsibilities if they have the appropriate status, organisational back-up and resources, whether in terms of personnel, premises, means of transport or simply an adequate budget. Consulting representatives of the prosecution service about these requirements is a sure method of determining what the real needs are.

5. States should take measures to ensure that :

- a. the recruitment, the promotion and the transfer of public prosecutors are carried out according to fair and impartial procedures embodying safeguards against any approach representing interests of specific groups, and excluding discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status;**
- b. careers of public prosecutors, their promotions and their mobility be governed by known and objective criteria, such as competence and experience;**
- c. mobility of public prosecutors be governed also by the needs of the service;**
- d. reasonable conditions of service should be governed by law, such as remuneration, tenure and pension commensurate with the crucial role of prosecutors, as well as an appropriate age of retirement;**
- e. disciplinary proceedings against public prosecutors should be governed by law and should guarantee a fair and objective evaluation and decision which should be subject to independent and impartial review;**
- f. public prosecutors have access to a satisfactory grievance procedure, including where appropriate access to a tribunal, if their legal status is affected;**

g. public prosecutors, together with their families, are physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their functions.

These are the main safeguards needed to enable public prosecutors to carry out their functions properly, and all member states should be guided by them because they reflect a common concern, born not from any self-interested class thinking but from the will to eliminate a number of unlawful practices, in particular unlawful practices by political authorities.

The first three safeguards - (a), (b) and (c) - concern impartiality, which in one form or another must govern the recruitment and career prospects of public prosecutors. Arrangements for a competitive system of entry to the profession and the establishment of Service Commissions for the judiciary, or exclusively for prosecutors, are among the means of achieving impartiality. However, unlike judges, public prosecutors must not be guaranteed tenure in a particular position or post, although decisions to transfer them from one post to another must be based on verified needs of the service (in the light of the prosecutors' skills and experience), and not simply on arbitrary decisions by the authorities. The quest for mobility should not however induce any prioritising temporary recruitments or appointments that may carry damaging effects.

The status of public prosecutors and their rates of remuneration and pension - see (d) above - must take account of the need to maintain a certain balance between members of the judiciary and the prosecution service, as both - despite the different nature of their duties - play a part in the criminal justice system. The material conditions of service should also reflect the importance and dignity of the office. Lastly, improving the situation of public prosecutors in certain member states, particularly in central and east Europe, should curb the tendency for them to desert to private sector posts.

As to disciplinary decisions (e), it should at the end of the day be possible for prosecutors to submit them to review by an independent and impartial entity. However, this is not meant to prevent the requirement of previous administrative or hierarchical review.

The term "tribunal" in (f) above is used in the sense it carries in Article 6 of the European Convention on Human Rights.

The requirement in (g) that public prosecutors should enjoy protection refers back to the provisions of Recommendation (94) 12.

6. States should also take measures such to enable that public prosecutors have an effective right to freedom of expression, belief, association and assembly. In particular they should have the right to take part in public discussion of matters concerning the law, the administration of justice and

the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings in a private capacity, without suffering professional disadvantage by reason of their lawful action of their membership in a lawful organisation. The rights mentioned above can only be limited in so far as this is prescribed by law and is necessary to preserve the constitutional⁶ position of the public prosecutors. In cases where the rights mentioned above are violated, an effective remedy should be available.

This recommendation is based in particular in Article 10 of the Convention for the Protection of Human Rights. It must be interpreted in the light of the prosecutor's duties, in particular the duty of reserve. In this respect, members of the Public Prosecution, in certain member States, may neither become a member of a political party nor be active in politics.

7. Training is both a duty and a right for all public prosecutors, before their appointment as well as on a permanent basis. States should therefore take effective measures to ensure that public prosecutors have appropriate education and training, both before and after their appointment. In particular, public prosecutors should be made aware of:

- a. the principles and ethical duties of their office;
- b. the constitutional and legal protection of suspects, victims and witnesses;
- c. human rights and freedoms as laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms, especially the rights as established by Articles 5 and 6 of this Convention;
- d. principles and practices of management in a judicial context;
- e. mechanisms and materials which contribute to consistency in their activities.

Furthermore, States should take effective measures to provide for additional training on specific issues or in specific sectors, in the light of present-day conditions, taking into account in particular the types and the development of criminality, as well as international co-operation on criminal matters.

The committee based its thinking on the principle that, while training is a fundamental aspect of the way the Public Prosecution is organised in all European countries, it needs to be reinforced in terms of quality and quantity, for both trainee and serving prosecutors, by becoming a veritable right. At the same time, all members of the prosecution service must be convinced that they have a duty - particularly to those brought before the courts - to undertake training.

Specifically, they should be made more aware of:

- the ideals and ethical duties of their office;

- the constitutional and legal protection of suspects' and victims' rights;
 - human rights and freedoms as laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms, especially in Articles 5 and 6 thereof, in the light of the case-law of the Strasbourg Court. Attention must also be paid to the tasks assigned to principal state prosecutors in the fields of management, administration and the organisation of multidisciplinary teams - see sub-paragraph (d). The expression "*in a judicial context*" refers to the fact that many legal systems require public prosecutors, judges and other officers of the law to work together in the same functional administrative structures or in structures that, although separate, are closely linked and increasingly interconnected. Moreover, there are certain specific features of legal management and administration that differ from those of mainstream administrative management and must be taken into account.

Lastly, greater equality of treatment for persons appearing before the courts depends on achieving greater consistency in the work of the prosecution service at local, regional and central levels, and not only with regard to individual decisions⁷. Training must therefore include information about the different mechanisms that can promote consistency - sub-paragraph (e) - which are discussed in greater detail in paragraph 36a.

In general, sub-paragraphs (d) and (e) reflect and redefine the aims set out in Recommendation (95) 12 on the management of criminal justice, which includes the following:

"Management principles, strategies and techniques may make significant contributions to the efficient and effective functioning of criminal justice. To this end, the agencies concerned should set objectives for the management of their workloads, finances, infrastructure, human resources and communications.

The achievement of more efficient and effective criminal justice will be greatly facilitated if the objectives of the various agencies are co-ordinated within a broader framework of crime control and criminal justice policies."

At a practical level, and in the light of developments in crime, there is a good case for additional training in specific sectors, such as:

- cross-border crime and other forms of crime of international concern;
- organised crime;
- computer crime;
- international trafficking in psychotropic substances;
- offences relating to complicated financial transactions, such as money laundering and large-scale fraud;
- international co-operation on criminal matters;
- comparative criminal justice systems and comparative law;

- prosecution strategies;
- vulnerable witnesses and victims;
- the contribution of criminal law to the protection of the environment, in particular the Council of Europe texts in this field, namely Resolution (77) 28 and the Convention on the Protection of the Environment through Criminal Law (ETS 172);
- scientific-based evidence, in particular the use of recently developed technologies such as DNA profiling.

8. In order to respond better to developing forms of criminality, in particular organised crime, specialisation should be seen as a priority, in terms of the organisation of public prosecutors, as well as in terms of training and in terms of careers. Recourse to teams of specialists, including multi-disciplinary teams, designed to assist public prosecutors in carrying out their functions should also be developed.

All public prosecutors must be thoroughly familiar with most areas of the law. In that sense, they must be generalists rather than specialists. None the less, for reasons of effectiveness, specialisation is essential in fields that are highly technical (business-related and financial crime, for example), or fall into the category of large-scale organised crime.

Accordingly, two types of specialisation are envisaged:

- firstly the traditional form of specialisation in which the prosecution service is organised to include (in larger offices or at regional or national level) teams of prosecutors specialising in specific sectors. Dissociating grade from post might be a way of encouraging such specialisation, as envisaged in Recommendation (95) 12, paragraph 13:

“Career development planning should be actively pursued, *inter alia* through furthering specialisation, dissociating grade from post where appropriate, and by creating other opportunities for staff to develop new skills and expertise [...]”;

- the second type of specialisation that should be encouraged is the formation, under the direction of prosecutors who are themselves specialists, of truly multi-disciplinary teams whose members are drawn from a variety of backgrounds (a team dealing with financial crime and money laundering, for example, might include chartered accountants, customs officers and banking experts). This pooling of expertise in a single unit is a vital factor in the operational effectiveness of the system.

9. With respect to the organisation and the internal operation of the Public Prosecution, in particular the assignment and re-assignment of cases, this should meet requirements of impartiality and independence and maximise

the proper operation of the criminal justice system, in particular the level of legal qualification and specialisation devoted to each matter.

A hierarchical structure is a necessary aspect of all Public Prosecution services, given the nature of the tasks they perform. But relationships between the different layers of the hierarchy must be governed by clear unambiguous rules so that personal considerations do not play an unwarranted role. Such is the thinking behind paragraphs 9 and 10, as amplified by paragraph 36a.

Paragraph 9 requires in principle that the same level of impartiality employed in determining public prosecutors' status should be reflected in the internal organisation and functioning of each Public Prosecution office.

10. All public prosecutors enjoy the right to request that instructions addressed to him or her be put in writing. Where he or she believes that an instruction is either illegal or runs counter to his or her conscience, an adequate internal procedure should be available which may lead to his or her eventual replacement.

With regard to instructions delivered within the hierarchy - a particularly sensitive question in legal systems where senior levels of the service are entitled to issue instructions about specific cases and about general criminal policy - there are two extremes that should be avoided.

On the one hand, affording all public prosecutors a "conscience clause" right would lead to excesses that could not be dealt with satisfactorily through appeal mechanisms. Moreover, the introduction of such mechanisms would have the effect of bringing relationships between the different levels of the prosecution service within the jurisdiction of the courts in a manner likely to impede the smooth operation of the system.

On the other hand, it is unacceptable in human terms, and potentially dangerous in terms of civil liberties, to require that all members of the prosecution service carry out instructions which they may regard as unlawful or to which they have a conscientious objection.

It is therefore recommended that, in such circumstances, two types of guarantee should be available:

- the first (already enjoyed by all those who have dealings with the administration or come before the courts) is that of being able to request that instructions are delivered in writing so that the hierarchy assumes direct responsibility. Because instructions from superiors vary widely - from the most routine everyday decisions to rulings on matters of principle - it was considered inappropriate to require that they all be delivered in writing, as to do so would plunge public prosecutors into a jungle of red tape (but see

paragraphs 13c and d, on government instructions, which differ on this point).

- the second guarantee is offered by the introduction into Public Prosecution services of an internal procedure enabling subordinates, at their own request, to be replaced in order to allow the disputed instruction to be carried out.

It should be understood that these guarantees are established in the interest of both individual prosecutors and the public. In other words, they are intended to come into play only in exceptional circumstances and must not be misused - for example, as a means of impeding the smooth running of the system. It is clear, too, that the hierarchy must be organised so as to leave ample scope for co-operation and team spirit.

At the same time, public prosecutors who have recourse to these guarantees in circumstances that warrant their so doing must not suffer any consequences prejudicial to their careers.

RELATIONSHIP BETWEEN THE PUBLIC PROSECUTION AND THE EXECUTIVE AND LEGISLATIVE POWERS

Legal Europe is divided on this key issue between the systems under which the public prosecutor enjoys complete independence from parliament and government and those where it is subordinate to one or other of these authorities while still enjoying some degree of scope for independent action. Inasmuch as this is an institutional question - concerned with the fundamental distribution of power in the state - and currently, in many countries, a key factor in internal reforms occasioned either by changes in the historic context or by the existence of problems in the relationship between justice and politics, the very notion of European harmonisation around a single concept seemed premature.

Therefore the committee sought, by analysing the two types of system currently in operation, to identify the elements for achieving the balance that is necessary if excesses in either direction are to be avoided. As well as laying down common rules for all public prosecutors (see paragraphs 11 and 12), it took pains to create "safety nets" specifically intended for either those systems where prosecutors were to some degree subordinate (see paragraphs 13 and 16) or those where they enjoyed independence (see paragraphs 14 and 15).

11. States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to

civil, penal or other liability. However, the Public Prosecution should account periodically and publicly for its activities as a whole and, in particular, the way in which its priorities were carried out.

There are two requirements for the proper functioning of Public Prosecution in all circumstances:

- on the one hand, public prosecutors must enjoy such independence or autonomy as is necessary for the exercise of their duties⁸, and in particular to be able to act whatever the interests at stake, “*without unjustified interference*” (unjustified i.e. in cases other than those provided in the law) not only from any other authority, whether executive or legislative - this being most relevant in systems where the public prosecutor is subordinate - but also from economic forces and local political authorities. Generally speaking, the law itself provides such a safeguard, indeed in some cases unjustified interference is a criminal offence. But interference can be more insidious, for example taking the form of a squeeze on the Public Prosecution’s budget, thus making the service more dependent on sources of financing not originating in the State.

- on the other hand, while there must be provision for public prosecutors - given the substantial powers they enjoy and the consequences that the exercise of those powers can have on individual liberties - to be made liable at disciplinary, administrative, civil and criminal level for their personal shortcomings, such provision must be within reasonable limits in order not to encumber the system. The emphasis must therefore be on appeal to a higher level or to an ad-hoc committee and on disciplinary procedures, although individual prosecutors must, like any other individuals, be held responsible for any offences they may commit. Clearly, however, in systems where public prosecutors enjoy full independence, they carry greater responsibility.

These requirements go hand in hand with the need for transparency. Apart from individual decisions that are the subject of specific recommendations, all public prosecutors - because they act on behalf of society - must give account of their work at local or regional level, or indeed national level if the service is highly centralised. These regular accounts must be made to the general public - either directly through the media or a published report, or before an elected assembly. They may take the form of reports or bodies of statistics indicating work done, aims achieved, ways in which crime policy was implemented considering the discretionary powers in the hands of Public Prosecution, and sums of public money spent; and setting out priorities for the future. This type of reporting, already a feature of many systems where the public prosecutor enjoys substantial independence, can also have a

positive impact on other systems inasmuch as it makes for greater consistency in the prosecutor's work.

12. Public prosecutors should not interfere with the competence of the legislative and the executive powers.

This paragraph - a corollary to the preceding one - restates the familiar principle of the separation of powers.

In particular, where the law provides otherwise, the final interpretation of statutes and other legislative measures, and any evaluation of their constitutionality, is the preserve of the courts, not the public prosecutor. While the public prosecutor may recommend changes in the law and, where appropriate, give opinions on its interpretation, it does not have the authority to impose a legal interpretation.

13. Where the Public Prosecution is part of or subordinate to the government, States should take effective measures to guarantee that:

- a. the nature and the scope of the powers of the government with respect to the Public Prosecution are established by law;
- b. government exercises its powers in a transparent way and in accordance with international treaties, national legislation and general principles of law;
- c. where government gives instructions of a general nature, such instructions must be in writing and published in an adequate way;
- d. where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law, the government being under a duty, for example:
 - to seek prior written advice from either the competent public prosecutor or the body that represents the Public Prosecution;
 - duly to explain its written instructions, especially when they deviate from the public prosecutor's advice and transmit them through the hierarchical channels;
 - to see to it that, before the trial, the advice and the instructions become part of the file so that the other parties may take cognisance of it and make comments;
- e. public prosecutors remain free to submit to the court any legal arguments of their choice, even where they are under a duty to reflect in writing the instructions received;
- f. instructions not to prosecute in a specific case should, in principle, be prohibited. Should that not be the case, such instructions must remain exceptional and be subjected not only to the requirements indicated in

paragraph *d.* above but also to an appropriate specific control with a view in particular to guaranteeing transparency.

This provision specifically concerns systems in which the public prosecutor is subordinate to the executive authority. It details how the two entities must relate to one another at the level of practical, rather than institutional, arrangements so that the form of subordination leaves scope for a certain degree of autonomy deemed essential to the functioning of all public prosecutors, particularly in dealing with individual cases.

Instructions of a general nature, for example on crime policy, must be in writing and be published (sub-paragraph (c)) more for the information of those who come before the courts than as a safeguard for public prosecutors. It is also advisable to see to it that such instructions, in particular when they aim at exempting from prosecution one or another category of facts, respect strictly equity and equality; moreover, it must not be possible to seek a solution to an individual case under cover of instructions of a general nature. Instructions in respect of specific cases are more problematic, particularly in systems where the principle of discretionary prosecution applies. Indeed, it is just such systems that have raised questions in several member states in recent years as the risk of government partisanship has been recognised.

The committee worked from the premise that the authority to issue instructions in respect of specific cases is not an essential element of systems based on the principle of subordination: in certain cases, public prosecutors, despite being subordinate to governments or parliaments, may only be given instructions of a general nature. If there is scope for instructions in respect of specific cases, that principle must be stated explicitly in the legislation (see (a) and (d)).

After much reflection, the committee also concluded that instructions of a specific nature should be confined to the conduct of particular prosecutions, recommending that instructions not to prosecute should be prohibited - see (f) - given that, in the absence of monitoring by the courts, they pose a particular threat to the principle of equality before the law. This means that discretionary decisions not to prosecute should be the exclusive preserve of the public prosecutor. In systems where such discretionary decisions are currently possible, it is recommended that, as a minimum step, existing safeguards should be strengthened by introducing a specific system for the retrospective monitoring of instructions given, in order to ensure transparency.⁹

Instructions in relation to specific prosecutions should also be subject to all or some of the safeguards listed in sub-paragraph (d): the stipulation that the public prosecutor must be consulted in advance; the duty to explain the instruction; the requirement that it be recorded in the case file; and the

insistence on the public prosecutor's freedom in arguing cases before the court.

14. In countries where the Public Prosecution is independent of the government the State should take effective measures to guarantee that the nature and the scope of the independence of the Public Prosecution should be established by law.

Where the public prosecutor is independent of the executive authority, the nature and extent of that independence must be fixed by law so as to rule out (a) informal practices that could undermine that principle and (b) any risk of drift towards self-interest by public prosecutors themselves.

15. In order to promote the fairness and effectiveness of crime policy, public prosecutors should co-operate with government agencies and institutions in so far as this is in accordance with the law.

Because the public prosecutor is independent, there is a risk that it may be out of step with other branches of the state administration involved in directing and implementing crime policy. The public prosecutor must therefore co-operate closely with these various services, which as a rule are answerable to the government, and the principle and methods of such co-operation must have a legal basis.

In order to co-operate with these administrative bodies, the Public Prosecution service itself must be rigorously organised and possess representatives empowered to enter into agreements. Moreover, rigorous internal organisation is essential for ensuring overall consistency in the work of the different public prosecutors, in particular with respect to the crime policy actually applied by them within the framework of their discretionary powers.¹⁰

16. Public prosecutors should, in any case, be in a position to prosecute without obstruction public officials for offences committed by them, particularly corruption, unlawful use of power, grave violations of human rights and other crimes recognised by international law.

Although applicable generally, this recommendation specifically concerns those systems where the public prosecutor is subordinate to the government, a situation that must not prevent it from prosecuting public officials - or, by extension, elected representatives or politicians - who commit offences, particularly where corruption is involved.

«Obstruction» means any hindrance placed in the path of prosecution; it also means any practice amounting to reprisal upon public prosecutors.

RELATIONSHIP BETWEEN PUBLIC PROSECUTORS AND COURT JUDGES

The committee considered it important to state clearly that, although public prosecutors and judges are part of the same legal system and although the status and certain functions of the two professions are similar, public prosecutors are not judges and there can be no equivocation on that point, just as there can be no question of public prosecutors exerting influence on judges. On the contrary, the dealings between the two professions - which inevitably come into frequent contact - must be characterised by mutual respect, objectivity and the observance of procedural requirements.

17. States should take appropriate measures to ensure that the legal status, the competencies and the procedural role of public prosecutors are established by law in a way that there can be no legitimate doubt about the independence and impartiality of the court judges. In particular States should guarantee that a person cannot at the same time perform duties as a public prosecutor and as a court judge.

Firstly, any ambiguity about the respective status and roles of public prosecutors and judges should be removed so that each profession is clearly identified in the eyes of the public and no confusion exists in the minds of those who come before the courts. The first step in this regard is to lay down clear rules of procedure concerning the public prosecutor's capacity to act. The second element is a restatement of the basic principle that a person cannot at the same time perform duties as a public prosecutor and a judge. There is no inconsistency between this principle and paragraph 5*b*, which is intended to provide for the possibility of public prosecutors becoming judges, or vice-versa, in the course of their careers. Likewise, the fact that some prosecutors can be employed temporarily as judges at the beginning of their careers, in order to evaluate their qualifications, is not contrary to the principle.

18. However, if the legal system so permits, States should take measures in order to make it possible for the same person to perform successively the functions of public prosecutor and those of judge or vice versa. Such changes in functions are only possible at the explicit request of the person concerned and respecting the safeguards.

The possibility that public prosecutors become judges and vice-versa is based not only on the complementary nature of their duties but also on the fact that similar guarantees in terms of qualifications, competence and status are

required in relation to both professions. This provision also constitutes a further safeguard for the public prosecutor.

19. Public prosecutors must strictly respect the independence and the impartiality of judges; in particular they shall neither cast doubts on judicial decisions nor hinder their execution, save where exercising their rights of appeal or invoking some other declaratory procedure.

The close relationship between public prosecutors and judges must not affect the impartiality of the latter. Public prosecutors, whose job it is to guarantee the application of the law, must be vigilant on this point while at the same time scrupulously respecting the court decisions which it is often their duty to implement, save where exercising their normal right of appeal.

It is obvious that the reverse is also true: judges must respect public prosecutors as representatives of a distinct professional body and not interfere with the exercise of their functions.

The term “*declaratory procedure*” means any procedure having the same effect as an appeal, though not technically an appeal as such.

20. Public prosecutors must be objective and fair during court proceedings. In particular, they should ensure that the court is provided with all relevant facts and legal arguments necessary for the fair administration of justice.

The third recommendation under this heading concerns the need for objectivity on the part of public prosecutors and for transparency in their dealings with judges, so that the latter have a sound basis on which to deliver a ruling. The first priority for ensuring transparency must be the communication of all relevant facts and arguments. In addition, apart from information on individual cases, it is useful for judges to be kept informed about the public prosecutor’s general priorities and criteria for action.

RELATIONSHIP BETWEEN THE PUBLIC PROSECUTION AND THE POLICE

The question of institutional links between the Public Prosecution and the police is another stumbling block in the pursuit of harmonisation at European level. There is a distinction between those states in which the police service is independent of the Public Prosecution, and enjoys considerable discretion not only in the conduct of investigations but also often in deciding whether to prosecute, and those in which policing is supervised, or indeed directed, by the public prosecutor. However, this is another field in which the requirements of human rights and respect for

individual liberties have recently led to change - based on the premise that internal monitoring in the police service is inadequate given the extent of police powers and the particularly damaging consequences of any illegality - with a tendency towards convergence. It is for this reason that the committee laid down a general principle common to both systems before proceeding to specific recommendations for each.

21. In general, public prosecutors should scrutinise the lawfulness of police investigations at the latest when deciding whether a prosecution should commence or continue. In this respect, public prosecutors will also monitor the observance of human rights by the police.

All public prosecutors must have at least two functions vis-à-vis the work of the police: namely scrutinising the lawfulness of police investigations before any decision to proceed with public prosecution can be taken and, at the same stage, monitoring in general terms that human rights are respected.¹¹

22. In countries where the police is placed under the authority of the Public Prosecution or the police investigations are either conducted or supervised by the public prosecutor, that State should take effective measures to guarantee that the public prosecutor may:

- a. give instructions as appropriate to the police with a view to an effective implementation of crime policy priorities, notably with respect to deciding which categories of cases should be dealt with first, the means used to search for evidence, the staff used, the duration of investigations, information to be given to the Public Prosecution, ... etc;
- b. where different police agencies are available, allocate individual cases to the agency that it deems best suited to deal with it;
- c. carry out evaluations and controls in so far as these are necessary in order to monitor compliance with its instructions and the law;
- d. sanction or promote sanctioning if appropriate of eventual violations.

These provisions relate exclusively to systems in which the public prosecutor is empowered, to any extent, to supervise the police and police activities. In this context, while the committee chose not to express a view on the recurring question of whether all or part of the police service should be attached to the public prosecutor, it sought to voice its concerns about the public prosecutor's real capacity to direct and supervise, given that there is a significant discrepancy, in many cases, between the prosecutor's statutory powers and their actual exercise on a routine basis.

The effective exercise of such authority depends, first and foremost, on the public prosecutor being fully empowered - over and above its capacity to issue instructions in relation to specific cases - to give general instructions

with a view to ensuring that crime policy priorities (which it is often responsible for implementing) are followed in every respect. For example, the priority requirement might be a concerted effort to solve certain types of crime (such as petty theft or money laundering) depending on the government's policy choices; an emphasis on particular methods of evidence-gathering (e.g. specific inquiries to be made in cases of burglary, or the use of DNA profiling); the allocation of certain types of resource to certain investigations or to the detection of certain types of offence; an effort to limit the duration of investigations (which often take too long); or a duty to notify the public prosecutor systematically of all offences of a certain gravity, and of progress with investigations.

In addition, where more than one police agency has the capacity to conduct a specific inquiry, it is up to the public prosecutor to decide which is the most appropriate, paying due regard, of course, to the territorial jurisdiction and particular fields of competence of the different agencies and to the practical and operational constraints placed on them.

Lastly, police officers are all the more in a position effectively to apply instructions issued by the Public Prosecution when the latter participates in their training process.

While interaction and co-operation must be the keynotes in dealings between the public prosecutor and the police, it is also important that the former should have the necessary resources to ensure that instructions are complied with and to penalise any failure to comply.

23. States where the police is independent of the Public Prosecution should take effective measures to guarantee that there is appropriate and functional co-operation between the Public Prosecution and the police.

In the absence of institutional links between the public prosecutor and the police, the two institutions must none the less co-operate and it is up to the government to determine what form the co-operation should take.

DUTIES OF THE PUBLIC PROSECUTOR TOWARDS INDIVIDUALS

As a necessary corollary to the safeguards enjoyed by the public prosecutor in the performance of its functions, it must have certain duties towards those who come into contact with the legal system whether as suspects, witnesses or victims of crime.

24. In the performance of their duties, public prosecutors should in particular:

- a. carry out their functions fairly, impartially and objectively;**
- b. respect and seek to protect human rights, as laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms;**
- c. seek to ensure that the criminal justice system operates as expeditiously as possible.**

Here, the text underscores the two vital requirements mentioned in recommendation 1 - respect for the rights of the individual and the pursuit of effectiveness - for which the public prosecutor is partly accountable.

25. Public prosecutors should abstain from discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, health, handicaps or other status.

The fact that the public prosecutor is in charge of prosecutions must not overshadow its primary function as a custodian of the law: this means that it must behave impartially, and the practical implications of that principle are set out in the following paragraphs of the recommendation.

26. Public prosecutors should ensure equality before the law, and make themselves aware of all relevant circumstances including those affecting the suspect, irrespective of whether they are to the latter's advantage or disadvantage.

27. Public prosecutors should not initiate or continue prosecution when an impartial investigation shows the charge to be unfounded.

28. Public prosecutors should not present evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to methods which are contrary to the law. In cases of any doubt, public prosecutors should ask the court to rule on the admissibility of such evidence.

Because it is answerable for the way the law is applied, the public prosecutor must take account of the manner in which incriminating evidence is obtained.

The expression "*methods which are contrary to the law*" is intended to cover not so much minor, formal irregularities, many of which have no impact on the overall validity of proceedings, but rather those illegalities that impinge on fundamental rights.

Typically two sets of situations may occur: either there is no room for doubt as to the illegal nature of the evidence and the public prosecutor must act on its own account in refusing to admit that evidence; or else there is an element of doubt and the public prosecutor, either before or at the time of conducting the prosecution, must ask the court to rule on the admissibility of the evidence.

29. Public prosecutors should seek to safeguard the principle of equality of arms, in particular by disclosing to the other parties – save where otherwise provided in the law - any information which they possess which may affect the justice of the proceedings.

The duty of parties in a case to disclose information - a corollary to the stipulation in paragraph 20 that public prosecutors must be objective and fair in their dealings with judges - is a key factor in the adversarial nature of court proceedings. However, the committee wished to make an exception for those cases where an overriding public interest justifies keeping certain documents or information confidential (for example, where the law provides that certain sources of information shall not be disclosed for security reasons), but such cases must remain the exception.

The principal of equality of arms is contained in Article 6 (1) of the European Convention on Human Rights: “it is only one feature of the wider concept of fair trial by an independent and impartial tribunal” (European Court of Human Rights, *Delcourt Case*, judgement of 17 January 1970, § 28).

“Under the principle of equality of arms [...] each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage

vis-à-vis his opponent. [...] In this context, importance is attached to appearances as well as to the increased sensitivity to the fair administration of justice [...]” (European Court of Human Rights, *Bulut v. Austria*, judgement of 22 February 1996, § 47).

30. Public prosecutors should keep confidential information obtained from third parties, in particular where the presumption of innocence is at stake, unless disclosure is required in the interest of justice or by law.

The public prosecutor must maintain the presumption of innocence, which is recognised under all democratic systems, on the understanding that there may be (exceptional) cases where information obtained cannot be kept confidential: such breaches of confidentiality must be authorised or required by law.

31. Where public prosecutors are entitled to take measures which cause an interference in the fundamental rights and freedoms of the suspect, judicial control over such measures must be possible.

Depending on the legal system in question, the public prosecutor - acting either directly or via the services that it controls or supervises - may be empowered to take measures that interfere with the freedoms of the individual. While the committee did not think it worthwhile to restate the principles and safeguards laid down in the European Convention on Human Rights and other international texts, it was concerned to emphasise the need for judicial review, given that ultimately only the courts can guarantee freedoms.

32. Public prosecutors should take proper account of the interests of the witnesses, especially take or promote measures to protect their life, safety and privacy, or see to it that such measures have been taken.

Efforts to combat organised crime increasingly necessitate the adoption of measures for the protection of witnesses. It is usually the task of the public prosecutor leading the prosecution either to take effective measures or to use its best endeavours so that such measures are taken by the police.

In this respect it is useful to refer to Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence.

33. Public prosecutors should take proper account of the views and concerns of victims when their personal interests are affected and take or promote actions to ensure that victims are informed of both their rights and developments in the procedure.

The place accorded to victims in criminal proceedings varies from one legal system to another, depending in particular on whether a civil action may be brought in the criminal courts. None the less, consideration for victims is now a major element of European crime policies. The committee therefore decided it was necessary to include in the recommendation the public prosecutor's main duties regarding victims, whatever the legal system.

While some legal systems are obviously more ambitious in this respect, it is useful to refer to the main instruments already adopted by the Council of Europe:

- Resolution (77) 27 on the compensation of victims of crime;
- Recommendation No. R (85) 11 on the victim's position in the framework of criminal law and procedure;
- Recommendation No. R (87) 21 on assistance to victims and the prevention of victimisation;

- European Convention on the Compensation of Victims of Violent Crimes;
- Recommendation No. R (99) 19 concerning mediation in penal matters ...

34. Interested parties of recognised or identifiable status, in particular victims, should be able to challenge decisions of public prosecutors not to prosecute; such a challenge may be made, where appropriate after an hierarchical review, either by way of judicial review, or by authorising parties to engage private prosecution.

In all legal systems, in particular those systems under which the public prosecutor exercises discretion on whether or not to prosecute, decisions to discontinue proceedings where an offence has clearly been committed - and many such decisions are accompanied by proposals for an alternative to prosecution (e.g. a compromise settlement, mediation, a caution or warning or the imposition of conditions) - pose a difficult problem if they are contested by the persons concerned and/or their grounds are controversial. In addition to recommending - in item 13e - that government instructions not to prosecute should be prohibited, the committee sought to help reinforce the whole system of checks and balances designed to ensure that the criminal justice system is not diverted from its objectives, all without prejudicing other rights enjoyed by the parties under national law. It encountered two types of difficulty. Firstly, while the great majority of offences produce identifiable (individual or groups of) victims, others - such as corruption or interference with the financial interests of the state or a regional or local authority - do not. To create a right applicable only to victims would thus mean accepting the absence of democratic checks on the public prosecutor's activities in a number of particularly sensitive areas. On the other hand, indiscriminately permitting anyone who considered themselves affected by offences to contest decisions not to prosecute would effectively bring public prosecutions grinding to a halt and increase the incidence of appeals being lodged as a delaying tactic.

Thus the committee wished to recognise not only victims' rights but also the rights of "*interested parties of recognised or identifiable status*", for example a person having reported facts to a judicial authority (subject to certain conditions) or associations empowered, or authorised in exceptional circumstances, to defend an area of public interest.

The second difficulty concerns the type of control machinery needed, given that it must not have negative effects such as the paralysis of the system or the introduction of a general requirement for judicial review of all the public prosecutor's decisions, however well-founded and lawful. On the other hand, systems of hierarchical review or appeal have not always been adequate or

even appropriate, particularly in cases of decisions taken by public prosecutors on the instructions of their superiors.

Building on Recommendation No. R (87) 18 concerning the simplification of criminal justice, the committee has recommended the introduction of procedures for either judicial review - aware that this concept may vary from one country to another - or for authorising the parties as defined above to bring private prosecutions. Such authorisation could be given generally or on a case-by-case basis.

In some jurisdictions, although remedies exist such as those described in this recommendation, they are limited in their scope.

35. States should ensure that in carrying out their duties, public prosecutors are bound by “codes of conduct”. Breaches of such codes may lead to appropriate sanctions in accordance with item 5 above. The performance of public prosecutors should be subject to regular internal review.

Public prosecutors should in particular demonstrate high standards of decision-making and professional conduct.

As public prosecutors become increasingly independent or autonomous, and thus of necessity assume a greater burden of responsibility, existing statutory and procedural regulations may become insufficiently detailed as a guide to the ethics and conduct of the profession.

However, the drafters do not envisage the proposed “*code of conduct*” as a formal code, but rather as a reasonably flexible set of prescriptions concerning the approach to be adopted by public prosecutors, clearly aimed at delimiting what is and is not acceptable in their professional conduct. Regular monitoring is an appropriate way to ensure the observance of such rules.

36. a. With a view to promoting a fair, consistent and efficient activity of public prosecutors, States should seek to:

- give prime consideration to hierarchical methods of organisation, without however letting such organisational methods lead to ineffective or obstructive bureaucratic structures;
- define general guidelines for the implementation of criminal policy;
- define general principles and criteria to be used by way of references against which decisions in individual cases should be taken, in order to guard against arbitrary decision-making.

b. The above-mentioned methods of organisation, guidelines, principles and criteria are decided by parliament or by government or, if national law

enshrines the independence of the public prosecutor, by representatives of the Public Prosecution.

c. The public must be informed of the above-mentioned organisation, guidelines, principles and criteria; they shall be communicated to any person on request.

Ensuring that citizens are equal before the law and that the criminal justice system functions efficiently demands a certain level of co-ordination and an effort at consistency, extending beyond the handling of individual cases.

These requirements are even more pertinent in systems where the public prosecutor is an independent authority or enjoys considerable autonomy.

Three elements should take precedence in the pursuit of consistency:

- a well designed hierarchy, with no place for insidious bureaucracy, in which all members of the Public Prosecution service should feel responsible for their own decisions and capable of taking the initiatives needed to do their particular job (see also paragraphs 9 and 10 on this point);
- general guidelines on the implementation of crime policy, setting out priorities and the means of pursuing them having account of the discretionary powers recognised to the public prosecutor;
- a set of criteria to guide decision-making in individual cases, with the aim, for example, of preventing inconsistencies such as that of certain offences systematically attracting prosecution in certain public prosecutors' offices and not in others or being dealt with under different procedures or categorised differently.

These criteria must be framed in such a way as to have the desired effect without rigidly impeding the necessary evaluation of each case individually and in the light of local circumstances, or creating a grey area, within which offenders may operate with impunity.

The committee considers it to be of prime importance that such guidelines, principles and criteria should be approved by parliament or government.

Only where national law enshrines the independence of the public prosecutor can the Public Prosecution itself be empowered to establish them. Because such instruments are intended primarily to safeguard the members of the public rather than the public prosecutors, they must be brought to the attention of the public or at least of all those concerned. This is a particularly important requirement in systems where the public prosecutor is independent or enjoys substantial discretionary powers.

INTERNATIONAL CO-OPERATION

Given the number of existing international instruments and recommendations and the fact that this field is under specific scrutiny within the Council of Europe itself, the committee concentrated on identifying practical measures for improving the current situation, bearing in mind the important role normally played by the public prosecutor in international judicial co-operation on criminal matters.

37. Despite the role that might belong to other organs in matters pertaining to international judicial co-operation, direct contacts between public prosecutors of different countries should be furthered, within the framework of international agreements where they exist or otherwise on the basis of practical arrangements.

The committee acknowledged that, as a result of international agreements, some States currently resort to central authorities. Direct contacts should nevertheless be encouraged, in particular within member States.

38. Steps should be taken in a number of areas to further direct contacts between public prosecutors in the context of international judicial co-operation. Such steps should in particular consist in:

- a. disseminating documentary tools;
- b. compiling a list of contacts and addresses giving the names of the relevant contact persons in the different prosecuting authorities, as well as their specialist fields, their areas of responsibility, etc;
- c. establishing regular personal contacts between public prosecutors from different countries, in particular by organising regular meetings between Prosecutors General;
- d. organising training and awareness-enhancing sessions;
- e. introducing and developing the function of liaison law officers based in a foreign country;
- f. training in foreign languages;
- g. developing the use of electronic data transmission;
- h. organising working seminars with other States, on questions regarding mutual aid and shared crime issues.

The documentary tools referred to include, for example, documents providing information on the legislation applicable in the different countries. The requirement for training and awareness-raising sessions can be met by organising regular international training seminars for members of the various national Public Prosecution services, under the auspices of the Council of Europe, as well as language training.

The objective in the medium term should be to set up a pan-European judicial network.

39. In order to improve rationalisation and achieve co-ordination of mutual assistance procedures, efforts should be taken to promote:

- a. among public prosecutors in general, awareness of the need for active participation in international co-operation, and**
- b. the specialisation of some public prosecutors in the field of international co-operation,**
- c. to this effect, States should take steps to ensure that the public prosecutor of the requesting State, where he or she is in charge of international co-operation, may address requests for mutual assistance directly to the authority of the requested State that is competent to carry out the requested action, and that the latter authority may return directly to him or her the evidence obtained.**

Public prosecutors could, for example, usefully be empowered to:

- receive requests for mutual legal assistance that fall within their sphere of responsibility;
- assist the body in charge of executing such requests;
- co-ordinate investigations where appropriate;
- participate (in their capacity as custodians of the interests of international co-operation), either directly or by submitting memoranda, in all procedures relating to the execution of requests for mutual legal assistance;
- lastly, the possibility should be considered of extending existing mechanisms¹² facilitating spontaneous exchange of information between public prosecutors of different countries.

In order to reinforce both police co-operation and judicial co-operation in this field and where the legal system so allows, the Public Prosecution should liaise with and, where appropriate, be represented in the national bodies that manage information of interest to international criminal assistance, as well as international organisations devoted to police co-operation.

Bearing in mind the key role of public prosecution within the framework of the rule of law and in particular in the criminal justice system, this Recommendation aims at laying down a number of fundamental principles that should guide its action, notably by defining its functions and the safeguards that are necessary for carrying out such functions, its relationship with the executive and legislative powers, court judges, the police, its duties towards individuals, lastly its role in international co-operation.

Notes

1) The word “constitutional” is used here with reference to the legally established aims and powers of the public prosecutor, not to the Constitution of any state.

2) Preamble to Recommendation No. R (96) 8 of the Committee of Ministers to the member states on crime policy in Europe in a time of change.

3) See in particular Resolution (97) 24 on the twenty Guiding Principles for the Fight against Corruption.

4) The last is the term used throughout the Recommendation.

5) In certain common law jurisdictions the prosecutor does not recommend an appropriate sentence, neither before nor after conviction. The prosecutor may decide to accept pleas of guilty to certain charges offered by the defence. This does not involve a discussion as to sentence, which is a matter for the trial judge. Even where the prosecution can appeal an apparently lenient sentence, the prosecutor will argue that the sentence is unduly lenient without recommending an appropriate sentence to the appeal court.

6) The word “constitutional” is used here with reference to the legally established aims and powers of the public prosecutor, not to the Constitution of any State.

7) Cf. 8th Criminological Colloquium of the Council of Europe (1987) on “disparities in sentencing: causes and solutions”.

8) See in particular Resolution (97) 24 on the twenty Guiding Principles for the Fight against Corruption.

9) By way of an example : in the Dutch law that came into force on 1 June 1999, the following guarantees are laid down:

- If the Minister of Justice should consider an instruction, he is obliged to seek the advice of the Board of Attorneys-General (head of the public prosecution). The minister can deviate from the advice, but only when he gives an adequate explanation.
- The instruction and the advice will have to be given in writing. The public prosecutor is obliged to put these documents in the file of the case. As a consequence the judge and the suspect can take notice of these documents and make comments.
- Although the instruction is binding, the public prosecutor remains free to submit any other legal arguments to the court.
- If the minister gives an instruction not to prosecute, he is obliged to inform the Parliament. This information includes the written advice of the public prosecution on the matter. As a consequence there can be full public scrutiny.
- Victims and other interested parties can appeal against the decision not to prosecute to a court.

10) This means all the discretionary powers that are granted to public prosecutors and not only their prerogatives as regards the power to institute or not to institute criminal proceedings.

11) The form of words chosen represents a compromise designed to reflect the farthest that certain common law systems could agree to and the minimum that other systems could accept.

12) See Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg 9.11.1990.

Annex 7

THE NETHERLANDS CODE OF CONDUCT PUBLIC PROSECUTIONS SERVICE

As set down by the Board of Procurators General on July 11, 2000

CODE OF CONDUCT

1 GENERAL RULES

An employee of the Public Prosecutions Service carries out his/her duties:

- 1 within the limits of the law;
- 2 with special attention to the fundamental human rights;
- 3 with respect for the inherent human dignity, irrespective of person or status, and without discriminating as to religion, sex, sexuality, national origin, ethnicity, color, age or on any other ground;
- 4 Fairly, impartially, objectively and without fear;
- 5 in a way that can be monitored, also in retrospect, and so that an accounting can always be given of the choices made in the process of carrying out duties;
- 6 with due observance of the rules of proportionality and subsidiary;
- 7 in a way that is both conscientious and dynamic.

Whether on or off duty, he/she conducts himself/herself:

- 8 with due observance of the instructions in relation to the provision of information to third parties and observance of secrecy in respect of confidential information;
- 9 in accordance with the public character of the responsibility of the Public Prosecutions Service, where the work involves enforcing standards, which may mean that the employee's acts and omissions become the subject of public debate and thus can affect the prestige of the Public Prosecutions Service as a whole;
- 10 with the necessary integrity, which in any case shall be construed to mean that an employee does not perform any acts or hold any secondary jobs or

carry out other activities that might influence his/her professional attitude of open-mindedness, or that might arouse such an impression.

2 RULES IN RELATION TO COLLABORATION

1 Colleagues

A Employees of the Public Prosecutions Service treat one another with respect.

B Employees of the Public Prosecutions Service are result-oriented in the way they work together, and they communicate in openness.

C Employees of the Public Prosecutions Service have mutual and reciprocal consideration for each other's duties and responsibilities, and do not ask one another to perform services that would complicate these duties and responsibilities.

2 Employees

A Employees of the Public Prosecutions Service account for their work and the way in which they have done it to their superior.

B Employees inform their superior in a timely fashion, without necessarily being asked to do so, in respect of matters which, in reasonableness, are important for their superior to know.

3 Superiors

A A superior adopts an attitude of openness and receptiveness in respect of his/her employees.

B A superior deals fairly with his/her employees and sets a good example.

C A superior informs the employees in respect of matters which are necessary for them to know if they are to perform their duties properly and well.

4 The public prosecutor's office

The various public prosecutor's offices work together in a manner that is result-oriented and they communicate in openness.

5 Consultation with the head of a public prosecutor's office

In case of doubt as to whether a proposed action is justifiable, an employee of the Public Prosecutions Service shall consult with his/her superiors and/or with the head of the public prosecutor's office in question.

3 SPECIFIC RULES IN RESPECT OF THE WORKING ENVIRONMENT

1 The court

A An employee of the Public Prosecutions Service gives a full accounting to the court of all cases that have been put before it.

B With the exception of that which takes place at the court hearing, an employee of the Public Prosecutions Service shall not furnish to the court any information about matters in which this court must judge, or may have to judge in the future, unless it is immediately substantiated by a written document which constitutes part of the case file.

C For purposes of development of law, with the consent of the head of the public prosecutor's office, a public prosecutor may put before the court a standpoint that purposely deviates from existing case law or legal views. He/she shall do so explicitly, stating reasons.

D In his/her dealings with the court, a public prosecutor shall refrain from conduct that might call the impartiality of the court into question.

2 The suspect and his/her counsel

A Except in special circumstances, a public prosecutor shall not decide to prosecute in a criminal case if he/she is not convinced in all conscience that there is sufficient legal evidence available to allow the court to declare that the charges have been proved.

B If evidence has been obtained in a manner that constitutes a gross violation of the fundamental rights of the suspect, a public prosecutor will not make use of that evidence, except to initiate legal proceedings against the persons responsible for this violation.

C In his/her investigation, a public prosecutor addresses his/her actions at finding the objective truth. He/She is open-minded and honest, and includes in his/her considerations all circumstances, both those that are incriminating and those that are disculpatory.

D If a public prosecutor should have factual information that disculpates a suspect or that is to the advantage of the suspect in the case, or that is essential for the court to arrive at its decision, then he/she shall provide this information at his/her own initiative.

E A public prosecutor shall ensure that the defense can take cognizance of the case documents in a timely fashion.

3 The victim

An employee of the Public Prosecutions Service must show special concern in respect of victims of offences and their next-of-kin. He/she shall make

efforts to ensure their interests properly. He/she shall actively furnish information about their rights, about the outcome of the case.

4 Witnesses

An employee of the Public Prosecution Service shall make every effort to ensure that witnesses are not burdened by the giving of evidence any more than is necessary in the interests of a good administration of justice. If necessary, he/she shall take measures to protect the physical and mental integrity of witnesses, as well as their property and that of their next-of-kin.

5 The Minister of Justice

A An employee of the Public Prosecutions Service shall act in accordance with instructions given. At the court session, a public prosecutor will loyally defend any instructions he/she has been given. He/she is free, however, to call attention to considerations in respect of the law that the court, from a point of view of objectivity, ought to include in its opinion on the case at hand.

B An employee of the Public Prosecutions Service shall have an eye for the consequences that his/her actions or omissions may have for the political responsibility of the Minister of Justice

6 Public administration

A In his/her dealings with the public administration, an employee of the Public Prosecutions Service always aims to work in purposeful collaboration. In doing so, he/she furthers and promotes maintenance of law and order with a particular view to a well-considered and fair use of the possibilities offered by criminal law.

B As a representative of the Public Prosecutions Service, an employee of the Public Prosecutions Service shows himself/herself to be a reliable discussion partner.

C With a view to the incorruptible operation of public administration, a public prosecutor shall particularly ensure for a due and proper prosecution of offences committed by public servants and other offences which might be disparaging for the integrity of the public administration.

7 The police force¹

A A public prosecutor shall adopt an attitude of openness and receptiveness vis-à-vis the police force, shall take unambiguous decisions and shall take his/her responsibility.

¹ The police force is deemed to include all special investigating officers.

B A public prosecutor shall see to it that the police act lawfully and properly.

C A public prosecutor shall ensure that the police submit reports that are truthful and complete.

D A public prosecutor shall ensure that he/she is informed of investigative actions undertaken by the police in a criminal investigation and that he/she can justify these actions to the court during the hearing session.

8 Society

In the exercise of his/her job, an employee of the Public Prosecutions Service shall conduct himself/herself courteously and conscientiously toward all those with whom he/she comes in contact.

9 The media

In individual criminal cases, a public prosecutor only expresses himself about that case in public in the courtroom, during the public hearing. This does not detract from the fact that an employee of the Public Prosecutions Service who is in charge of maintaining contacts with the press shall give to the press as much objective information as is justified at that time -- taking into consideration all circumstances which are at issue.

10 Other countries

In handling requests for mutual legal assistance, an employee of the Public Prosecutions Service shall provide the required help and in doing so, shall exercise the same care and caution as he/she would in his/her own cases.

4 OTHER ASPECTS

1 Compliance

The code of conduct in this guide will have to come alive in everyday practice. The code of conduct aims to promote that a climate is achieved within the constituent parts of the organization in which problems (whether moral or otherwise) are recognized and are open to discussion.

The code of conduct does not give independent disciplinary or public service rules other than those that arise from existing legislation and regulations. Nor was it decided to introduce a specific complaints procedure: internal corrective procedures and incentives are already in place. In this way, it is hoped to do justice to the intended nature of the document: a living instrument that serves as an incentive in further shaping ethical awareness within the Public Prosecutions Service.

The form of the code of conduct (that of a guideline) limits the invocation by third parties of compliance with the code of conduct. Its external influence goes no further than the consequences that arise from existing legislation and regulations comprising obligations of the Public Prosecutions Service or its individual employees.

2 Evaluation and amendment

Because rules in the code of conduct may lose their validity, or other rules may develop that are deserving of a place in the code of conduct, it is in the interests of the organization that the code of conduct remains up to date. The code of conduct will therefore be evaluated periodically for this purpose.

BACKGROUND

As the Public Prosecutions Service, we are responsible for maintaining law and order. Together with public administrative bodies, the police force, the courts and other organizations, we promote compliance with the law and we take action against people who violate those rules. We feel that society may therefore expect us as a law enforcement agency to act fairly and respectfully in doing our work. This guide, as a derivative of that vision, sets down in writing for all employees of the Public Prosecutions Service the standards of conduct that they observe in carrying out their responsibilities. The great majority of these standards have been brought together from international treaties, statute law, case law and other sources that have long served as an inspiration to the Public Prosecutions Service and that are simply taken for granted by many. Some of the behavioural standards will need to be given a more concrete definition in terms of daily practice so that they can also start to function as genuine guidelines in our professional practice.

This guide is expected to grow and expand over the years into a document in which the people in the organization recognize themselves, and about which they will say that it definitely offers grip as they carry out their responsibilities in their daily jobs.

This code of conduct is not so much intended as a legally conclusive system of rules, but more as a set of general principles that are leading for the conduct of employees of the Public Prosecutions Service: the code of conduct serves as a reference point for our own actions, but also as a guideline. It goes without saying that responsibilities arising from other regulations and, ultimately, a person's own responsibility, continue to remain in full force. The code of conduct applies for all employees of the Public Prosecutions Service, and not merely for public prosecutors and advocates-general. In fact

that speaks for itself in an organization in which much of the work is teamwork, in which powers are sometimes given in the form of mandates and in which many members of the team maintain contacts with third parties. This does not detract from the fact that some rules of conduct primarily revolve around powers that are exercised by public prosecutors and advocates-general. Wherever that is the case, for the sake of conciseness, these rules are addressed to public prosecutors. When it is a matter of mandated powers as referred to in article 126 of the Judiciary (Organization) Act, then the rule also applies to the employees of the public prosecutions office who make use of the mandated power.

Most rules, including all general rules in the code of conduct, apply to every single employee of the Public Prosecution Service.

In formulating the code of conduct, it has been attempted to relate it to the oath (article 5 of the Judiciary (Organization) Act) which is taken by all judicial officials upon their acceptance of office. The oath which is taken by members of the judiciary dates from 1827 and reads as follows:

“All the members of the judiciary named in this present act, each of them in the manner of his religious affinity or philosophy of life, before taking office, shall take the oath (make the promise) that they will be loyal to the King, and will maintain and comply with the Constitution; that they have not given or promised anything, nor will they give or promise anything, in order to obtain their appointment, either directly or indirectly, under any designation or pretence, to any person whomsoever; that they will never accept or receive any gifts or donations whatsoever from any person of whom they know or suspect that he is involved in legal proceedings or in a lawsuit, or will become thus involved, in which they might be required to act in an official capacity; that they, furthermore, will fulfil their posts with honesty, accuracy and impartiality, without discrimination of persons, and will conduct themselves in the exercise of their duties as behaves brave and honest judicial officials.”

The object was to focus on specific qualities or aspects of the Public Prosecutions Service and on a contemporary interpretation of the more than 170-year-old oath. Other employees of the Public Prosecutions Service take a different oath or make a different promise upon accepting office: because it is briefer, it offers fewer points of departure for elaboration into a code of conduct. For this reason, the judiciary oath with its broader scope was taken as a basis.

Transitional law

This guide applies as from the date of its entry into force

Annex 8

THE EUROPEAN CODE OF POLICE ETHICS
Recommendation (2001) 10 adopted by the Committee of Ministers
of the Council of Europe on 19 September 2001
and
Explanatory memorandum

Directorate General I – Legal Affairs

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics

(Adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve greater unity between its members;

Bearing in mind that it is also the purpose of the Council of Europe to promote the rule of law, which constitutes the basis of all genuine democracies;

Considering that the criminal justice system plays a key role in safeguarding the rule of law and that the police have an essential role within that system;

Aware of the need of all member states to provide effective crime fighting both at the national and the international level;

Considering that police activities to a large extent are performed in close contact with the public and that police efficiency is dependent on public support;

Recognising that most European police organisations – in addition to upholding the law – are performing social as well as service functions in society;

Convinced that public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for the

human dignity and fundamental rights and freedoms of the individual as enshrined, in particular, in the European Convention on Human Rights; Considering the principles expressed in the United Nations Code of Conduct for Law Enforcement Officials and the resolution of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police;

Bearing in mind principles and rules laid down in texts related to police matters – criminal, civil and public law as well as human rights aspects - as adopted by the Committee of Ministers, decisions and judgments of the European Court of Human Rights and principles adopted by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Recognising the diversity of police structures and means of organising the police in Europe;

Considering the need to establish common European principles and guidelines for the overall objectives, performance and accountability of the police to safeguard security and individual's rights in democratic societies governed by the rule of law,

Recommends that the governments of member states be guided in their internal legislation, practice and codes of conduct of the police by the principles set out in the text of the European Code of Police Ethics, appended to the present recommendation, with a view to their progressive implementation, and to give the widest possible circulation to this text.

Appendix to Recommendation Rec(2001)10

Definition of the scope of the code

This code applies to traditional public police forces or police services, or to other publicly authorised and/or controlled bodies with the primary objectives of maintaining law and order in civil society, and who are empowered by the state to use force and/or special powers for these purposes.

I. Objectives of the police

1. The main purposes of the police in a democratic society governed by the rule of law are:

- to maintain public tranquillity and law and order in society;
- to protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights;
- to prevent and combat crime;

- to detect crime;
- to provide assistance and service functions to the public.

II. Legal basis of the police under the rule of law

2. The police are a public body which shall be established by law.
3. Police operations must always be conducted in accordance with the national law and international standards accepted by the country.
4. Legislation guiding the police shall be accessible to the public and sufficiently clear and precise, and, if need be, supported by clear regulations equally accessible to the public and clear.
5. Police personnel shall be subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of police work in a democratic society.

III. The police and the criminal justice system

6. There shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system; the police shall not have any controlling functions over these bodies.
7. The police must strictly respect the independence and the impartiality of judges; in particular, the police shall neither raise objections to legitimate judgments or judicial decisions, nor hinder their execution.
8. The police shall, as a general rule, have no judicial functions. Any delegation of judicial powers to the police shall be limited and in accordance with the law. It must always be possible to challenge any act, decision or omission affecting individual rights by the police before the judicial authorities.
9. There shall be functional and appropriate co-operation between the police and the public prosecution. In countries where the police are placed under the authority of the public prosecution or the investigating judge, the police shall receive clear instructions as to the priorities governing crime investigation policy and the progress of criminal investigation in individual cases. The police should keep the superior crime investigation authorities informed of the implementation of their instructions, in particular, the development of criminal cases should be reported regularly.
10. The police shall respect the role of defence lawyers in the criminal justice process and, whenever appropriate, assist in ensuring the right of access to legal assistance effective, in particular with regard to persons deprived of their liberty.
11. The police shall not take the role of prison staff, except in cases of emergency.

IV. Organisational structures of the police

A. General

12. The police shall be organised with a view to earning public respect as professional upholders of the law and providers of services to the public.
13. The police, when performing police duties in civil society, shall be under the responsibility of civilian authorities.
14. The police and its personnel in uniform shall normally be easily recognisable.
15. The police shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable.
16. Police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates.
17. The police organisation shall provide for a clear chain of command within the police. It should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.
18. The police shall be organised in a way that promotes good police/public relations and, where appropriate, effective co-operation with other agencies, local communities, non-governmental organisations and other representatives of the public, including ethnic minority groups.
19. Police organisations shall be ready to give objective information on their activities to the public, without disclosing confidential information. Professional guidelines for media contacts shall be established.
20. The police organisation shall contain efficient measures to ensure the integrity and proper performance of police staff, in particular to guarantee respect for individuals' fundamental rights and freedoms as enshrined, notably, in the European Convention on Human Rights.
21. Effective measures to prevent and combat police corruption shall be established in the police organisation at all levels.

B. Qualifications, recruitment and retention of police personnel

22. Police personnel, at any level of entry, shall be recruited on the basis of their personal qualifications and experience, which shall be appropriate for the objectives of the police.
23. Police personnel shall be able to demonstrate sound judgment, an open attitude, maturity, fairness, communication skills and, where appropriate, leadership and management skills. Moreover, they shall possess a good understanding of social, cultural and community issues.
24. Persons who have been convicted for serious crimes shall be disqualified from police work.
25. Recruitment procedures shall be based on objective and non-discriminatory grounds, following the necessary screening of candidates. In

addition, the policy shall aim at recruiting men and women from various sections of society, including ethnic minority groups, with the overall objective of making police personnel reflect the society they serve.

C. Training of Police Personnel

26. Police training, which shall be based on the fundamental values of democracy, the rule of law and the protection of human rights, shall be developed in accordance with the objectives of the police.

27. General police training shall be as open as possible towards society.

28. General initial training should preferably be followed by in-service training at regular intervals, and specialist, management and leadership training, when it is required.

29. Practical training on the use of force and limits with regard to established human rights principles, notably the European Convention on Human Rights and its case law, shall be included in police training at all levels.

30. Police training shall take full account of the need to challenge and combat racism and xenophobia.

D. Rights of police personnel

31. Police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.

32. Police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures, taking into account the particular character of police work.

33. Disciplinary measures brought against police staff shall be subject to review by an independent body or a court.

34. Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties.

V. Guidelines for police action/intervention

A. Guidelines for police action/intervention: general principles

35. The police, and all police operations, must respect everyone's right to life.

36. The police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances.

37. The police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective.

38. Police must always verify the lawfulness of their intended actions.
39. Police personnel shall carry out orders properly issued by their superiors, but they shall have a duty to refrain from carrying out orders which are clearly illegal and to report such orders, without fear of sanction.
40. The police shall carry out their tasks in a fair manner, guided, in particular, by the principles of impartiality and non-discrimination.
41. The police shall only interfere with individual's right to privacy when strictly necessary and only to obtain a legitimate objective.
42. The collection, storage, and use of personal data by the police shall be carried out in accordance with international data protection principles and, in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.
43. The police, in carrying out their activities, shall always bear in mind everyone's fundamental rights, such as freedom of thought, conscience, religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions.
44. Police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups.
45. Police personnel shall, during intervention, normally be in a position to give evidence of their police status and professional identity.
46. Police personnel shall oppose all forms of corruption within the police. They shall inform superiors and other appropriate bodies of corruption within the police.

B. Guidelines for police action/intervention: specific situations

1. Police investigation

47. Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime.
48. The police must follow the principles that everyone charged with a criminal offence shall be considered innocent until found guilty by a court, and that everyone charged with a criminal offence has certain rights, in particular the right to be informed promptly of the accusation against him/her, and to prepare his/her defence either in person, or through legal assistance of his/her own choosing.
49. Police investigations shall be objective and fair. They shall be sensitive and adaptable to the special needs of persons, such as children, juveniles, women, minorities including ethnic minorities and vulnerable persons.
50. Guidelines for the proper conduct and integrity of police interviews shall be established, bearing in mind Article 48. They shall, in particular, provide for a fair interview during which those interviewed are made aware of the

reasons for the interview as well as other relevant information. Systematic records of police interviews shall be kept.

51. The police shall be aware of the special needs of witnesses and shall be guided by rules for their protection and support during investigation, in particular where there is a risk of intimidation of witnesses.

52. Police shall provide the necessary support, assistance and information to victims of crime, without discrimination.

53. The police shall provide interpretation/translation where necessary throughout the police investigation.

2. Arrest/deprivation of liberty by the police

54. Deprivation of liberty of persons shall be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee. A custody record shall be kept systematically for each detainee.

55. The police shall, to the extent possible according to domestic law, inform promptly persons deprived of their liberty of the reasons for the deprivation of their liberty and of any charge against them, and shall also without delay inform persons deprived of their liberty of the procedure applicable to their case.

56. The police shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest.

57. Persons deprived of their liberty by the police shall have the right to have the deprivation of their liberty notified to a third party of their choice, to have access to legal assistance and to have a medical examination by a doctor, whenever possible, of their choice.

58. The police shall, to the extent possible, separate persons deprived of their liberty under suspicion of having committed a criminal offence from those deprived of their liberty for other reasons. There shall normally be a separation between men and women as well as between adults and juveniles.

VI. Accountability and control of the police

59. The police shall be accountable to the state, the citizens and their representatives. They shall be subject to efficient external control.

60. State control of the police shall be divided between the legislative, the executive and the judicial powers.

61. Public authorities shall ensure effective and impartial procedures for complaints against the police.

62. Accountability mechanisms, based on communication and mutual understanding between the public and the police, shall be promoted.

63. Codes of ethics of the police, based on the principles set out in the present recommendation, shall be developed in member states and overseen by appropriate bodies.

VII. Research and international co-operation

64. Member states shall promote and encourage research on the police, both by the police themselves and external institutions.

65. International co-operation on police ethics and human rights aspects of the police shall be supported.

66. The means of promoting the principles of the present recommendation and their implementation must be carefully scrutinised by the Council of Europe.

EXPLANATORY MEMORANDUM

Relating to the Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics

I. Introduction

I.1. Codes of Police Ethics

Much that has been written about the police takes the form of descriptions of how they do or would act in various situations. There is tendency, except in a moralising manner, to set aside questions of how the police *should* act: to make clear the values and standards that are required of police in a modern, democratic society. The provision of “The European Code of Police Ethics” provides a basis for just such a framework. It could not be more timely. Many European countries are reorganising their police to promote and consolidate democratic values. They are also concerned to secure common policing standards across national boundaries both to meet the expectations of increasingly mobile Europeans, who wish to be confident of uniform, fair and predictable treatment by police, and to enhance their powers of co-operation, and hence their effectiveness, in the fight against international crime. The provision of the Code also supports the Council of Europe’s aim of achieving greater unity between its members.

A glance at the role of police in a democracy reveals the particular relevance of a code of ethics for the police. People within democracies have organised their states to secure maximum freedom for themselves within the rule of

law. Likewise, the criminal justice systems have been developed with the purpose of providing individual liberty and security. In democratic societies where the rule of law prevails, the police undertake the traditional functions of preventing, combating and detecting crime, preserving public tranquillity, upholding the law, maintaining public order, and protecting the fundamental rights of the individual. Moreover, in such societies the police provide various services to the public that are of a social nature, which support their other activities. They are granted discretion to fulfil these functions. The police in democracies help to sustain the values of democracy, and are themselves imbued with the self-same values. In general, the public consent to and, indeed, welcome the exercise of legitimate authority by the police so long as the police are seen to carry out their tasks towards worthwhile, democratic ends in an ethically acceptable manner. In turn, when they fulfil these conditions, the police have every right to expect that the public will trust them to carry out their responsibilities, and support and co-operate with them in their activities when doing so. These ideas about policing within democracies are at the heart of the Council of Europe. Although a code of police ethics is only the beginning of any process to secure common police standards, without one such a process has little hope of succeeding. By laying the foundation for ethical norms, a code of police ethics enhances the possibility that ethical problems are more readily identified, more fully understood, analysed more carefully and more readily resolved. It also prompts questions about the values served by the police as an organisation, and their proper application. Key concepts within the police, such as 'loyalty', 'consent', 'impartiality', 'discretion' and 'professionalism' all benefit from the common reference and shared meaning, and hence understanding, made possible by a code. Moreover, it can help articulate personal standards of conduct, which captures a sense of pride in being members of a police organisation. This is of particular importance to police recruits, who need to know from the outset the core values that should define and govern their work. The mention of police recruits is a reminder of how important codes are for police training. Without some such objective reference for standards and values, the trainer's task is made doubly difficult. Both the origin and authority of standards have to be argued for, with the risk that they are seen as merely local and the creation of no one but the trainer. It should be added that a police code of ethics has merit at all levels of training.

As has been mentioned, police services are greatly enhanced if police enjoy the consent and close co-operation of the public. The public is dependent upon the responsible delivery of police services for the delivery of which the police are invested with considerable authority, including discretion, which

constitutes a virtual monopoly of legitimate coercion. For this reason the public has a need for assurance. A well publicised police code of ethics, by underlining the common standards, purposes and values of the police, can help to promote public trust in the police and further good public relations and co-operation. The same standards, by making clear the range and scope of police services help safeguard the police against unwarranted, frivolous and vexatious demands, and, above all, limit their liability for failures of service. Moreover, a police code of ethics can work as a regulatory instrument for the internal organisation of the police. This is one of the striking features of “The European Code of Police Ethics”. By providing minimum standards, values and ethical frameworks, it may serve a regulatory function in at least four ways: maintain quality control of the personnel of the police organisation (including civilian staff); help in the exercise of leadership, management and supervision; make senior members of the organisation more accountable; and provide a norm for the adjudication of difficult, internal disputes.

In terms of its possible influence upon police practice, a police code of ethics recommends best practice for the police, and is a specialised version of habitual, everyday, common-sense principled conduct. There are, however, a number of meanings for the word “ethics”. Aristotle established the most widely understood meaning of the word. For him, it refers to the critical discipline that focuses upon everyday ethical conduct and beliefs for its subject matter. This is not the meaning of the word intended in the title “The European Code of Police Ethics”. Modern societies and their police are partly organised under the twin principles of division of labour and co-operation. People find themselves engaged in a large number of specialised activities. While their everyday relationships employ common standards of conduct, they often have need of more specialised understanding and guidance when it comes to their particular jobs and occupations. This is because their work focuses upon particular aspects of human conduct in ways that highlight ethical dilemmas that are regularly repeated, and which their occupational roles require them to cope with and resolve. This is particularly the case with those working in the public services, where the public entrust their well-being to occupational specialists. In this context the word “ethics” refers to that body of principled requirements and prescriptions that is deemed fit to regulate the conduct of the occupation. It is important to note that “ethics” in this sense represents an attempt to apply everyday ethics to the specialist demands and dilemmas of public organisations. It is in this sense that “ethics” is used in “The European Code of Police Ethics”. The police objective of upholding the rule of law encompasses two distinct but inter-related duties: the duty of upholding the properly enacted and

constituted law of the state, including securing a general condition of public tranquillity, and the related duty of keeping strictly within prescribed powers, abstaining from arbitrary action and respecting the individual rights and freedoms of members of the public.

The rule of law is focused not only on what is done but on how it is done. In carrying out their duties, police need to respect citizen's individual rights, including human rights, and freedoms and avoid arbitrary or unlawful action. This is fundamental to the meaning of the rule of law and therefore to the whole meaning and purpose of police duty in a democracy.

Above all the rule of law requires that those who make, adjudicate and apply the law should be subject to that same law. In other words, the police should be subject to the self-same law that they apply and uphold. It is the mark of the police in a fully-fledged and mature democracy that they bind and subject themselves to the very law that they are pledged to uphold. The police role in upholding and safeguarding the rule of law is so important that the condition of a democracy can often be determined just by examining the conduct of its police.

The European Code of Police Ethics aims to provide a set of principles and guidelines for the overall objectives, performance and control of the police in democratic societies governed by the rule of law, and is to a large extent influenced by the European Convention on Human Rights. The Code is concerned to make specific and define the requirements and arrangements that fit the police to meet the difficult, demanding and delicate task of preventing and detecting crime and maintaining law and order in civil, democratic society. Even if the Recommendation primarily is aimed at Governments the guidelines are drafted in such a way that they may also be a source of inspiration to those dealing with the police and police matters at a more pragmatic level.

I.2 The background to “The European Code of Police Ethics”

From its earliest days, the Council of Europe has had police matters on its agenda. Indeed, the police play such an important role with regard to the protection of the fundamental values of the Council of Europe (pluralistic democracy, the rule of law and human rights) that the Council of Europe provides a natural platform for European discussion on the role of the police in a democratic society.

Considerable case law relating to the police has been established by the European Court of Human Rights. Moreover, guiding principles relevant to the police have been developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The European Social Charter and its case-law comprises important

principles with regard to the social and economic rights of police personnel. The European Commission against Racism and Intolerance (ECRI) has developed principles for the police in its specific field of competence. Moreover, the European Commission for Democracy through Law (Venice Commission) has adopted texts on constitutional aspects of the police. The Group of States against Corruption (GRECO) has the mandate to evaluate national administrations, including the police, with regard to corruption. The police has also been subject to the requirements of local and regional authorities, and this work has also been linked to problems of urban insecurity. Police and ethnic relations is another area of interest. Moreover, the Council of Europe has developed activities designed to promote human rights awareness within the police. Through this work, police practitioners and human rights experts, representing both states and non-governmental organisations, have been brought together to deal with problems of human rights in a professional police context. The training of police personnel in human rights, and a large number of documents, such as handbooks on police and human rights issues, are some of the concrete results of this work. It has served to develop an understanding within national police services of the necessity for raising awareness of human rights at all levels of the police. The *“Declaration on the Police”*, adopted by the Parliamentary Assembly of the Council of Europe in 1979, was an early attempt to provide ethical standards for the police. It has been a source of inspiration for answering policy questions on the police in many European states. While the Committee of Ministers shared the Assembly’s view of the necessity to apply particularly high ethical standards to the police in democratic societies, they did not give the ‘Declaration’ unqualified support, and it did not become a legal instrument of the Council of Europe.

The traditional inter-governmental standard setting work of the Council of Europe, carried out under the authority of the Committee of Ministers, has focused on the police with regard to criminal justice policies, criminal law and criminology (criminal procedure, crime prevention, victim and witness protection, juvenile delinquency, custody, organised crime, corruption, public prosecution, etc.) and public law (personal integrity and data protection, etc). Legal instruments - conventions and recommendations - of relevance for the police have been developed within this framework. Starting in 1989, changes occurred in central and eastern Europe, which led the Council of Europe to intensify considerably its activities with regard to the police. Within the framework of programmes aiming at supporting legal reform as well as the reform of public administration, including the police, a large number of activities (seminars, training sessions and the dissemination of legal expertise) were implemented under themes such as “the role of the

police in a democratic society”, “police ethics”, and “police and the rule of law”.

It was in this context of police reform that the need for a normative, pan-European framework for the police was again highlighted. As a result, the Committee of Ministers established the *Committee of Experts on Police Ethics and Problems of Policing (PC-PO)* under the authority of the European Committee on Crime Problems (CDPC).

The terms of reference of Committee PC-PO were adopted by the CDPC at its 47th plenary session in 1998, and confirmed by the Committee of Ministers at the 641st meeting of their Deputies in September 1998.

The following terms of reference were given to Committee PC-PO:

“The Police play an important role within the criminal justice system. As opposed to other professional groups within that system, few international instruments apply to the Police. At the moment many European countries are reorganising their Police as a crucial part of the process to promote and consolidate democratic ideas and values in society. Police ethics have thus become an important topic in several member States of the Council of Europe.

The Committee of experts should prepare a study of police ethics in the broad sense, taking into account such questions as:

- the role of the Police in a democratic society and their place in the criminal justice system;*
- the objectives of policing under the Rule of Law - prevention of crime, detection of crime etc;*
- control of the Police.*

The Committee of Experts should consider, in particular, aspects of police ethics related to certain situations that occur in daily police work, such as the interrogation of suspects and other functions of investigation, the use of force, the exercise of police discretion etc. Ethical aspects of police management in general as well as their inclusion as a training subject would also be covered. In this respect the differences between ethical codes, codes of professional conduct and disciplinary codes should be taken into consideration. In carrying out this task the Committee should bear in mind the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as Assembly Resolution 690 (1979) on the Declaration on the Police. It should take into account the work of the Committee of Experts on Partnership in Crime Prevention (PC-PA) as well as other relevant activities of the Council of Europe.

The outcome of the work should be a report and/or a recommendation on police ethics, which could be used as a guiding framework for member States when police reforms and national codes of police ethics are being considered.”

The Committee was composed of experts from Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, France, Greece, Italy, Lithuania, Moldova, Poland, Portugal, Romania, Slovenia, Spain, "The former Yugoslav Republic of Macedonia", Turkey and the United Kingdom. The Committee included experts coming from ministries of the interior, ministries of justice, the police, the prosecution and the judiciary. The Committee was chaired by Mr Karsten Petersen, Deputy Police Commissioner, Denmark. Two scientific experts – Mr Amadeu Recasens i Brunet (Director of Escola de Policia de Catalunya and Professor at the University of Barcelona, Spain) and Mr Neil Richards (Director of Chief Police Officers Development Programme, National Police Training, Bramshill, United Kingdom) – were appointed to assist the Committee. The Secretariat was provided by the Directorate General of Legal Affairs, DG I, of the Council of Europe.

The European Commission, I.C.P.O.-Interpol, the Association of European Police Colleges (AEPC) and the International Centre of Sociological Penal and Penitentiary Research and studies (Intercenter) were observers to the Committee. The Association for the Prevention of Torture (APT), the European Council of Police Trade Unions (CESP), the European Network of Police Women (ENP), the European Federation of Employees in Public Services (EUROFEDOP), the International Federation of Senior Police Officers (FIFSP), the International Police Association (IPA) and the International Union of Police Federations (UISP), were consulted in the final stages of the work.

The Committee based its work upon legal instruments (conventions and recommendations of the Council of Europe and other international organisations) as well as principles established by the European Court of Human Rights and other bodies of the Council of Europe, mentioned above. The Committee organised hearings with representatives of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment and the European Committee of Social Rights. Moreover, the Committee was informed of projects and activities related to police carried out by the various Directorates General of the Council of Europe. The work of the Committee was presented and supported at the Twelfth Criminological Colloquium, organised by the Council of Europe in November 1999, on the theme "Police Powers and Accountability in a Democratic Society", and at the High Level Conference between European Ministers of the Interior, in June 2000.

The Committee held six plenary and three working group meetings between December 1998 and March 2001. Following a request by the Parliamentary Assembly, the Committee of Ministers agreed that a provisional draft

recommendation be sent to the Parliamentary Assembly for its opinion. The opinion of the Assembly was taken into account by the Committee at its sixth meeting.

The text of the draft recommendation, “*The European Code of Police Ethics*”, and its explanatory report were finalised at the sixth meeting of the Committee in March 2001, and submitted for approval and transmission to the Committee of Ministers at the 50th plenary session of the European Committee on Crime problems (CDPC), held in June 2001. At the 765th meeting of their Deputies on 19 September 2001, the Committee of Ministers adopted the Recommendation and authorised publication of the explanatory memorandum thereto.

II. Preamble to the Recommendation

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve greater unity between its members;

Bearing in mind that it is also the purpose of the Council of Europe to promote the Rule of Law, which constitutes the basis of all genuine democracies;

Considering that the criminal justice system plays a key role in safeguarding the Rule of Law and that the police have an essential role within that system;

Aware of the common need of all member states to provide effective crime fighting both at the national and the international level;

Considering that police activities to a large extent are performed in close contact with the public and that the police efficiency is dependent on public support;

Recognising that most European police organisations - in addition to upholding the law - are performing social functions as well as service functions in society;

Convinced that public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for human dignity and individuals' fundamental rights and freedoms as enshrined notably in the European Convention on Human Rights;

Considering principles expressed in the United Nations Code of Conduct for Law Enforcement Officials and the Resolution of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police;

Bearing in mind principles and rules laid down in texts related to police matters – criminal, civil and public law as well as human rights aspects - as adopted by the Committee of Ministers, decisions and judgements of the European Court of Human Rights and principles adopted by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Recognising the variety of different police structures and means of organising the police in Europe;

Considering the need to establish common European principles and guidelines for the overall objectives, performance and accountability of the police to safeguard security and individual's rights in democratic societies governed by the Rule of Law;

Recommends that the governments of member States be guided in their internal legislation, practice and codes of conduct of the police by the principles set out in the text of "The European Code of Police Ethics", appended to the present Recommendation, with a view to their progressive implementation, and to give the widest possible circulation to this text.

III. Commentary on the preamble:

Since its inception, the Council of Europe has worked to establish and promote common principles in its member states' laws, practices and systems. The criminal justice system has been one of the priorities in this respect, as crime fighting demands the direct practical application of the principles on which the Council of Europe was founded and which it is expected to uphold, namely the rule of law, democracy and human rights. Moreover, the effectiveness of responses to crime depends to a large extent on their being harmonised within a coherent and concerted European policy. That requirement is increasingly becoming more important with the existence of crime phenomena, such as organised crime and corruption, which often have an international dimension, with respect to which national systems risk to prove insufficient.

Traditionally, the elaboration of common standards applicable to law enforcement bodies, such as the police, has not been as developed as is the case for example with regard to the judicial side of criminal justice or the implementation of sanctions. The recent adoption of the Council of Europe Recommendation Rec (2000) 19 on the Role of Public Prosecution in the Criminal Justice System, as well as the present Recommendation is, however, a new trend in this respect. Moreover, the recognition of the police as a component of the criminal justice system, thus bringing justice and home affairs closer to each other, is likely to provide a solid basis for continued harmonisation of standards applicable to the police.

In a Europe where national borders become less important the focus on the police and their powers from an international perspective is unavoidable. The debate concerns to a large extent the efficiency of the police in combating crime that increasingly is operated over national borders, such as organised crime and corruption. However, the debate is not limited to this perspective. In a democratic society the police powers are restricted with regard to what is acceptable from the perspective of individuals' fundamental rights and freedoms, as laid down in the European Convention on Human Rights. A

proper balance between these interests must be found and it is here that the international ethics of the police are at stake.

The police are accountable not only to the state but also vis-à-vis the public in such a society and their efficiency is to a large extent depending on public support. In this respect the social function and the public service side of the police are important also for the carrying out of law enforcement.

The European Convention on Human Rights and its case-law has been considered a basic framework for the drafting of the present Recommendation. Moreover, principles of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have been incorporated into the text. The work has also in relevant parts been influenced by the European Social Charter and its case-law. Moreover, other international texts, particularly applicable to the police, the United Nations Code of Conduct for Law Enforcement Officials and Resolution 690 (1979) of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police have not only been considered in depth, but also been influential sources for the drafting of the present Recommendation.

The following Council of Europe texts, which offer guidance in matters relating to the present Recommendation, have been given the closest attention:

- Framework Convention for the Protection of National Minorities (ETS No 157);
- Resolution (78) 62 on juvenile delinquency and social change;
- Recommendation R (79) 17 concerning the protection of children against ill-treatment;
- Recommendation R (80) 11 concerning custody pending trial;
- Recommendation R (83) 7 on participation of the public in crime policy;
- Recommendation R (85) 4 on violence in the family;
- Recommendation R (85) 11 on the position of the victim in the framework of criminal law and procedure;
- Recommendation R (87) 15 on regulating the use of personal data in the police sector;
- Recommendation R (87) 19 on the organisation of crime prevention;
- Recommendation R (88) 6 on social reactions to juvenile delinquency among young people coming from migrant families;
- Recommendation R (96) 8 concerning crime policy in Europe in a time of change;
- Recommendation R (97) 13 concerning intimidation of witnesses and the rights of the defence;

- Resolution (97) 24 on the twenty guiding principles for the fight against corruption;
- Recommendation R (99) 19 concerning mediation in penal matters;
- Recommendation R (2000) 10 on codes of conduct for public officials;
- Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system;
- Recommendation Rec (2000) 20 on the role of early psychosocial intervention in the prevention of criminality;
- Recommendation Rec (2000) 21 on the freedom of exercise of the profession of lawyer;
- ECRI General Policy Recommendations; European Commission against Racism and Intolerance.

It should also be mentioned that several other texts (instruments and handbooks, etc.) produced within the Council of Europe relating to police matters, such as “police and human rights”, “police ethics”, media, racism and intolerance, equality and minority questions, have been considered. The present Recommendation has been drafted from the viewpoint that there are big differences between member states in terms of how their law enforcement/police tasks are being implemented. This is particularly noticeable in terms of the status and the organisation of the forces/services as well as their operating methods. At the same time there are great similarities, in particular as regards the objectives of the police and the problems they face in their daily activities. Having this in mind, the Recommendation consists of major guiding principles that are considered crucial in a well established democracy, both for the efficiency of the police and for their acceptance by the public.

The establishment of common standards is very timely. Police reforms are being carried out throughout Europe and, in particular, in the more recent democracies police reforms are part of general processes with the overall objective of consolidating democratic principles such as the rule of law and the protection of human rights, in public administration.

The present set of guiding principles may serve as guidance and source of inspiration when police systems are being reformed. It is, however, clear that a reasonable margin of appreciation must be left to member states, not least with regard to the different historical heritage and the level of development. With this Recommendation a foundation for continued efforts relating to the police has been achieved and the Council of Europe has made police matters one of its priorities.

Definition of the Scope of the Code

This Code applies to traditional public police forces or police services, or to other publicly authorised and/or controlled bodies with the primary objectives of maintaining law and order in civil society and, who are empowered by the state to use force and/or special powers for these purposes.

Commentary

The definition of the scope of the Code at the outset of the recommendation serves the purpose of establishing its applicability. In order to make the Code relevant for as many police systems as possible and considering the variety of different police systems existing in Europe, in particular their different stages of development and organisational structures, the definition is made wide.

The definition used in this paragraph makes the Code applicable to "traditional" police in all member States. (It is worth noting that this definition should not be confused with the *recommended* objectives of the police, which are included in Article 1 of the Code.)

For the reasons referred to above, the definition of the scope of the Code only contains the "hard core" characteristics that are entrusted to all existing public police bodies in Europe, that is the power to use force in order to maintain law and order in civil society, normally including upholding public order, prevention and detection of crime. Having this definition, as the lowest common denominator for the applicability of the Code, there is no need to establish a detailed description of various types of police to be affected. Thus, this Code applies to all police responsible for police activities in civil society. The Code applies regardless of how such police are being organised; whether centralised or locally oriented, whether structured in a civilian or military manner, whether labelled as services or forces, or whether they are accountable to the state, to regional or local authorities or to a wider public.

Although the intention is to have as wide a range as possible of the Code, certain specific types of police are excluded from its scope. The reference to *traditional* police should be regarded as opposed to "special types" of police, which are set up for specific purposes other than keeping law and order in civil society. Examples of police that do not come within the scope of the Code are military police when exercising their military functions and secret security services. Another category not covered by the Code is "penitentiary police", which in the countries where they exist, are limited to perform their duties in penal institutions.

It should be added that private security companies are not covered by this Recommendation.

I. Objectives of the Police

1. *The main purposes of the police in a democratic society governed by the Rule of Law are:*

- *to maintain public tranquillity, and law and order in society;*
- *to protect and respect the individual's fundamental rights and freedoms as enshrined notably in the European Convention on Human Rights;*
- *to prevent and combat crime;*
- *to detect crime;*
- *to provide assistance and service functions to the public.*

Commentary

This Article contains a selection of the most important objectives of the police in a democratic state governed by the Rule of law.

Maintaining *tranquillity* and *law and order* in society are the classical overall objectives and the full responsibility of the police, often referred to as "public order" policing. This concept covers a wide variety of police activities among which providing for the safety and security of persons (physical as well as legal) and property (private as well as public) and law enforcement between the state and individuals as well as between individuals should be mentioned. The respect for the *individual's fundamental rights and freedoms* as enshrined in the European Convention on Human Rights as an objective of the police is possibly the most significant token of a police service in a society governed by the rule of law. This objective implies not only a separate obligation to uphold these rights, but that there are limits as to how far the police may proceed in order to fulfil their other objectives.

The wording "notably the European Convention on Human Rights" is chosen in order to indicate a specific and precise reference to a particular instrument, without excluding the importance of other relevant human rights texts in this respect.

Crime prevention is dealt with differently in member states, however, most commonly, this is regarded as an overall responsibility of the state. Crime prevention is often divided between *social* and *situational prevention*, both of which apply to the police.

As follows from the Council of Europe Recommendations No. R (83) 7 on Participation of the Public in Crime Policy as well as No. R(87)19 on Organisation of Crime Prevention, effective crime prevention requires active participation by the community at large, including the public. "Partnership" in crime prevention is an often used term in recent years, which indicates that this is not a task exclusively of the police. Activities in crime prevention need to be co-ordinated between the efforts for the police and other agencies

and the public. Even if the ultimate responsibility for crime prevention policy, in most member states does not lie with the police, it is nevertheless one of their main objectives, which, in a society governed by the Rule of Law requires certain safeguards to curb abuse directed against individuals.

Crime detection is one of the classical primary objectives of police in all states. Even if crime detection often amounts to a limited part of the total police work, it is a vital component of the activities of the police. People expect much of the police in terms of their crime detection. Effective crime detection has also a preventive effect in itself, and is thus crucial for promoting public confidence in criminal justice.

Crime detection is organised differently in various states; in some states it is the responsibility of the general police, whereas in other states it is carried out by special branches of the police, such as criminal police or judicial police. The independence of the police from the prosecution authorities also differ to a large extent. However, the problems the police are facing in their crime detection are identical all over Europe. This Code does not challenge the centrality of the crime fighting side of police work, but it underlines the importance of upholding a proper balance between the efficiency of the police and the respect for individuals fundamental human rights, which is particularly difficult in crime fighting. The principle of “presumption of innocence” and its accompanying safeguards are certainly of great importance for persons suspected of crime. In addition, the respect for individual rights in crime detection, also comprises the rights of other persons affected, such as victims and witnesses, towards whom the police also have responsibilities. Safeguards in crime detection are dealt with in Chapter V.2, below.

The provision of *assistance* to the public is also a feature of most police bodies, but such functions are more or less developed in various member states. The inclusion of *service* functions under the objectives of the police is somewhat different as it changes the role of the police from that of being a “force” to be used in society into a “service” body of the society. For some years there has been a clear trend in Europe to integrate the police more fully into civil society, to bring them closer to the public. The development of “community policing” in several member States serves such a purpose. One important means used to do this is to give the police the status of a public service body rather than a pure law enforcer. In order to make such a shift a bit more than a semantic exercise, the service side of the police should be included as one of the purposes of a modern democratic police. Whereas assistance by the police is generally related to specific situations where the police should have an obligation to act, such as offering direct assistance to any person in danger or assisting persons in establishing contact with other

authorities or social services, the service side of the police is more vague and thus difficult to define. It should not be confused with certain administrative duties given to the police (issuing passports etc). In general, the police as a public service body is connected to the role of the police as a resource for the general public, and easy access to the police is one of the basic and most important aspects in this respect. The service side of the police has more to do with police attitudes towards the public than with giving the police far going service functions in addition to their traditional duties. It is clear that the police cannot be charged with a too heavy responsibility for service functions in society. Member states should therefore establish guidelines for police performance and duties in this respect.

II. Legal Basis of the Police under the Rule of Law

2. *The police are a public body, which shall be established by law.*
3. *Police operations must always be conducted in accordance with the national law and international standards accepted by the country.*
4. *Legislation guiding the police shall be accessible to the public and sufficiently clear and precise and, if need be, supported by regulations equally accessible to the public and clear.*
5. *Police personnel shall be subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of police work in a democratic society.*

Commentary

This Section establishes the legal framework according to the Rule of Law of the police as an institution as well as for its actions. The section also contains some fundamental legal requirements, some of which are deduced from the European Convention on Human Rights and its accompanying case law.

Articles 2-5 summarise some of the principles behind the concept of the rule of law with regard to the police.

Article 2 underlines that the police as an institution is a public body. It means that public authorities, ultimately the state, cannot evade their responsibility for the police and that the police as an institution cannot be made into a private body. Another thing is that police functions/powers can be delegated to private bodies.

Moreover, Article 2 states that police organisations should be established by law. This implies that the police are based on the constitution and/or ordinary legislation, however, it does not exclude detailed regulations of the police in subordinated instruments, such as governmental decrees or

instructions of the Head of Service, provided that these are given with delegated powers in conformity with the constitution/legislation. Article 3 spells out the principles that should always guide police operations; they must be lawful, both with regard to national legislation and relevant international standards. As regards the latter, the European Convention on Human Rights and related instruments are of particular importance. Article 4 sets out two general additional principles contained in the “Rule of law Concept”, which have been referred to by the European Court of Human Rights in several cases. In order to be in a position to protect his/her own rights against police powers, the citizen must be aware of which legal rules apply. Firstly, this implies that regulations are accessible to the general public and, secondly, the norm, whether legislation or a subordinate regulation, must be formulated with sufficient precision. These two requirements are necessary to give the citizen the possibility to foresee the consequences which a given regulation may entail. It is clear that consequences never can be foreseeable with absolute certainty and, in addition, laws and regulations must keep pace with changing circumstances. Therefore, the Recommendation does not go any further than the European Court of Human Rights, and uses the wording “sufficiently clear”. There must be a good balance between the details and the flexibility of a police regulation, both concerning the basis for the organisation and the performance of operations. The importance of these principles cannot be underestimated in respect of state powers used against individuals. This is the reason for having them spelled out in the Recommendation.

A cardinal principle of the rule of law, contained in Article 5, is that the law applies equally to all citizens, including those who execute the law, like police personnel. Exceptions from this rule should only be allowed when it is necessary for the proper performance of police duties.

This Article also implies that, unless there are special reasons, police personnel should, as a rule, be subject to ordinary legislation as well as to ordinary legal proceedings and sanctions. Internal disciplinary measures fall outside the scope of this rule. The European Court of Human Rights have established case law concerning the distinction between disciplinary matters and criminal matters. In essence, it is not feasible for a state to label what, according to international law, should be considered a criminal matter, a disciplinary matter, and thus disregard procedural safeguards provided for in Article 6 of the European Convention on Human Rights.

III. The Police and the Criminal Justice System

6. There shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system; the police shall not have any controlling functions over these bodies.

Commentary

As already stated in the preamble, the police are one of the four components of the criminal justice system; police, prosecution, courts and corrections. Even though this model of the criminal justice system sees each element as independent, it is widely accepted that the system should incorporate a number of checks and balances in order to ensure that the total system, and its constituent elements operate according to the law and in an efficient way. At the same time, this model of the criminal justice system, in which individual cases are seen as passing from one element to another and thereby justifying the criminal justice process, requires that these elements are independent and autonomous to a certain degree with regard to each other. Such a system is more likely to provide safeguards for those passing through it.

This Article underlines the importance of a separation of the role of the police from the other components of the criminal justice system. The police, who are “the first link of the chain”, should have no controlling functions over the other bodies in the criminal justice system.

7. The police must strictly respect the independence and the impartiality of judges; in particular, the police shall neither raise objections to legitimate judgments or judicial decisions, nor hinder their execution.

Commentary

This Article deals with the integrity of the criminal justice system. The independence and the impartiality of the judiciary is one of the corner stones in a society governed by the rule of law. The police, as part of the criminal justice system, are necessarily close to the judiciary and must never act in a way that may prejudice, or be seen to affect the impartiality of the judiciary. On the other hand, the judiciary should respect the police as a distinct professional body and not interfere with their professional arrangements. The police are subject to the judiciary in judicial decisions, which they must scrupulously respect and often implement, provided these are legitimate. The legitimacy, or lawfulness, is related to national law as well as to international (human rights) law, see also Article 3.

The second part of this Article would normally imply that the police must respect all judgments and decisions of courts and even do whatever is appropriate to enable their execution. However, the way in which the Article is formulated opens a possibility for the police not to play the role of “blind implementers” in situations when the requirements for justice in a democratic society governed by the rule of law are clearly set aside. It follows from Articles 3 and 37 that the police always must check the lawfulness of their actions.

This Article does not prejudice the rights and freedoms of police personnel as private citizens.

8. The police shall, as a general rule, not have judicial functions. Any delegation of judicial powers to the police shall be limited and in accordance with the law. It must always be possible to challenge any act, decision or omission by the police affecting individual rights, before the judicial authorities.

Commentary

As an exception from the main rule of strict separation of powers between the Executive and the Judiciary, the police may in certain situations be entrusted with judicial powers. The Recommendation emphasises that the police should be in a position to exercise judicial powers only to a limited extent, normally in regard to minor offences where the facts are simple and where the offender accepts guilt, the sanctions are limited, and often standardised. It is crucial that decisions, by the police based on delegation of judicial powers can be challenged before a court and that the offender is made aware of this. This follows from Article 6 of the European Convention on Human Rights, which states everyone’s right to a fair trial by a court of law. The present Article provides for the possibility to challenge all decisions by the police before the judicial authorities.

9. There shall be functional and appropriate co-operation between the police and the public prosecution. In countries where the police are placed under the authority of the public prosecution or the investigating judge, the police shall receive clear instructions as to the priorities governing crime investigation policy and the performance of crime investigation in individual cases. The police should keep the superior crime investigation authorities informed of the implementation of their instructions, in particular, the development of criminal cases should be reported regularly.

Commentary

This Article reflects the principles contained in the Council of Europe Recommendation on the Role of Public Prosecution in the Criminal Justice System (Rec(2000)19) concerning the relationship between the prosecution and the police. Due to the different systems prevailing in Europe, that Recommendation makes a distinction between member states where the police are independent from the prosecution and those where the police are placed under the authority of the prosecution. Irrespective of what kind of system, that Recommendation gives two general functions to the prosecution vis-a-vis the police; to scrutinise the lawfulness of police investigations, and to monitor that human rights are respected. Moreover it indicates that there should be appropriate and functional co-operation between the public prosecution and the police.

In countries where the police is placed under the authority of the prosecution, the said Recommendation (Rec(2000)19) states in Article 22 that “State should take effective measures to guarantee that the public prosecutor may:

- a. give instructions as appropriate to the police with a view to an effective implementation of crime policy priorities, notably with respect to deciding which categories of cases should be dealt with first, the means used to search for evidence, the staff used, the duration of investigations, information to be given to the Public Prosecution, ... etc;
- b. where different police agencies are available, allocate individual cases to the agency that it deems best suited to deal with it;
- c. carry out evaluations and controls in so far as these are necessary in order to monitor compliance with its instructions and the law;
- d. sanction or promote sanctioning if appropriate of eventual violations.”

Article 9 of the present Recommendation, mirrors the above described rules for the prosecution on the police. States should therefore see to it that there is functional and appropriate co-operation between the police and the prosecution, also with a police perspective. In particular, measures should be taken with the view that the police should receive clear and precise instructions from the prosecution. Such measures could be instructions through legislation or lower forms of regulations, accompanied by training, even co-training between the police and the prosecution etc. On the other hand, the co-operation also requires that the police is obliged to inform the superior investigating authority of progress in policy matters and, in particular, in the specific cases. The reporting back to the prosecution/investigating judge should preferably be regulated in detail and equally requires training.

10. The police shall respect the role of defence lawyers in the criminal justice process and, whenever appropriate, assist to make the right to access to legal assistance effective, in particular with regard to persons deprived of their liberty.

Commentary

One of the corner stones in a rule of law society is to provide everyone equal access to law and justice. Generally, this implies also to provide effective legal assistance to everyone whose rights and interests are threatened, see Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer. Moreover, Article 6 of the European Convention on Human Rights contains the specific provision that everyone charged with a criminal offence has the right to defend himself/herself in person or through legal assistance of his/her own choosing (see also Article 47 of the present Recommendation).

Article 10 highlights that the police must respect the role of defence lawyers in the criminal justice process. This implies inter alia that the police shall not interfere unduly into their work or in any sense intimidate or harass them. Moreover, the police shall not associate defence lawyers with their clients. The assistance of the police with regard to offenders' right to legal assistance is particularly needed when the person in question is deprived of his/her liberty by the police.

11. The police shall not take the role of prison staff, except in cases of emergency.

Commentary

This Article, complementary to Article 6, has been included to emphasise the absolute difference between the functions of the police, which in its judicial function is preoccupied with the pre-trial procedure, from that of treating convicted and sentenced offenders. According to Council of Europe standards concerning the administration and management of probation and prison systems, for example the European Prison Rules (Rec. No. R (87) 3) and the Recommendation on staff concerned with the implementation of sanctions and measures (Rec. No. R (97) 12), it is clear that the professions of probation and prison staff are completely different from those of the police, in particular in their crime detection function. Accordingly, personal qualifications, recruitment procedures and training are all very different. This rule indicates an important principle for the separation of powers within the criminal justice system, before and after sentencing. However, it does not preclude that police are called for in emergency situations.

(In some member States, correctional staff are referred to as "penitentiary or prison police". As was mentioned in the commentary to the "Definition of

the Scope of the Code”, this category of staff are not covered by the Recommendation.)

IV. Organisational Structures of the Police

IV.1 General

12. The police shall be organised with a view to earning public respect as professional upholders of the law and providers of services to the public.

Commentary

This Article embodies a principle, which is key to the identity of a police organisation in a democratic society governed by the rule of law. Police work in such a society succeeds best if it is carried out with the consent of the population (“*earning* public respect”). Therefore, it is crucial for the police to establish a mutual understanding and co-operation with the public. This is true for most of the functions the police are entrusted with.

The organisational structures of the police should preferably be such as to promote confidence building between the police and the public. One important aspect in this respect is to develop a high level of professionalism within the police. Another aspect is to develop the police organisation into a transparent public service body. In such a way the public may regard the police more as a service at their disposal than as a force imposed upon them.

13. Police organisations, when performing police duties in civil society, shall be under the responsibility of civilian authorities.

Commentary

It should be recalled that the scope of the present Code is limited to police work in civil society. The judicial side of police work - the police being a component of the criminal justice system - and the public order side of the police, as well as the public service dimension of police work, and the integration of the police in civil society, are all elements that are different from military functions and objectives. Moreover, the legal basis and powers of the police in a rule of law society, where the focus is on the respect for civil and political rights of individuals, are also different from those of the military. Although there are some similarities between police and military functions and performances, the above special characteristics of the police are so important in a democratic society governed by the rule of law that they should be supported by all means. The organisational responsibility is one of

the means in this respect. A police organisation under civilian responsibility is likely to best cultivate police professionalism suitable for civil society. The organisational police structures – civil or military – differ very much in Europe. In western and northern Europe the police are primarily civilian. In central and eastern Europe, several police organisations have a military structure; whereas in southern Europe, both models exist, sometimes side by side in the same country.

Moves towards community orientation of the police is under way in several member states. These processes contain often elements of organisational reform. In central and eastern Europe, this is part of an overall transition processes into systems of democracy and the rule of law. However, this trend is also going on in parts of Europe with traditions of long standing democratic systems.

In the prevailing circumstances and, with full respect to the history and traditions in member states, the present Article does not go any further than to state that police functions performed in civil society – whether carried out by civilian or militarily organised police – should ultimately be under the responsibility of civilian authorities.

14. The Police and its personnel in uniform shall normally be readily recognisable.

Commentary

This Article contains a principle of crucial importance for the traditional police in a democratic society governed by the rule of law; it should be easy for the general public to recognise police stations and the uniformed police. This also covers equipment used (cars etc). The Article indicates that, unless there are special reasons, such as the proper exercise of police functions, the police should be distinctively recognisable from other bodies. This forms part of the general requirement of openness and transparency of the police organisation, however, it also serves the purpose of easy access to the police in emergency situations. (See also Article 44.)

15. The police organisation shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable.

Commentary

The police belong to the executive power. They cannot be fully independent of the Executive, from which they receive instructions. However, in executing their given tasks the police must follow the law and are, in

addition, entrusted with discretion. In exercising their powers, the police should not receive any instructions of a political nature. Operational independence should apply throughout the organisation. Such an independence is an important feature of the rule of law, as it is aimed at guaranteeing that police operations are being conducted in accordance with the law, and when interpretation of the law is needed, this is done in an impartial and professional way. Operational independence requires that the police are fully accountable for their actions/omissions (see also Section VI).

16. Police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates.

Commentary

In a society governed by the rule of law, the law applies equally to all citizens. If this principle is to be meaningful, it follows that police personnel, just as any citizen, must also be personally accountable for their own actions. Moreover, they should also be fully accountable for orders to subordinated police personnel, given with hierarchical powers.

17. The police organisation shall provide for a clear chain of command within the police. It should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.

Commentary

This Article, which is complementary to Article 16, concerns the responsibility for orders within the police. The fact that all police personnel are responsible for their own actions, does not exclude that superiors may also be held responsible, for having given the order. The superior may be held responsible side by side with the “implementing” official, or alone in cases where the latter person followed orders in “good faith”. (See also Article 38.) Through an established *chain of command*, ultimate responsibility for police action can be traced in an effective way.

18. The police shall be organised in a way that promotes good police / public relations and where appropriate effective co-operation with other agencies, local communities, non-governmental organisations and other representatives of the public, including ethnic minority groups.

Commentary

This Article recommends states to organise their police from the perspective of the police as an integrated part of society. The police may increase its

efficiency if well-functioning relationships are established between them and other public bodies on different levels and, in particular, between the police and the wider public, the latter often being represented by groups or organisations of a non governmental character.

The Recommendation leaves open how to implement this principle. Different models exist in Europe to make the police co-operate with other agencies and to bring the police closer to the community. Decentralisation of the police organisation is generally considered as an important means. However, this is often closely related to the extent that local democracy is developed in a country. “Community policing” was in Europe initially developed in the United Kingdom, as a way to involve the whole community in crime prevention in particular, but also in detecting crime. Many European countries have followed this model.

Urban insecurity in bigger cities in Europe is an example of a multi-faceted problem, often related to phenomenon, such as poverty, racism and juvenile delinquency, which cannot be effectively combated solely by police action, but which requires a wider society approach with many players involved.

19. Police organisations shall be ready to give objective information on their activities to the public, without disclosing confidential information. Professional guidelines for media contacts shall be established.

Commentary

The police should be as transparent as possible towards the public. A readiness by the police to disclose information on its activities is crucial for securing public confidence. At the same time, the police must respect confidentiality for a number of reasons; integrity of persons, crime investigation reasons, the principle of the presumption of innocence, security reasons etc. Obviously, even if situations like those described are well regulated in most states, there will always be a margin of appreciation left to the police in striking the balance between the two interests. In addition, communication between the police and the media can be difficult, and may not always be well prepared from the police side. Therefore, it is recommended that the police establish guidelines for their media contacts. It is noted that in some member States media relations are being dealt with in departments especially tasked for such contacts. A key principle should always be that of objectivity.

20. The police organisation shall contain efficient measures to ensure the integrity and proper performance of police staff, in particular, to guarantee respect for

individuals' fundamental rights and freedoms as enshrined, notably in the European Convention on Human Rights.

Commentary

The concern with this Article is to enhance a police culture which in recognising its responsibility for upholding individuals' fundamental rights and freedoms, works to safeguard its own professional integrity through internal accountability measures. This could be realised in different ways. The leadership and management of the police certainly play an important role in establishing an "ethos", which upholds individual rights and the principle of non-discrimination, both within the organisation and in dealings with the public. Other means are an open communication between staff (horizontal as well as vertical), standard setting (professional codes of conduct) and monitoring. It is clear that recruitment and training play an important role in this respect. (External accountability is dealt with in Chapter VI.)

21. Effective measures to prevent and combat police corruption shall be established in the police organisation at all levels.

Commentary

There is no common international definition of corruption. The qualification of what should be considered as corruption varies from country to country. The Criminal Law Convention on Corruption adopted by the Council of Europe in 1999, does not provide a uniform definition of corruption. However, it aims at developing common standards concerning certain corruption offences, such as bribery (active and passive).

The term "police corruption" is often used to describe a great variety of activities, such as bribery, fabrication or destruction of evidence, favouritism, nepotism, etc. What seems to be a common understanding of police corruption is that it necessarily involves an abuse of position, an abuse of being a police official. Moreover, it is widely recognised that corruption should be regarded as a constant threat to the integrity of the police and its proper performance under the rule of law in all member states.

The present Article aims at highlighting that member States should put in place effective internal measures to combat corruption within their police. This could include measures to define corrupt behaviour, to the extent possible; that the causes for corruption in the police be studied, and that organisational structures and control mechanisms to combat corruption be established.

It should be mentioned that corruption has only in recent years become a focal point on the international agenda. Nowadays, member states consider corruption a real threat to democracy, the rule of law and the protection of human rights, and, as a result, the Council of Europe, being the pre-eminent European institution to defend these rights, has developed a series of instruments for the fight against corruption; the Resolution on the twenty guiding principles for the fight against corruption ((97) 24) and Recommendations on the status of public officials in Europe (No. R (2000) 6) and on codes of conduct for public officials (No. R (2000) 10), which all apply to the police, and the Criminal Law Convention (ETS No 173) as well as the Civil Law Convention on Corruption (ETS No 174), adopted in 1999. Moreover, the Group of States against Corruption (GRECO) was established in 1998 to monitor corruption in member States. The Council of Europe is also performing other programmes with the overall objective to the fight against corruption, inter alia in the police sector, which are open to member states.

IV. 2 Qualifications, Recruitment and Retention of Police Personnel

22. Police personnel, at any level of entry, shall be recruited on the basis of their personal qualifications and experience, which shall be appropriate for the objectives of the police.

Commentary

In order to select appropriate candidates to the police, the selection process should only be based on objective criteria. This rule deals with personal qualifications, which may be divided into personal skills and experience. To the former category belongs the personal abilities and aptitudes of the applicant, some of which are described in Article 23. The latter category - personal experience - covers both educational background and life experience, often the previous working experience of candidates. The personal qualifications should meet the objectives of the police, see Article 1. The same basic principles should apply to all ranks although the qualifications may differ. Appointments to the police for political reasons should be avoided, in particular to posts of an operational character.

23. Police personnel shall be able to demonstrate sound judgment, an open attitude, maturity, fairness, communication skills and, where appropriate, leadership and management skills. Moreover, they shall possess a good understanding of social, cultural and community issues.

Commentary

The listed examples of personal skills are important for the operational staff of a police service in a democracy. The list is not exhaustive. The ultimate goal is to have police personnel with a broad understanding of the society they serve and whose behaviour is appropriate for fulfilling their tasks in accordance with the objectives of the police.

24. Persons who have been convicted for serious crimes shall be disqualified from police work.

Commentary

This Article sets a minimum standard, which should apply to those at the point of recruitment, to recruits and to fully recruited police personnel. It is, however, open to member States to decide what “degree of tolerance” should be accorded to crimes that fall short of the category of serious crimes.

Furthermore, the requirement of a conviction should also be interpreted as a minimum standard, which does not exclude that recruits and personnel be disqualified as police, or from carrying out police duties, for the reason of well substantiated suspicion of criminal activities, committed by the person in question.

25. Recruitment procedures shall be based on objective and non-discriminatory grounds, following the necessary screening of candidates. In addition, the policy shall aim at recruiting men and women from various sections of society, including ethnic minority groups, with the overall objective of making police personnel reflect the society they serve.

Commentary

In order to be as beneficial as possible to the police, recruitment procedures should be carried out in an objective and non-discriminatory way. Some means for achieving this are described in Article 22 and its Commentary. Access to the police in a non-discriminatory way also has support in the European Convention on Human Rights (Protocol No. 12) as well as in the European Social Charter. The case law of these instruments has in this respect tended to focus on the following grounds - sex, political opinion, religion, race, national and ethnic origin.

“Necessary screening” of candidates indicates that the recruiting authority should have an *ex-officio* and active “research” approach when scrutinising the background of applicants. This requirement is more demanding in countries where the public administration, including the criminal justice system, is not so well developed and/or in countries which are suffering from

catastrophes and war, than in countries where public records, such as criminal records, are accurate and easy to access.

It is a fact that women generally are grossly under represented in the police in all member States, and that this is even more apparent in the higher ranks and managerial positions than in the basic grades. A similar situation can generally be described for minority groups, including ethnic minority groups, in all member States.

It is appreciated that the relations between the police and the public will benefit from the composition of the police reflecting that of society. This will reinforce the efficiency of the police and promote their support by the public. As a consequence, every effort shall be made to this effect.

The second sentence of the Article implies that recruitment policies shall encourage a representation in the police, which corresponds to that of the society. Such a policy should be made known to the public and implemented at a reasonable pace and take full account of the requirements stated in Article 22.

IV. 3 Training of Police Personnel

26. Police training, which shall be based on the fundamental values of democracy, the Rule of Law and the protection of human rights, shall be developed in accordance with the objectives of the police.

Commentary

The police play a prominent role as a defender of the society it serves and should preferably share the same fundamental values as the democratic state itself. The fostering of democratic values in the police is therefore crucial and training is one of the most important means in furthering values among the staff. As a result, this Article brings in the fundamental values of all member states of the Council of Europe as an integrated part of the training of the police.

Ethical and human rights aspects of police work should preferably be introduced in a problem oriented context, which focuses on practical police work and gives a solid understanding of the underlying principles. Although member states give considerable attention to human rights training, there is still a great need to develop this part of police training, in particular to develop training methods and material. The Council of Europe is active in this area and several handbooks containing practical guidelines on human rights in police training have been developed on an expert level.

27. General police training shall be as open as possible towards society.

Commentary

The principle of openness and transparency of a police organisation, must also be reflected in the training of its staff. A police which aims to carry out tasks with the support of the public, must have its personnel trained in an environment, which is as close as possible to social realities. This would include the physical environment (place and equipment) as well as the intellectual input to the training.

Police training in closed and remote places, involving students living in barracks, etc, may be necessary for certain types of specialist training.

However, general training of police should, wherever possible, be carried out in “normalised” conditions. Another strong implication of openness is that external training, involving institutions other than the police, should be offered, in addition to internal training.

Police openness towards society is also beneficial for the dynamics of training. In particular, with problem oriented training, states of affairs in society must be faithfully reproduced for the training to be effective.

28. General initial training should preferably be followed by in-service training at regular intervals, and specialist, management and leadership training, when it is required.

Commentary

This Article contains the principle that police personnel, as a rule, initially, shall undergo general training and that initial training, should be followed, if need be, by more specialised training. Such a system will help to create a staff, familiar with the same basic values of policing and capable of carrying out a variety of tasks. The approach of training police personnel as generalists initially, does not rule out that police personnel - in addition - need special training relating to specific tasks and responsibilities (ranks). The Article also underlines the need to complement initial training with in-service training at regular interval.

Police training is closely related to the system of recruitment to the police. There are states where all police personnel, as a rule, are recruited as basic grades (United Kingdom model) and systems where basic grade staff and managerial staff could be recruited through separate proceedings (continental Europe), as a requirement for being recruited to the latter category is often a university degree. The principles in this rule apply to both these systems.

29. Practical training on the use of force and limits with regard to established human rights principles, notably the European Convention on Human Rights and its case law, shall be thoroughly included in police training at all levels.

Commentary

The practical aspects on the use of force by the police, in particular vis-à-vis individuals or groups of individuals are of such crucial importance for the police in a rule of law society, that it has been highlighted in a separate Article. Practical training would imply that it should be as close to reality as possible.

30. Police training shall take full account of the need to challenge and combat racism and xenophobia.

Commentary

This article draws attention to the problem of racism and xenophobia which exists in many European countries, and is an important factor in urban insecurity. Police training should, whenever necessary, challenge any racist or xenophobic attitudes within the police organisation, and also emphasise the importance of effective police action against crimes which are based on race hatred and target ethnic minorities.

IV.4 Rights of Police Personnel

31. Police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.

Commentary

The Articles of this section are guided by the overall principle that police in an open democratic society should have the same rights as other citizens, to the fullest possible extent. This is an important element of the rule of law and of making the police part of the society it serves.

The rights covered by the European Convention on Human Rights (civil and political rights) apply fully to all citizens in member states, including those employed by the police. Some of these rights are “absolute” in their character, whereas others may be derogated under special conditions. In this respect, reference is made to the extensive case law developed by the European Court of Human Rights.

The present Article emphasises that member states shall not deprive their police staff of any civil and political rights, unless there are legitimate reasons directly connected to the proper performance of police duties in a democratic state governed by the rule of law.

32. Police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures; taking into account the particular character of police work.

Commentary

This Article refers to social and economic rights, which are covered by the European Social Charter, a complementary instrument to the European Convention on Human Rights for these particular rights.

Police personnel have the status as public servants (or civil servants) in several member States. As this is not the case in all member states, it is stated that police personnel, to the extent possible, should enjoy social and economic rights as public servants. Such rights may be limited for reasons of the special character of police work. The listed social and economic rights in the Article highlights a few crucial rights but is not exhaustive.

The right to *organise* - to join trade unions - has in the European Social Charter (Article 5) a special interpretation when it comes to the police as the Charter in this respect leaves a margin of appreciation to the states. However, the case-law under the Charter has established that, even if there may be no unlimited right for the police to organise, it would be a violation of the Charter to forbid police officers to set up their own representative associations. National law may provide for police-only organisations, which is the case in some member states. However, a complete ban on the right to strike for police is not contradictory to the Charter and its case-law and the present Recommendation does not go any further.

The rights to *appropriate remuneration* and *social security*, as well as *special health and security measures* have been highlighted in the recommendation for the reason of the special character of police work. This refers, for example, to the unpredictable tasks that police personnel are facing every day, to the risks and dangers inherent in police work and to the irregular working hours. Moreover, these rights of police personnel are also crucial conditions for making the police profession attractive. This aspect is extremely important, considering the need for highly qualified staff to be recruited to, and retained within, the police. Furthermore, a well remunerated police personnel is more likely not to be involved in undesired activities, such as corruption.

33. Disciplinary measures brought against police staff shall be subject to review by an independent body or a court.

Commentary

Disciplinary sanctions against police personnel are normally an internal police matter and are often of a minor character. However, disciplinary measures may also be severe and sometimes it is difficult to draw the line between the criminal and the disciplinary aspects of a case. Furthermore, criminal proceedings and sanctions may be followed by disciplinary measures.

The possibility to have disciplinary decisions challenged by an independent body, preferably a court of law has two main advantages. Firstly, it would provide police personnel a safeguard against arbitrary decisions. Secondly, it opens up the police towards society (transparency), in particular, given that court hearings and judgments/decisions of courts are normally made public. Another, more legalistic aspect is that if disciplinary measures were subject to review by a court of law, the right to a fair trial, according to Article 6 of the European Convention on Human Rights, which in certain situations apply also to disciplinary matters, would always be safeguarded.

34. Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties.

Commentary

Police personnel, as a result of their particular tasks and close contacts with the public, will sometimes be the subject of accusations by the public concerning their performance. If such accusations are ill-founded (following investigations/proceedings that are impartial) police personnel should be entitled to necessary support from their authorities, in particular, concerning personal assistance. (Police complaints systems are dealt with in Chapter VI.) This Article does not exclude that support to police personnel may be required in other situations, such as during internal proceedings against staff.

V. Guidelines for Police Action / Intervention

Commentary

This part of the recommendation deals to a large extent with guidelines for operational police personnel in their daily activities. During the preparatory work of the Recommendation, reference was sometimes made to "internal ethics" for this part of the text as opposed to the "broader ethics of the police" for the sections which concern the framework of the police in a

democratic society, their place in the criminal justice system, organisational structures, etc.

The guidelines are divided into two parts, one dealing with general principles of democratic policing which apply to almost any situation, and the other devoted to principles for specific situations which provide particular difficulties in terms of ethics and human rights in all member States.

V.1 Guidelines for Police Action/Intervention: General Principles

35. The police and all police operations must respect everyone's right to life.

Commentary

This Article - which is based on Article 2 of the European Convention on Human Rights - implies that the police and their operations shall not engage in intentional killings. Considering Article 2 of the European Convention on Human Rights in the light of Protocol No. 6 to the same Convention, concerning the abolition of the death penalty, it should also be excluded that the police are being used for the execution of capital punishment.

Another factor is that police actions may lead to the loss of life as a result of the use of force by the police. That may not necessarily violate the respect for the right to life, provided that certain conditions are fulfilled.

Article 2 of the European Convention on Human Rights, which contains the prohibition of intentional deprivation of life, requires that everyone's life shall be protected by the law. The second paragraph of Article 2 reads:

“Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

a. in defence of any person from unlawful violence;

b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c. in action lawfully taken for the purpose of quelling a riot or insurrection.”

The European Court of Human Rights (see for example “McCann case”, European Court of Human Rights, Series A, No.324-A) has held that these exceptions primarily describes situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life. The use of force may be no more than absolutely necessary for the achievement of one of the purposes set out in *a*, *b* and *c*. “Absolutely necessary” implies according to the European Court of Human Rights, in particular, that the force used must be strictly proportionate to the achievements of the aims mentioned (*a*, *b* and *c*).

The training of police personnel in this respect is of utmost importance.

36. The police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances.

Commentary

The prohibition of torture or inhuman or degrading treatment or punishment contained in this Article, derives from Article 3 of the European Convention on Human Rights. The European Court of Human Rights clearly and systematically affirms that Article 3 of the European Convention enshrines one of the fundamental values of democratic societies and that the prohibition is absolute. That means that under no circumstances can it be admissible for the police to inflict, instigate or tolerate any form of torture for any reason. The word “tolerate” implies that the police should even have an obligation to do their utmost to hinder such treatment, which also follows from the overall objectives of the police, see Articles 1 and 38.

In addition to the fact that torture, inhuman or degrading treatment or punishment is a serious offence against human dignity and a violation of human rights, such measures, when used for the purpose of obtaining a confession or similar information, may, and are even likely to, lead to incorrect information from the person who is subject to torture or similar methods. Thus, there is no rational justification for using such methods in a state governed by the rule of law.

It is clear that both physical and mental suffering are covered by the prohibition. For a more detailed analyses on what kind of behaviour that is covered by torture, inhuman or degrading treatment, reference is made to the case law of the European Court of Human Rights as well as to the principles developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). These bodies have provided a rich source of guidance for the police, which must govern police action and be used in the training of police personnel.

It goes without saying that a police service that uses torture or inhuman or degrading treatment or punishment against the public, are unlikely to earn respect or confidence from the public.

37. The police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective.

Commentary

This Article recognises the case-law of the European Court of Human Rights with regard to Article 2 of the European Convention on Human Rights, see the Commentary to Article 34. However, it should be noted that the present

rule is applicable to all kinds of situations where the police are entitled to use force.

As a starting point, there must always be a legal basis for police operations (Article 3), including the use of force. Arbitrary use of force can never be accepted. Moreover, the present Article indicates that the use of force by the police must always be considered as an exceptional measure and, when there is need for it, no more force than is absolutely necessary may be used. This implies that the force used should be proportionate to the legitimate aim to be achieved through the measure of force. There must, accordingly, be a proper balance between the using of force and the situation in which the force is used. In practical terms, this means, for example, that no physical force should be used at all, unless strictly necessary, that weapons should not be used, unless less strictly necessary, and, if lethal weapons are deemed necessary, they should not be used more than what is considered strictly necessary; shoot to warn before shoot to wound and do not wound more than is strictly necessary, etc.

Normally, national legislation and regulations should contain provisions on the use of force based on the principles of *necessity* and *proportionality*.

However, the practical approach to the problem in a given situation is more difficult, as the use of force, according to the above principles, places a heavy burden on the police and emphasises the need for police personnel not only to be physically fit and equipped but also, to a large extent, to have well developed psychological skills. The importance of recruitment of suitable personnel to the police, as well as their training cannot be under estimated in this respect, see also Articles 23 and 29.

38. Police must always verify the lawfulness of their intended actions.

Commentary

It is a basic requirement that the police, in a society governed by the rule of law, only conduct lawful activities. It follows from Article 3, that the lawfulness test is not limited only to national law, but includes international human rights standards.

The present Article gives the police an *ex officio* obligation to control the legality of their action before and during their interventions. This applies to the police as an organisation as well as to the individual police official. A system of checks and balances within the police, as well as training, are important means of ensuring that such verification becomes systematic.

39. Police personnel shall carry out orders properly issued by their superiors, but they shall have a duty to refrain from carrying out orders which are clearly illegal and to report such orders, without fear of any form of sanction.

Commentary

Since police personnel, in accordance with Article 16, should be held personally liable for their own actions, there must be a possibility for them to refuse carrying out orders which are illegal (contrary to the law). The wording “clearly illegal”, has been chosen to avoid incurring police disobedience in situations where the legality of an order is unclear. With full respect to the necessary hierarchical structures in the police, the overall idea with this Article is to avoid the individual’s responsibility for flagrant illegal activities and human rights violations being “covered up” by hierarchical structures. The “operational independence” of the police from other state bodies (Article 15), works in the same direction. The duty with regard to illegal orders should also contain an obligation to report such orders. The reporting of illegal orders shall have no negative repercussion or sanctions on the reporting staff.

40. The police shall carry out their tasks in a fair manner, in particular, guided by the principles of impartiality and non-discrimination.

Commentary

The *fairness* requirement is an overall and open ended quality, which comprises the principles of impartiality and non discrimination as well as other qualities. The police act with fairness when they show full respect for the positions and rights of each individual that are subject to their police duties. Fairness should apply to all aspects of police work, but it is particularly emphasised with regard to the public.

The *impartiality* implies, for example, that the police act with integrity and with a view to avoid taking sides in a conflict, which is under scrutiny. In the case of an offence, the police must take no position on the question of guilt (see also Article 47). Furthermore, the impartiality requires that police personnel abstain from any activity outside the police which is likely to interfere with the impartial discharge of their police duties or which may give rise to the impression amongst the public that this is the case.

The general principle of *non discrimination* and equality is a fundamental element of international human rights law. With the adoption of Protocol No. 12 to the European Convention on Human Rights, there is a general prohibition of discrimination contained in that instrument. The scope of protection against discrimination concerns rights under the European

Convention on Human Rights, individual rights directly under national law or via obligations to public authorities and acts by public authorities in their exercise of discretionary powers or any other act of such a body, for example the police.

The present Article does not list particular grounds of discrimination. There is no intention, however, to deviate from what is contained in the European Convention on Human Rights, which mentions a non exhaustive list to which further grounds could be added. Examples of grounds of discrimination are sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, physical or mental disability, sexual orientation or age.

Finally, it should be mentioned that in certain cases, unequal treatment, which has an objective and reasonable justification, may not amount to discrimination, according to the European Convention on Human Rights and its case-law.

41. The police shall only interfere with individual's right to privacy when strictly necessary and only to the extent required to obtain a legitimate objective.

Commentary

Individuals right to “privacy” would include the rights covered by Article 8 of the European Convention on Human Rights: private life, family life, home and correspondence. As a starting point, there must always be a legal basis for police operations (Article 3), including interference with peoples’ privacy. Arbitrary interference can never be accepted. Moreover, the present rule indicates that the interference in peoples’ privacy must always be considered as an exceptional measure and, even when justified, should involve no more interference than is absolutely necessary.

42. The collection, storage, and use of personal data by the police shall be carried out in accordance with international data protection principles and, in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.

Commentary

The use of new information technologies largely facilitates police action against different forms of criminality. The registration and the analysis of personal data, in particular, allows the police to crosscheck information and thus to expose networks the existence of which would remain obscure without resort to these tools. However, the uncontrolled use of personal data

may constitute violations of the right to privacy of the individuals concerned. In order to avoid abuse at the stages of collection, storage and use of personal data, such police activities must be guided by principles for the protection of data. In this respect, the principles expressed in this Article should be considered in the light of the Recommendation No. R (87) 15 of the Council of Europe regulating the use of personal data in the police sector.

43. The police, in carrying out their activities, shall always bear in mind everyone's fundamental rights, such as freedom of thought, conscience, religion, expression, peaceful assembly, movement and the peaceful enjoyment of possessions.

Commentary

The rights referred to in this Article are a recapitulation of rights provided for in the European Convention on Human Rights (Articles 9, 10 and 11 of the Convention, Article 1 of its First Protocol and Article 2 of Protocol No.4 to the same Convention) , which are essential for the effective functioning of an open democratic society, but which have not been dealt with elsewhere in the Recommendation.

The police play a major part in safeguarding these rights - without which democracy becomes an empty notion without any basis in reality - either directly, through safeguarding democratic arrangements, or indirectly, through their general responsibility for upholding the rule of law.

44. Police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups.

Commentary

The police service is judged by the public, to a large extent, upon how the police personnel act. Correct behaviour of individual police officials is, therefore, of ultimate importance for the credibility of the police. In order to earn the respect of the public, it is not sufficient only to act within the law, but to apply the law with integrity and respect towards the public; applying the law with a degree of "common sense" and never to forget the "public service" which is a necessary dimension in police work.

Police personnel act with integrity and respect towards the public, when they are professional, impartial, honest, conscientious, fair and just, politically neutral and courteous. In addition, the police should acknowledge that the public consists of individuals, with individual needs and demands. Vulnerable groups in society call for extra attention by the police.

45. Police personnel shall during intervention normally be in a position to give evidence of their police status and professional identity.

Commentary

This Article, which is closely linked to Article 14, has two main purposes. Firstly, the intervening police personnel shall as a rule always be in a position to give evidence that they belong to the police. Secondly, they shall normally also be in a position to identify themselves as an individual member of the police ("professional identity"). The requirement that police personnel normally should give evidence of their professional identity before, during or after intervention is closely linked to the personal police responsibility for action or omission (Article 16). Without a possibility of identifying the individual police man/woman, the personal accountability, seen in the perspective of the public, becomes an empty notion. It is clear that the implementation of this regulation must be balanced between the public interest and the safety of the police personnel on a case by case basis. It should be stressed that the identification of a member of the police does not necessarily imply that his/her name be revealed.

46. Police personnel shall oppose all forms of corruption within the police. They shall inform superiors and other appropriate bodies of corruption within the police.

Commentary

This Article, which concerns the conduct of police personnel, is complementary to that of Article 21, which deals with organisational structures in the fight against corruption. The Article places a positive obligation upon the police official to avoid corrupt behaviour as an individual and discourage it among colleagues. Police officials shall, in particular, carry out their duties in accordance with the law, in an honest and impartial way and should not allow their private interests to conflict with their position in the police. To this end, police officials shall always be on the alert for any actual or potential conflicts of interest and take steps to avoid such conflicts. They shall report to their superiors or to other appropriate authorities if they become aware of corrupt behaviour within the police. It should be noted that the Council of Europe Recommendation No R (2000) 10 on Codes of Conduct for Public Officials (drafted by the "Multidisciplinary Group on Corruption", GMC) is applicable to the police and its personnel.

V.2 Guidelines for Police Action/Intervention: Specific Situations

V.2.1 Police Investigation

47. Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime.

Commentary

In order to avoid arbitrary police investigations, a minimum requirement should be fulfilled before the police initiate any such investigation. There should at least be reasonable (and legitimate) suspicion of an offence or crime, that is the suspicion must be justified by some objective criteria.

48. The police must follow the principles that everyone charged with a criminal offence should be considered innocent until found guilty by a court, and that everyone charged with a criminal offence has certain rights, in particular, the right to be informed promptly of the accusation against them, and to prepare his/her defence either in person, or through legal assistance of his/her own choosing.

Commentary

The principle of the presumption of innocence, contained in Article 6 of the European Convention on Human Rights, is one of the most important rights of individuals in the criminal justice process. The police, often "the first link of the chain" in this process, have a particularly difficult task as they must, in an objective manner, investigate a case and no matter how overwhelming the evidence is against a suspect, must respect the presumption of innocence. With regard to the relation between the police and the public, in particular the media, the problem becomes even more accentuated (see also Article 19).

The list of certain additional minimum rights of everyone charged with a criminal offence, also drawn from Article 6 of the European Convention on Human Rights, is also extremely important for the police to bear in mind, as these rights should be provided for as soon as possible during the criminal justice process. Often, that is during the police investigation.

49. Police investigations shall be objective and fair. They shall be sensitive and adaptable towards the special needs of persons, such as children, juveniles, women, minorities, including ethnic minorities, and vulnerable persons.

Commentary

Police work should always be guided by objectivity and fairness. This is particularly important in police investigations. The objectivity required implies that the police must carry out an investigation impartially, that is, they should base an investigation on *all* relevant circumstances, facts and evidence, that work both for and against their suspicions. Objectivity is also a criteria for the fairness requirement, which, in addition, requires that the investigation procedure, including the means used, is such as to provide for an environment that lends itself to a "just" process, where the individual's fundamental rights are respected.

The fairness requirement for police investigations also means that consideration must be taken of an individuals' right to participate fully. The investigation must, for example, be adapted to take account of the physical and mental capacities and cultural differences of those involved.

Investigations concerning children, juveniles, women and individuals belonging to minority groups, including ethnic minorities are particularly important in this respect. The investigation should be thorough, with as limited a risk of damage to those subject to the investigation as possible. Upholding these measures sustains "fair police process", which constitutes the preparatory basis for a "fair trial".

50. Guidelines for the proper conduct and integrity of police interviews shall be established, bearing in mind Article 48. They shall, in particular, provide for a fair interview during which those interviewed are made aware of the reasons for the interview as well as other relevant information. Systematic records of police interviews shall be kept.

Commentary

This rule, which generally applies to police interviews, originates in statements with regard to the interrogation process in custody made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as contained in its 2nd General Report (1992):

"...the CPT considers that clear rules or guidelines should exist on the way in which police interviews are to be conducted. They should address inter alia the following matters: the informing of the detainee of the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; places in which interviews may take place; whether the detainee may be required to stand while being questioned; the interviewing of persons who are under the influence of drugs, alcohol, etc. It should also be required that a record be systematically kept

of the time at which interviews start and end, of any request made by a detainee during an interview, and of the persons present during each interview. The CPT would add that the electronic recording of police interviews is another useful safeguard against the ill-treatment of detainees (as well as having significant advantages for the police).”

The present Article, is applicable to all police interviews, regardless of whether those subject to the interview are in custody or not.

51. The police shall be aware of the special needs of witnesses and shall be guided by rules for their protection and support during investigation, in particular, where intimidation of witnesses is at risk.

Commentary

Police personnel must be competent in handling the early stages of an investigation, in particular, contacts with those implicated by a crime. The proper protection of witnesses is necessary for their safety, which is a crucial condition for them to give evidence and thus for the outcome of the investigation. When intimidated witnesses are afraid of the possible consequences of giving evidence, investigative techniques must be flexible, and take this into account. The problem of intimidated witnesses is particularly critical in situations, such as those related to terrorism, to organised crime, to drug related crime and to violence within the family. Moreover, in cases where the witnesses are also victims of the crime, the handling of witnesses becomes even more complex.

This Article underlines how important it is for the police to be aware of the special needs of witnesses in different situations, and their protection. Not only does this call for special training of police personnel, but also guidelines are necessary to determine the proper handling of witnesses by the police. In this respect reference is made to the extensive work already carried out by the Council of Europe, concerning witness and victim protection (Recommendations No. R (85) 4 on the violence in the family, No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, No. R ((87) 21 on assistance to victims and prevention of victimisation, No. (91) 11 on sexual exploitation, pornography and prostitution of , and trafficking in children and young adults, No. R (96) 8 on crime policy in Europe in a time of change and recommendation No. R (97) 13 on intimidation of witnesses and the rights of the defence).

52. Police shall provide the necessary support, assistance and information to victims of crime, without discrimination.

Commentary

This Article summarises the police duties of providing assistance and information for victims of crime as stated in Recommendation No. R (85) 11 on the position of the victim in criminal law and procedure. In addition, the Article places an obligation on the police to provide the necessary support for victims, which implies that there is a readiness and capacity within the police to provide such support either directly or through other agencies and organisations.

53. The police shall provide interpretation/translation where necessary throughout the police investigation.

Commentary

This Article complements Article 5.2 of the European Convention on Human Rights, which gives everyone who is arrested the right to be informed of the reasons for the arrest, and the charge against them, in a language which they understand.

V.2.2 Arrest/Deprivation of liberty by the police

54. Deprivation of liberty of persons shall be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee. A custody record shall be kept systematically for each detainee.

Commentary

Deprivation of liberty must be regarded as an exceptional measure, which may never be used unless absolutely necessary and must be limited in time. As with all police operations, this measure must always be lawful. The Article emphasises with every arrest/deprivation of liberty, that the individual needs of the person concerned must be fully considered.

In accordance with the statement of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in its 2nd General Report (1992), a comprehensive custody record should be kept for each arrested person/detainee:

“The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced (and the work of police officers quite possibly facilitated) if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told of rights; signs of injury, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by

them; when offered food; when interrogated; when transferred or released, etc.). For various matters (for example, items in the person's possession, the fact of being told of one's rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. Further, the detainee's lawyer should have access to such a custody record.”

55. The police shall, to the extent possible according to domestic law, inform promptly persons deprived of their liberty of the reasons for the deprivation of their liberty and of any charge against them, and shall also without delay inform persons deprived of their liberty of the procedure applicable to their case.

Commentary

This Article brings to the attention the right provided for in Article 5.2 of the European Convention on Human Rights (*that “[e]veryone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*”) and a statement by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its 2nd General Report (1992), that persons “*taken into police custody should be expressly informed without delay of all their rights*” (including those contained in Article 56). To this has been added that persons deprived of their liberty should also be informed of the procedure of their case. (The wording “to the extent possible according to domestic law” is used as this information is sometimes provided by other authorities than the police, such as the public prosecution.)

56. The police shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest.

Commentary

This Article gives the police full responsibility for the standards of the physical environment of persons deprived of their liberty, who are kept in police facilities. The Article implies that the police have an obligation to care actively for the safety of persons kept in their custody. They should take full responsibility for safeguarding those in their custody from harm, originating either from outside or inside the custody, including self-inflicted harm by the detainee. This would, for example, involve the separation of dangerous persons. Furthermore, deterioration in the health of the person deprived of liberty - mental as well as physical – should, so far as is possible, be prevented

and medical care provided if necessary. This may also imply that instructions of doctors or other competent medical personnel must be followed. The police should also provide for appropriate hygiene, including toilet facilities, and food.

The Police cells should be of a reasonable size, considering the number of persons accommodated. Furthermore, there should be "adequate lighting", preferably natural day light as well as artificial light. "Adequate ventilation" implies that fresh air should be available at an appropriate temperature. Suitable means of rest, bed or chair, should be provided for all persons kept in police custody. (Reference is also made to further standards established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.)

57. Persons deprived of their liberty by the police shall have the right to have the deprivation of their liberty notified to a third party of their choice, to have access to legal assistance and to have a medical examination by a doctor, whenever possible, of their choice.

Commentary

This rule is based on three rights of persons who are deprived of their liberty by the police, which have been identified by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT):

“The CPT attaches particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities). They are, in the CPT's opinion, three fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc).” (CPT 2nd General Report, 1992)

58. The police shall, to the extent possible, separate persons deprived of their liberty under suspicion of having committed a criminal offence from those deprived of their liberty for other reasons. There shall normally be a separation between men and women as well as between adults and juveniles deprived of their liberty.

Commentary

Out of respect for the dignity and integrity of individuals and their needs, the police should avoid, whenever possible, keeping criminal suspects together with other categories of persons deprived of their liberty (c.f. immigration detainees). This rule is in accordance with principles established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Other grounds for separation are sex and age, however, separation on these grounds must also take into account personal needs and decency.

VI. Accountability and Control of the Police

59. The police shall be accountable to the state, the citizens and their representatives. They shall be subject to efficient external control.

Commentary

The police shall be accountable to the state (through central, regional or local bodies) as the state is the principal of the police. Accordingly, there are state bodies to monitor and control the police in all member states. However, state control over the police must in an open democratic society be complemented with the means for the police to be answerable to the public, that is the citizens and their representatives. Police accountability vis-a-vis the public is a crucial condition for making the mutual relationship between the police and the public a reality.

There are several means of rendering the police accountable to the public. The accountability can be direct or channelled through bodies representing the public. Generally, openness and transparency of the police are, however, basic requirements for accountability/control to be effective. Complaints procedures, dialogue and co-operation as means for accountability are included in Articles 59-62.

60. State control of the police shall be divided between the legislative, the executive and the judicial powers.

Commentary

In order to make the control of the police as efficient as possible, the police should be made accountable to various independent powers of the democratic state, that is the legislative, the executive and the judicial powers. In a simplified model, the *legislative* power (Parliament) exercises an *a priori* control by passing laws that regulate the police and their powers. Sometimes the legislative power also perform an *a posteriori* control through "justice and

interior commissions" or through "Parliamentary ombudsmen", who may initiate investigations, *ex officio* or following complaints by the public concerning mal administration.

The *executive* power (government: central, regional or local), to which the police are accountable in all states, perform a direct control over the police as the police are part of the executive power. The police receive their means from the budget, which is decided by the government (sometimes approved by the parliament). Furthermore, the police receive directives from the government as to the general priority of their activities and the Government also establishes detailed regulations for police action. It is important to emphasise that the police should be entrusted with operational independence from the executive in the carrying out their specific tasks (see also Article 15).

The *judicial* powers (in this context comprising the prosecution and the courts) should constantly monitor the police in their functions as a component of the criminal justice system.

The *judicial* powers (in this context the courts), also perform an *a posteriori* control of the police through civil and criminal proceedings initiated by other state bodies as well as by the public.

It is of the utmost importance that these powers of the state are all involved in the control of the police in a balanced way.

61. Public authorities shall ensure effective and impartial procedures for complaints against the police.

Commentary

Complaints against the police should be investigated in an impartial way. "Police investigating the police" is an issue which generally raises doubts as to the impartiality. States must therefore provide systems which are not only impartial but also seen to be impartial, to obtain public confidence. Ultimately, it shall be possible to refer such complaints to a court of law.

62. Accountability mechanisms, based on communication and mutual understanding between the public and the police, shall be promoted.

Commentary

This Article points to the possibilities of developing public-police relations through accountability mechanisms, which bring the public closer to the police and thus contribute to a better mutual understanding. Accordingly, mechanisms, which foster the settlement of disputes between the public and the police are to be recommended. That may be established as a mediation or

complaints structure, which opens a possibility for contacts and negotiations between the public and the police in order to settle disputes in an informal way between the parties. Such mechanisms should preferably be independent from the police.

In addition, member states should consider strengthening existing structures, or develop new ones for police accountability in certain situations where the police enjoy wide discretion vis-à-vis the individual, for example in the use of force, when persons are deprived of their liberty, when the police interview suspects and when they use certain investigative measures. Transparency and public monitoring of situations, such as the provision of public access to police cells is an example of such a measure, which is beneficial for the public as well as for the police as it gives the public a measure of control at the same time as it helps to counteract ill-founded accusations against the police.

63. Codes of ethics of the police, based on the principles set out in the present Recommendation, shall be developed in member states and overseen by appropriate bodies.

Commentary

Member states are encouraged to develop codes of ethics based on the values reflected in this Recommendation. It may be difficult to distinguish between ethical codes and codes of conduct, however, these should clearly be distinguished from disciplinary instruments, as the latter are aimed rather at defining what constitutes a breach of professional conduct and its internal consequences.

Ethical codes should be overseen by appropriate bodies. It is up to member states to give this task to existing bodies or to create new ones. Such bodies should, for example, be independent from the police, be as transparent as possible towards the public and at the same time have an understanding of police matters. The “Ombudsman institution” is an example of such a body.

VII. Research and International Co-operation

64. Member states shall promote and encourage research on the police, both by the police themselves and external institutions.

Commentary

The police is an important institution of a democratic state governed by the rule of law. It is a vital component of the criminal justice system and the body responsible for public order. The police is provided with specific

powers and should be, at the same time, an integrated part of the society it serves, etc.

Such a multifaceted body clearly warrants the best critical attention in the form of research and police studies. Internal police research should therefore be complemented with research on the police by institutions independent of the police. A close link between police training and universities is an example of a measure that would serve such a research purpose.

65. International co-operation on police ethics and human rights aspects of the police shall be supported.

Commentary

The values and principles expressed in the Recommendation need to be implemented through legislation, regulations and training. In addition, acceptance of the values should grow from within the police. For these reasons there is a need to stimulate international co-operation between the police in Europe, including states and international organisations, such as ICPO-Interpol, Europol and Cepol. The Council of Europe with its particular expertise in articulating democratic values, ethics, human rights and the rule of law, has an important role in facilitating this co-operation.

66. The means of promoting the principles of the present recommendation and their implementation must be carefully scrutinised by the Council of Europe.

Commentary

The adoption of “The European Code of Police Ethics” is in itself an important step for the promotion of Council of Europe principles with regard to the police in member States. However, the principles contained in the Code should also be actively promoted following its adoption.

Firstly, the Code is a basic text, which should be complemented with other Council of Europe legal instruments targeting specific topics more in depth. Secondly, an intergovernmental structure within the Council of Europe could be a useful basis for furthering police matters in member States.

Considering that the police in all member States are bodies closely associated with the criminal justice systems and their activities mainly are related to law and order, crime prevention and crime control, follow-up action should preferably be considered in such a context. The know-how and expertise built up with regard to police ethics, criminal justice, individuals’ fundamental rights and the rule of law, could in such a way be maintained in the future within the Council of Europe.

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Annex 9

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (98) 7¹
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
CONCERNING THE ETHICAL AND ORGANISATIONAL ASPECTS
OF HEALTH CARE IN PRISON

*(Adopted by the Committee of Ministers on 8 April 1998,
at the 627th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that medical practice in the community and in the prison context should be guided by the same ethical principles;
Aware that the respect for the fundamental rights of prisoners entails the provision to prisoners of preventive treatment and health care equivalent to those provided to the community in general;
Recognising that the medical practitioner in prison often faces difficult problems which stem from conflicting expectations from the prison administration and prisoners, the consequences of which require that the practitioner should adhere to very strict ethical guidelines;
Considering that it is in the interests of the prison doctor, the other health care staff, the inmates and the prison administration to proceed on a clear vision of the right to health care in prison and the specific role of the prison doctor and the other health care staff;
Considering that specific problem situations in prisons such as overcrowding, infectious diseases, drug addiction, mental disturbance, violence, cellular

¹ *In accordance with Rule 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Danish Delegation wishes to make the following reservation: "Paragraph 72 of the appendix is not acceptable to Denmark to the extent that it allows for body searches being carried out by persons other than a medical doctor. And in the opinion of Danish Authorities, an intimate examination body cavities should take place only with the consent of the person involved."*

confinement or body searches require sound ethical principles in the conduct of medical practice;

Bearing in mind the European Convention on Human Rights, the European Social Charter and the Convention on Human Rights and Biomedicine;

Bearing in mind the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the recommendations on health care service in prisons summarised in the 3rd general report on the activities of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Referring to its Recommendation No. R (87) 3 on the European Prison Rules which help to guarantee minimum standards of humanity and dignity in prisons;

Recalling Recommendation No. R (90) 3 on medical research on human beings and Recommendation No. R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison, as well as the 1993 WHO guidelines on HIV infection and Aids in prison;

Mindful of Recommendations 1235 (1994) on psychiatry and human rights and 1257 (1995) on the conditions of detention in Council of Europe member states, prepared by the Parliamentary Assembly of the Council of Europe;

Referring to the Principles of Medical Ethics for the Protection of Detained Persons and Prisoners against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by United Nations General Assembly in 1982;

Referring to the specific declarations of the World Medical Association (WMA) concerning medical ethics, in particular the Declaration of Tokyo (1975), the Declaration of Malta on hunger strikers (1991) and the Statement on body searches of prisoners (1993);

Taking note of recent reforms in structure, organisation and regulation of prison health care services in several member states, in particular in connection with reforms of their health care systems;

Taking into account the different administrative structures of member states which require the implementation of recommendations both at federal and state levels,

Recommends that the governments of member states:

- take into account, when reviewing their legislation and in their practice in the area of health care provision in prison, the principles and recommendations set out in the appendix to this recommendation;

- ensure the widest possible dissemination of the recommendation and its explanatory memorandum, paying special attention to all individuals and bodies responsible for the organisation and provision of preventive treatment and health care in prison.

Appendix to Recommendation No. R (98) 7

I. Main characteristics of the right to health in prison

A. Access to a doctor

1. When entering prison and later on while in custody, prisoners should be able at any time to have access to a doctor or a fully qualified nurse, irrespective of their detention regime and without undue delay, if required by their state of health. All detainees should benefit from appropriate medical examinations on admission. Special emphasis should be put on the screening of mental disorders, of psychological adaptation to prison, of withdrawal symptoms resulting from use of drugs, medication or alcohol, and of contagious and chronic conditions.
2. In order to satisfy the health requirements of the inmates, doctors and qualified nurses should be available on a full-time basis in the large penal institutions, depending on the number and the turnover of inmates and their average state of health.
3. A prison's health care service should at least be able to provide out-patient consultations and emergency treatment. When the state of health of the inmates requires treatment which cannot be guaranteed in prison, everything possible should be done to ensure that treatment is given, in all security in health establishments outside the prison .
4. Prisoners should have access to a doctor, when necessary, at any time during the day and the night. Someone competent to provide first aid should always be present on the prison premises. In case of serious emergencies, the doctor, a member of the nursing staff and the prison management should be warned; active participation and commitment of the custodial staff is essential.
5. An access to psychiatric consultation and counselling should be secured. There should be a psychiatric team in larger penal institutions. If this is not available as in the smaller establishments, consultations should be assured by a psychiatrist, practising in hospital or in private.
6. The services of a qualified dental surgeon should be available to every prisoner.

7. The prison administration should make arrangements for ensuring contacts and co-operation with local public and private health institutions. Since it is not easy to provide appropriate treatment in prison for certain inmates addicted to drugs, alcohol or medication, external consultants belonging to the system providing specialist assistance to addicts in the general community should be called on for counselling and even care purposes.

8. Where appropriate, specific services should be provided to female prisoners. Pregnant inmates should be medically monitored and should be able to deliver in an external hospital service most appropriate to their condition.

9. In being escorted to hospital the patient should be accompanied by medical or nursing staff, as required.

B. Equivalence of care

10. Health policy in custody should be integrated into, and compatible with, national health policy. A prison health care service should be able to provide medical, psychiatric and dental treatment and to implement programmes of hygiene and preventive medicine in conditions comparable to those enjoyed by the general public. Prison doctors should be able to call upon specialists. If a second opinion is required, it is the duty of the service to arrange it.

11. The prison health care service should have a sufficient number of qualified medical, nursing and technical staff, as well as appropriate premises, installations and equipment of a quality comparable, if not identical, to those which exist in the outside environment.

12. The role of the ministry responsible for health should be strengthened in the domain of quality assessment of hygiene, health care and organisation of health services in custody, in accordance with national legislation. A clear division of responsibilities and authority should be established between the ministry responsible for health or other competent ministries, which should co-operate in implementing an integrated health policy in prison.

C. Patient's consent and confidentiality

13. Medical confidentiality should be guaranteed and respected with the same rigour as in the population as a whole.

14. Unless inmates suffer from any illness which renders them incapable of understanding the nature of their condition, they should always be entitled to give the doctor their informed consent before any physical examination of their person or their body products can be undertaken, except in cases provided for by law. The reasons for each examination should be clearly explained to, and understood by, the inmates. The indication for any

medication should be explained to the inmates, together with any possible side effects likely to be experienced by them.

15. Informed consent should be obtained in the case of mentally ill patients as well as in situations when medical duties and security requirements may not coincide, for example refusal of treatment or refusal of food.

16. Any derogation from the principle of freedom of consent should be based upon law and be guided by the same principles which are applicable to the population as a whole.

17. Remand prisoners should be entitled to ask for a consultation with their own doctor or another outside doctor at their own expense.

Sentenced prisoners may seek a second medical opinion and the prison doctor should give this proposition sympathetic consideration. However, any decision as to the merits of this request is ultimately his responsibility.

18. All transfers to other prisons should be accompanied by full medical records. The records should be transferred under conditions ensuring their confidentiality. Prisoners should be informed that their medical record will be transferred. They should be entitled to object to the transfer, in accordance with national legislation.

All released prisoners should be given relevant written information concerning their health for the benefit of their family doctor.

D. Professional independence

19. Doctors who work in prison should provide the individual inmate with the same standards of health care as are being delivered to patients in the community. The health needs of the inmate should always be the primary concern of the doctor.

20. Clinical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health care personnel should operate with complete independence within the bounds of their qualifications and competence.

21. Nurses and other members of the health care staff should perform their tasks under the direct responsibility of the senior doctor, who should not delegate to paramedical personnel tasks other than those authorised by law and by deontological codes. The quality of the medical and nursing services should be assessed by a qualified health authority.

22. The remuneration of medical staff should not be lower than that which would be used in other sectors of public health.

II. The specific role of the prison doctor and other health care staff in the context of the prison environment

A. General requirements

23. The role of the prison doctor is firstly to give appropriate medical care and advice to all the prisoners for whom he or she is clinically responsible.

24. It should also imply advising the prison management on matters concerned with nutrition or the environment within which the prisoners are required to live, as well as in respect of hygiene and sanitation.

25. Health care staff should be able to provide health information to the prison management and custodial staff as well as appropriate health training, as necessary.

B. Information, prevention and education for health

26. On admission to prison, each person should receive information on rights and obligations, the internal regulations of the establishment as well as guidelines as to how and where to get help and advice. This information should be understood by each inmate. Special instruction should be given to the illiterate.

27. A health education programme should be developed in all prison establishments. Both inmates and prison administrators should receive a basic health promotion information package, targeted towards health care for persons in custody.

28. Emphasis should be put on explaining the advantages of voluntary and anonymous screening for transmissible diseases and the possible negative consequences of hepatitis, sexually transmitted diseases, tuberculosis or infection with HIV. Those who undergo a test must benefit from follow-up medical consultation.

29. The health education programme should aim at encouraging the development of healthy lifestyles and enabling inmates to make appropriate decisions in respect of their own health and that of their families, preserving and protecting individual integrity, diminishing risks of dependency and recidivism. This approach should motivate inmates to participate in health programmes in which they are taught in a coherent manner the behaviour and strategies for minimising risks to their health.

C. Particular forms of pathology and preventive health care in prison

30. Any signs of violence observed when prisoners are medically screened on their admission to a prison establishment should be fully recorded by the doctor, together with any relevant statements by the prisoner and the

doctor's conclusions. This information should also be made available to the prison administration with the consent of the prisoner.

31. Any information on cases of violence against inmates, occasioned in the course of detention, should be forwarded to the relevant authorities. As a rule, such action should only be undertaken with the consent of the inmates concerned.

32. In certain exceptional cases, and in any event in strict compliance with the rules of professional ethics, the informed consent of the prisoner need not be regarded as essential, in particular, if the doctor considers that he or she has an overriding responsibility both to the patient and to the rest of the prison community to report a serious incident that presents a real danger. The health care service should collect, if appropriate, periodic statistical data concerning injuries observed, with a view to communicating them to the prison management and the ministries concerned, in accordance with national legislation on data protection.

33. Appropriate health training for members of the custodial staff should be provided with a view to enabling them to report physical and mental health problems which they might detect in the prison population.

D. The professional training of prison health care staff

34. Prison doctors should be well versed in both general medical and psychiatric disorders. Their training should comprise the acquisition of initial theoretical knowledge, an understanding of the prison environment and its effects on medical practice in prison, an assessment of their skills, and a traineeship under the supervision of a more senior colleague. They should also be provided with regular in-service training.

35. Appropriate training should also be provided to other health care staff and should include knowledge about the functioning of prisons and relevant prison regulations.

III. The organisation of health care in prison with specific reference to the management of certain common problems

A. Transmitted diseases, in particular: HIV infection and Aids, Tuberculosis, Hepatitis

36. In order to prevent sexually transmitted infections in prison adequate prophylactic measures should be taken.

37. HIV tests should be performed only with the consent of the inmates, on an anonymous basis and in accordance with existing legislation. Thorough counselling should be provided before and after the test.

38. The isolation of a patient with an infectious condition is only justified if such a measure would also be taken outside the prison environment for the same medical reasons.

39. No form of segregation should be envisaged in respect of persons who are HIV antibody positive, subject to the provisions contained in paragraph 40.

40. Those who become seriously ill with Aids-related illnesses should be treated within the prison health care department, without necessarily resorting to total isolation. Patients, who need to be protected from the infectious illnesses transmitted by other patients, should be isolated only if such a measure is necessary for their own sake to prevent them acquiring intercurrent infections, particularly in those cases where their immune system is seriously impaired.

41. If cases of tuberculosis are detected, all necessary measures should be applied to prevent the propagation of this infection, in accordance with relevant legislation in this area. Therapeutic intervention should be of a standard equal to that outside of prison.

42. Because it is the only effective method of preventing the spread of hepatitis B, vaccination against hepatitis B should be offered to inmates and staff. Information and appropriate prevention facilities should be made available in view of the fact that hepatitis B and C are transmitted mainly by the intravenous use of drugs together with seminal and blood contamination.

B. Addiction to drugs, alcohol and medication: management of pharmacy and distribution of medication

43. The care of prisoners with alcohol and drug-related problems needs to be developed further, taking into account in particular the services offered for drug addicts, as recommended by the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs ("Pompidou Group"). Therefore, it is necessary to offer sufficient training to medical and prison personnel, and to improve co-operation with external counselling services, in order to ensure continuing follow-up therapy on discharge to the community.

44. The prison doctor should encourage prisoners to take advantage of the system of social or psychotherapeutic assistance in order to prevent the risks of abuse of drugs, medication and alcohol.

45. The treatment of the withdrawal symptoms of abuse of drugs, alcohol or medication in prison should be conducted along the same lines as in the community.

46. If prisoners undergo a withdrawal cure, the doctor should encourage them, both while still in prison and after their release, to take all the necessary steps to avoid a relapse into addiction.

47. Detained persons should be able to consult a specialised internal or external counsellor who would give them the necessary support both while they are serving their sentence and during their care after release. Such counsellors should also be able to contribute to the in-service training of custodial staff.

48. Where appropriate, prisoners should be allowed to carry their prescribed medication. However, medication which is dangerous if taken as an overdose should be withheld and issued to them on an individual dose-by-dose basis.

49. In consultation with the competent pharmaceutical adviser, the prison doctor should prepare as necessary a comprehensive list of medicines and drugs usually prescribed in the medical service. A medical prescription should remain the exclusive responsibility of the medical profession, and medicines should be distributed by authorised personnel only.

C. Persons unsuited to continued detention: serious physical handicap, advanced age, short term fatal prognosis

50. Prisoners with serious physical handicaps and those of advanced age should be accommodated in such a way as to allow as normal a life as possible and should not be segregated from the general prison population. Structural alterations should be effected to assist the wheelchair-bound and handicapped on lines similar to those in the outside environment.

51. The decision as to when patients subject to short term fatal prognosis should be transferred to outside hospital units should be taken on medical grounds. While awaiting such transfer, these patients should receive optimum nursing care during the terminal phase of their illness within the prison health care centre. In such cases provision should be made for periodic respite care in an outside hospice. The possibility of a pardon for medical reasons or early release should be examined.

D. Psychiatric symptoms, mental disturbance and major personality disorders, risk of suicide

52. The prison administration and the ministry responsible for mental health should co-operate in organising psychiatric services for prisoners.

53. Mental health services and social services attached to prisons should aim to provide help and advice for inmates and to strengthen their coping and adaptation skills. These services should co-ordinate their activities, bearing in mind their respective tasks. Their professional independence should be ensured, with due regard to the specific conditions of the prison context.

54. In cases of convicted sex offenders, a psychiatric and psychological examination should be offered as well as appropriate treatment during their stay and after.

55. Prisoners suffering from serious mental disturbance should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. The decision to admit an inmate to a public hospital should be made by a psychiatrist, subject to authorisation by the competent authorities.

56. In those cases where the use of close confinement of mental patients cannot be avoided, it should be reduced to an absolute minimum and be replaced with one-to-one continuous nursing care as soon as possible.

57. Under exceptional circumstances, physical restraint for a brief period in cases of severely mentally ill patients may be envisaged, while the calming action of appropriate medication begins to take effect.

58. The risk of suicide should be constantly assessed both by medical and custodial staff. Physical methods designed to avoid self-harm, close and constant observation, dialogue and reassurance, as appropriate, should be used in moments of crisis.

59. Follow-up treatment for released inmates should be provided for at outside specialised services.

E. Refusal of treatment, hunger strike

60. In the case of refusal of treatment, the doctor should request a written statement signed by the patient in the presence of a witness. The doctor should give the patient full information as to the likely benefits of medication, possible therapeutic alternatives, and warn him/her about risks associated with his/her refusal. It should be ensured that the patient has a full understanding of his/her situation. If there are difficulties of comprehension due to the language used by the patient, the services of an experienced interpreter must be sought.

61. The clinical assessment of a hunger striker should be carried out only with the express permission of the patient, unless he or she suffers from serious mental disorders which require the transfer to a psychiatric service.

62. Hunger strikers should be given an objective explanation of the harmful effects of their action upon their physical well-being, so that they understand the dangers of prolonged hunger striking.

63. If, in the opinion of the doctor, the hunger striker's condition is becoming significantly worse, it is essential that the doctor report this fact to the appropriate authority and take action in accordance with national legislation (including professional standards).

F. Violence in prison: disciplinary procedures and sanctions, disciplinary confinement, physical restraint, top security regime

64. Prisoners who fear acts of violence including possible sexual offences from other prisoners for any pertinent reason, or who have recently been assaulted or injured by other members of the prison community, should be able to have access to the full protection of custodial staff.

65. The doctor's role should not involve authorising and condoning the use of force by prison staff, who must themselves take that responsibility to achieve good order and discipline.

66. In the case of a sanction of disciplinary confinement, any other disciplinary punishment or security measure which might have an adverse effect on the physical or mental health of the prisoner, health care staff should provide medical assistance or treatment on request by the prisoner or by prison staff.

G. Health care special programmes: sociotherapeutic programmes, family ties and contacts with the outside world, mother and child

67. Sociotherapeutic programmes should be organised along community lines and carefully supervised. Doctors should be willing to co-operate in a constructive way with all the services concerned, with a view to enabling prisoners to benefit from such programmes and thus to acquire the social skills which might help reduce the risks of recidivism after release.

68. Consideration should be given to the possibility of allowing inmates to meet with their sexual partner without visual supervision during the visit.

69. It should be possible for very young children of detained mothers to stay with them, with a view to allowing their mothers to provide the attention and care they need for maintaining a good state of health and to keep an emotional and psychological link.

70. Special facilities should be provided for mothers accompanied by children (crèches, daynurseries).

71. Doctors should not become involved in administrative decisions concerning the separation of children from their mothers at a given age.

H. Body searches, medical reports, medical research

72. Body searches are a matter for the administrative authorities and prison doctors should not become involved in such procedures. However, an intimate medical examination should be conducted by a doctor when there is an objective medical reason requiring her/his involvement.

73. Prison doctors should not prepare any medical or psychiatric reports for the defence or the prosecution, save on formal request by the prisoner or as directed by a court. They should avoid any mission as medical experts

involved in the judicial procedure concerning remand prisoners. They should collect and analyse specimens only for diagnostic testing and solely for medical reasons.

74. Medical research on prisoners should be carried out in accordance with the principles set out in Recommendations No. R (87) 3 on the European Prison Rules, No. R (90) 3 on medical research in human beings and No. R (93) 6 on prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison.

Annex 10

Examples of University Curricula around the world

There are various approaches to developing a curriculum. All curricula however are similar in that all aim at achieving the objectives and goals set when designing the curriculum (The objectives of the curriculum have to be achieved through the courses that are to be offered within a given period of time).

When designing a curriculum for a particular program it is imperative that the courses should be relevant and address the needs of the society. The syllabus of the courses should also fulfill the required depth and comprehensiveness. On this basis different approaches to course designing can be followed.

Here, we have selected three examples:

The first example is that of the curriculum of *Oxford University Law Department* (U.K) under the graduate program. In this curriculum the courses are non-modular and have to be taken in three phases. Under this curriculum there is not much room for elective courses. Examinations are given to students after completion of the first phase of courses and after the completion of the third phase. The student is required to pass all first phase courses in order to continue to the second and third phases. S/he shall also pass all the courses of the second and third phase when completing the third phase to be able to graduate.

The second example is the curriculum of the *Minnesota University Law School* (USA). This curriculum sets out three main objectives (see the attached Minnesota Law School curriculum) and to achieve these objectives it provides various mandatory and elective courses which fall under 10 major areas. Under this curriculum, a student who is required, for example, to take

criminal law may select a certain number of courses out of the 15 courses that fall under the category of criminal law. This type of course offering requires specialized expertise and a lot of resources since there are too many electives and specialized courses.

The third example is the *McGill University Law School* undergraduate curriculum. Under this curriculum the courses seem to be modular and the student has to take required courses, which are compulsory and complementary courses. Complementary courses give the student a variety of options that could be selected. This curriculum like that of the University of Minnesota requires the availability of more trained manpower and more facilities. However, it could be adapted to the Ethiopian situation.

Analysed curricula

- **University of Minnesota Law School**

Curriculum

<http://www.law.umn.edu/prospective/curriculum.html>

With a public law faculty unsurpassed anywhere in the country, the University of Minnesota has led the way in combining public law offerings with more traditional private law courses.

Objectives

The curriculum has three objectives:

1. To provide thorough training in the law and legal techniques required for successful practice of law and scholarly work in law;
2. To create an understanding of and appreciation for the role of the lawyer and legal tribunals in the administration of justice; and
3. To prepare graduates for the lawyer's responsibility to improve the administration of justice and provide government and community leadership.

Methods

The basic form of instruction is the case and problem method, which centers on the critical study and discussion of decisions by courts and administrative agencies.

The decisions selected for study reflect the evolution of the law and efforts to arrive at satisfactory solutions to difficult current problems. Instructors also

make use of textual and legislative materials. Study of decisions, texts, and legislation is supplemented with hypothetical and real problems that students consider and solve.

The primary value of this method is that the student gains experience seeking the best solution to a problem, rather than simply acquiring an understanding of a decision reached by the court. The end product sought by the Law School is a lawyer thoroughly grounded in knowledge and understanding of past legal tradition and present law, prepared to resolve new and difficult legal problems.

Tutorial instruction is used extensively to develop the student's ability to solve problems. Beginning in the first year legal writing program, every student is given specific problems to resolve through independent research and study, resulting in preparation of legal memoranda and court briefs. Analysis, writing and rewriting are closely scrutinized by instructors in conference with each student.

Tutorial seminars, moot courts, live-client clinics, and simulated skills training opportunities follow in the second and third years to train students in the practice skills necessary to apply the theory learned in substantive classes to the every day work of the lawyer.

Courses and Class Size

With a 13.6:1 student/faculty ratio, students enjoy classes that range in size from 6 to 116. The first-year class of 270 students is divided into 5 sections that stay together as a unit throughout the first year. These sections meet independently or with one other section for all first-year courses except legal research and writing, for which the sections are subdivided into groups of 12-14.

Because of the faculty's size, its dedication to teaching and the strength of the adjunct core it has developed, the Law School has one of the richest curriculums available. For a listing of our 200+ courses and seminars see page 34 in the reference section.

Law School Course Offerings

<http://www.law.umn.edu/prospective/courses.html>

Criminal Law

Advanced Criminal Procedure Seminar

Advanced Evidence

Criminal Appeals Clinic

Criminal Procedure

Death Penalty Seminar

Domestic Abuse Prosecution Clinic
Evidence
Federal Prosecution Clinic
Juvenile Justice
Liberties, Communities, and Criminal Law Seminar
Misdemeanor Defense Clinic
Misdemeanor Prosecution Clinic
Rape in Justice System Seminar
Sentencing Policy Workshop Seminar
State Constitutional Law and Criminal Procedure

Commercial Law

Advanced Contracts
Advanced Topics in Copyright
Bankruptcy
Bankruptcy Clinic
Commercial Paper
Comparative Theories of Ownership Seminar
Copyright Law
Creditor's Remedies/Secured Transactions
Intellectual Property and Unfair Competition
Modern Real Estate
Patent Law
Real Estate Transactions Seminar
Sales

Corporate Law

Advanced Securities Regulation
Antitrust
Antitrust Seminar
Business Associations/Corporations I
Corporations
Drafting Business and Corporate Documents
Law and Economics Seminar
Federal Securities Regulation
Federal Securities Regulation II
Securitization/Structured Finance Seminar

Estate Planning

Advanced Estate Planning Seminar
Estate Planning
Wills and Trusts

International Law

Immigration Law
Immigration Clinic
International Contracts Seminar
International Human Rights
International Law
International and Foreign Legal Research Seminar
International Trade
Introduction to American Law
Women's International Human Rights Seminar

Law Clinics & Lawyering Skills

Advanced Evidence
Advanced Legal Research Seminar
Alternative Dispute Resolution
Art of Appellate Advocacy Seminar
Civil Practice Clinic
Criminal Appeals Clinic
Damage Analysis Seminar
Evidence
Expository Writing
International and Foreign Legal Research Seminar
Interviewing, Counseling & Negotiating
Judicial Externship
LAMP Clinic
Lawyering Process
Legal Aspects of Technology Seminar
Legislative Process Seminar
Professional Responsibility
Public Interest Clinic
Remedies
Statistics Seminar
Trial Practice

Moot Court & Journals

National Civil Rights Moot Court Competition
Civil Rights Moot Court
Environmental Moot Court
Intellectual Property Moot Court
International Moot Court
Law and Inequality: A Journal of Theory and Practice
Minnesota Journal of Global Trade
Minnesota Law Review
National Moot Court
Wagner Moot Court

Perspectives

American Indian History Seminar
Constitutional History Seminar
Constitutional Power of the Presidency Seminar
Jurisprudence
Law & Biotechnology Seminar
Law and Violence Against Women Clinic
Law, Medicine & Bioethics Seminar
Legal Aspects of Technology Seminar
Mental Health Law Seminar
Genetics & Assisted Reproduction: Law and Ethics

Public Law

Administrative Law
ADR Labor Arbitration and Employment Law
Advanced Environmental Law Seminar
Advanced Torts
Agricultural Law Seminar
American Indian Law
American Legal History Seminar
Business Environmental Law Seminar
Child Advocacy Clinic
Conflicts of Law
Divorce Negotiation Seminar
Employment Law
Employment Discrimination
Entertainment Law Seminar
Environmental Law
Family Law

Federal Jurisdiction
 Health Law
 Housing Law Clinic
 Indian Child Welfare Clinic
 Introduction to Employee Benefits
 Labor Law
 Land Use Planning
 Local Government Law
 Mental Health Law Seminar
 Poverty Law I
 Poverty Law II
 Products Liability
 Social Security Clinic
 Worker Compensation

Tax Law

Accounting for Lawyers
 Federal Tax Procedure Seminar
 Partnership Taxation
 State and Local Taxation
 Tax I
 Tax II
 Tax Clinic
 Tax Policy Seminar

- **Oxford Law, University of Oxford**

Undergraduate Study

<http://denning.law.ox.ac.uk/undergraduate/courses.shtml>

Students on our BA programmes take the full range of courses required for a 'qualifying law degree' recognised by the legal professions in England and Wales. The programmes are non-modular and courses have to be taken in the following three phases (but within the phases may be taken in different orders by students at different colleges). Students on the Diploma in Legal Studies may choose any three of the courses marked +.

Note: the plan below does not apply to students who embarked on our BA in Law in 2002 or earlier (or who embarked on our BA in Law with Law Studies in Europe in 2001 or earlier).

Phase 1: your first two terms

Criminal Law

Constitutional Law

Roman Law or Introduction to Law (your college tutor will advise)

Legal Research Skills

At this point you sit your First Public Examination ('Law Moderations').

There are three papers. You must pass to proceed. The Legal Research Skills course includes its own tests and is not examined as part of Law Moderations. However you must also pass it.

Phase 2: the last term of your first year and the whole of your second year

Tort +

Contract +

Land Law +

Trusts +

Administrative Law +

Jurisprudence +

At this point students on the Law with Law Studies in Europe programme go for their year abroad, returning to Oxford for phase 3 afterwards. Meanwhile students on the regular Law programme continue straight to phase 3. There are no public examinations for any students at the end of phase 2. All phase 2 courses are examined alongside the phase 3 courses at the end of the final year.

Phase 3: your final year

European Community Law +

Plus any two optional subjects from the following list. We do not guarantee to offer all of our optional subjects every year.

Company Law +

Comparative Law: Contract +

Criminal Justice and Penology +

Ethics + (course shared with the Philosophy Faculty)

Family Law +

History of English Law +

International Trade +

Labour Law +

Principles of Commercial Law +

Public International Law +

Roman Law (Delict) +

Taxation Law +

In place of one optional subject you may take two 'special subjects' from the following list. Again we do not guarantee to offer all of our special subjects every year.

European Community Competition Law

European Community Social, Environmental and Consumer Law

Introduction to the Law of Copyright and Moral Rights

Lawyers' Ethics

Personal Property

At this point you take your Second Public Examination on the basis of which your degree is classified. You are examined on all of the courses you took in phases 2 and 3.

Graduate study

<http://denning.law.ox.ac.uk/postgraduate/index.shtml>

Study at an advanced level alongside the leading law graduates of your generation, under the direct supervision of some of the world's leading legal scholars, with access to some of the world's best academic facilities. That's postgraduate law in Oxford.

Our taught postgraduate programmes: the BCL for common-law graduates, the MJur for non-common-law graduates, and the specialist MSc in Criminology and Criminal Justice.

Our pyramid of research degrees: the MSt, the MLitt and the DPhil. Also the MPhil, a one year add-on research degree available exclusively to successful BCL/MJur graduates.

Provision for those with degrees in disciplines other than law, including the special 'senior status' version of our BA law degree.

Admissions requirements and procedures for postgraduate study in law, with links to the Oxford graduate studies prospectus and downloadable application forms.

Law Faculty scholarships, with links to other funding information.

Our postgraduate handbook - outlining the main rules and requirements for our postgraduate programmes, and briefing our postgraduate students on what to expect.

- **McGill University, Faculty of Law, Canada**

Students in the undergraduate programme obtain both a civil law (B.C.L.) and common law (LL.B.) degree after completing 105 credits taken over three to four years. Concepts from the two legal systems are presented through an innovative, integrated methodology, fostering critical analysis. Students can also pursue joint degrees in management or social work, or enhance their law degrees by adding a Minor, Major, or Honours component. McGill Law students also have opportunities to pursue part of their legal education abroad.

McGill's Integrated B.C.L./LL.B. Programme

http://www.law.mcgill.ca/undergraduate/prog_bcl_llb_en.htm

<i>First-Year Courses</i>	<i>Credits</i>
Civil Law Property	5
Constitutional Law	6
Contractual Obligations	6
Extra-Contractual Obligations/Torts	5
Foundations of Canadian Law	4
Introductory Legal Research	3
Optional complementary (Administrative Process, Criminal Law, Family Law, or Public International Law)	3
Total:	32
<i>Required Courses, Second Year</i>	
Advanced Civil Law Obligations	2
Advanced Common Law Obligations	2
Common Law Property	4
Legal Writing, Mooting and Advanced Legal Research	2
Total:	10
<i>Other Required Courses (at some point in the programme)</i>	
Criminal Law	3
Judicial Institutions and Civil Procedure	4
<i>Complementary Civil Law and Trans-Systemic Courses</i>	
At least 4.5 credits from the following list of Advanced Civil Law and Trans-Systemic Courses:	
Administration of the Property of Another	3
Financing Moveable and Immoveable Transactions	3
Law of Persons	3
Lease, Enterprise and Suretyship	3
Successions	3

<i>Complementary Common Law and Trans-Systemic Courses</i> At least 4.5 credits from the following list of Advanced Common Law and Trans-Systemic Courses:	
Equity and Trusts	3
Real Estate Transactions	3
Remedies	3
Restitution	3
Wills and Estates	2
<i>The following three- or four-credit trans-systemic courses count for half their credit weight in each of the advanced Common Law and advanced Civil Law baskets</i>	
Business Associations	4 (2.0)
Consumer Law	3 (1.5)
Evidence (Civil Matters)	3 (1.5)
Family Law	3 (1.5)
Legal Methodology T.G.	4 (2.0)
Private International Law	3 (1.5)
Sale	4 (2.0)
Secured Transactions	4 (2.0)
<i>Complementary Human Rights and Social Diversity Courses</i> At least 3 credits from the following courses:	
Aboriginal Peoples and the Law	3
Canadian Charter of Rights and Freedoms	3
Civil Liberties	3
Comparative and International Protection of Minorities' Rights	2
Comparative Constitutional Protection of Human Rights	3
Discrimination and the Law	3
Feminist Legal Theory	3
International Development Law	3
International Law of Human Rights	3
Law and Poverty	3
Law and Psychiatry	3
Public International Law	3
Social Diversity and the Law	3
<i>Other Credits</i>	
All other complementary law courses, including up to six elective non-law credits.*	44
<i>Total for Programme:</i>	105

* *Policy Governing Non-Law Credits in the B.C.L./LL.B. Programme*

At its meeting of November 28th, 2003, Faculty Council resolved that the

number of non-law credits for which students in the B.C.L./LL.B. programme may register be reduced from 12 to six. At the same time, the requirement that the Assistant Dean (Student Affairs) approve non-law courses, as well as restrictions on the choice of language courses, were dropped from Faculty regulations. Pending approval of this policy by the appropriate University bodies, these new rules on non-law credits will apply to students entering the B.C.L./LL.B. programme in 2004.

Joint Degree Programmes

MBA/LAW

http://www.law.mcgill.ca/undergraduate/prog_joint_mbalaw-en.htm

McGill's Faculty of Management and the Faculty of Law provide a small number of students the opportunity to pursue legal and administrative aspects of business through this joint offering. At the end of approximately four and a half years, successful candidates graduate with B.C.L., LL.B., and M.B.A. degrees, a trio that prepares them for careers in private and public enterprise, as well as government service. Candidates must have an undergraduate degree and one year of employment experience following graduation in order to be admissible to the joint M.B.A./Law programme.

The Combined Sequence

The course sequencing is mandatory and must follow as outlined:

YEAR 1 - 30 credits of M.B.A. courses

YEAR 2 - 32 credits of Law courses

Note: Students in their first year of the Law (B.C.L./LL.B.) programme at McGill University can apply for the joint M.B.A./Law programme. For students who pursue that option, the course sequencing for years 1 and 2 as outlined above is reversed.

YEAR 3-5 - 18 credits of M.B.A. courses, 61 credits of Law courses

Other examples of University curricula around the world

In order to show more examples from different curricula around the world we present more links to examples below. The material was available in December 2003 on Internet.

Curriculum and other kind of presentations in English

Melbourne University

<http://www.unimelb.edu.au/HB/facs/LAW-S11525.html>

<http://www.unimelb.edu.au/HB/facs/LAW-S11527.html>

<http://www.unimelb.edu.au/HB/facs/LAW-S11568.html>

<http://graduate.unimelblaw.com.au/gradlaw2004.nsf/docs/502T?OpenDocument&parent=4G7AE8981&view=coursebytype&cat=masters+degrees&start=1&count=9999&expand=2>

<http://graduate.unimelblaw.com.au/gradlaw2004.nsf/docs/4FPGYE773?OpenDocument>

Hongkong, City University of Hong Kong

<http://www.cityu.edu.hk/cityu/dpt-acad/slw.htm>

Curriculum and other kind of presentations in other languages

Köpenhamns universitet

<http://www.ku.dk/sa/Uddannelsesvejledning/faginformation/Jura.html?ID=>

Universidad Austral de Chile

<http://www.derecho.uach.cl/escuela/escuela.php>

<http://www.derecho.uach.cl/escuela/malla.php>

<http://www.derecho.uach.cl/documentos/>

Universität Saarbrücken

<http://www.lawstudent.de/Studium/uebersichtjuraneu.pdf>

<http://www.lawstudent.de/Studium/uebersichtexamenneu.pdf>

<http://www.lawstudent.de/Ratgeber/unis.html>

<http://www.jura.uni-sb.de/jurpc.html>

<http://www.jura.uni-sb.de/internet/jurastud.html>

http://www.lawstudent.de/Ratgeber/llm_page.html

<http://www.lawstudent.de/Ratgeber/interessierte.html>

Institut d'Etudes Judiciaires de Grenoble

<http://www.facdroid-grenoble.com/formations/iej/imprimer.htm>

http://www.facdroid-grenoble.org/formations/concours/detail_conc/avocats/avocats.htm

<http://www.facdroid-grenoble.org/formations/1ercycle/1ercycle.htm>

<http://www.facdroid-grenoble.org/formations/1ercycle/deroulement/deroulement.htm>

<http://www.facdroid-grenoble.com/formations/1ercycle/cours1annee/main.htm>

<http://www.facdroid-grenoble.org/formations/1ercycle/cours2annee/deug2.htm>

<http://www.facdroid-grenoble.com/soutien/soutien.htm>

<http://www.facdroid-grenoble.org/formations/2emecycle/2emecycle.htm>

<http://www.facdroid-grenoble.org/formations/3emecycle/3emecycle.htm>

Université de Fribourg, Schweiz

<http://www.unifr.ch/droit/fr/faculty/index.html>

<http://www.unifr.ch/droit/fr/studies/license.htm>

<http://www.unifr.ch/droit/fr/afterstudies/index.html>

http://unifr-fr.floor.ch/files/3832/gh_iur1_f_151003.pdf

http://unifr-fr.floor.ch/files/3833/gh_iur2_f_151003.pdf

http://unifr-fr.floor.ch/files/3835/gh_iur4_hors_bloc_f_241003.pdf

http://unifr-fr.floor.ch/files/3837/gh_iur3_f_241003.pdf

http://unifr-fr.floor.ch/files/3879/gh_option_f_241003.pdf

Humboldt-Berlin

http://www.rewi.hu-berlin.de/index_02.php?path=/stfb&lang=de

<http://appel.rz.hu-berlin.de/Zope/AMB/verwaltung/dateien/datkat/amb18b03.pdf>

<http://appel.rz.hu-berlin.de/Zope/AMB/verwaltung/dateien/datkat/amb18a03.pdf>

Spain

<http://www.todoelderecho.com/Espana/index.htm>

Universidad Autónoma de Madrid

<http://www.uam.es/centros/derecho/licenciaturas/iderecho/iderecho.html>

<http://www.uam.es/centros/derecho/licenciaturas/iderecho/iderecho.html>

