Fetha Negest and the Existing Federal Laws of Ethiopia

A Comparative Analysis on the Appointment of Federal Judges

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Abstract

The purpose of this paper is to demonstrate the contribution of Fetha Negest to the development of Ethiopia's legal system and to evaluate the present judges' appointment law of Ethiopia in line with indigenous sources. It focuses particularly on Fetha Negest, which had a significant impact on Ethiopia's judicial system until the early 1940s. To this effect, the research for this paper discovered chapter 43 of the Fetha Negest and the federal judicial administration proclamation No. 1233/2021 through critical review. The paper thus finds that the current laws do not confirm Fetha Negest as their source and instead opt to transplant legal ideas from other countries. Due to this, the laws have been repeatedly amended and lack acceptance. Moreover, these transplanted laws face the issue of compatibility with the local culture. Legislators and concerned bodies should thus turn to indigenous sources before adopting external ideas.

Keywords


1 Introduction

Ethiopia is a cradle of diverse cultures and a long history (Tsegaw 2009). It is the only sub-Saharan African country with an indigenous scripture/alphabet, and home of traditional rules and administrations. It is also the only country in the continent that was never colonized. In addition, the country possesses
thousands of years of traditional oral knowledge linked to the Ethiopian Orthodox Tewahido Church (EOTC) for the administration of almost all matters (EOTC 2020). Notably, the book of Fetha Negest was the governing law for the administration of justice until the end of the Solomonic dynasty.¹

However, modern Ethiopia failed to use indigenous knowledge, including Fetha Negest, due to lawmakers having no interest in indigenous knowledge as a source for newly codified laws. Second, Ethiopia has lost several historical documents that could clarify its earlier civilization. Third, modern business organizations and educational institutions have made little effort to foster the management of indigenous knowledge (Zehabesha 2022). Fourth, accessibility and language barriers have presented challenges. Most knowledge and documentation are found in distant historical EOTC monasteries and churches and written in the country’s earlier official language, Ge’ez. These impediments push lawmakers to turn to external sources. Most current laws are transplanted from these sources, often incompatible with the culture, tradition, beliefs, and thinking of the people for whom the laws are made. The problem is demonstrably reflected in the existing judges’ appointment law that disregards the principal provisions of Fetha Negest.

This paper thus aims to discuss some crucial points about Fetha Negest, particularly chapter 43, which lists the judge’s appointment criteria and compares it with the current federal judicial administration proclamation No. 1233/2021. In addition, the paper is written with the thought that it may serve as a source for future researchers in the field. To do so, in addition to collecting and analyzing qualitative field data, documents are investigated.

2 Research Methodology

As noted above, this paper compares Fetha Negest and the existing law, focusing particularly on the criteria for appointing judges. The judge’s appointment criteria in the two legal documents are different. The existing law lacks something important and may have full-fledged criteria if it had adopted some important criteria from Fetha Negest. This paper thus aims to show the criteria of the two documents and makes comparisons in order to explicate the faults that the legislators have made.

Methodologically, the paper uses a doctrinal legal research method that assesses the pertinent legal provisions of Fetha Negest and proclamation No. 1233/2021, which mainly deals with judges’ appointment criteria. The paper also includes interviews with relevant EOTC fathers to clearly understand the issues. It is thus limited in scope to the analysis of legislation and
semi-structured interviews. The author does not investigate empirical data on the practicability of the criteria in Ethiopia, although the author firmly believes that empirical investigation into the issue is crucial.

3 General Overview of Fetha Negest

The Feteha Negest² (Ge'ez: ብትሐ ነገሥት ብትሐ ከጻعطاء, ‘Law of the Kings’) is the Ethiopian Nomographic canon and a legal code compiled around 1240 by the Coptic Egyptian Christian writer Abul Fadail Ibn al-‘Assal when Cyril III was the patriarch of Alexandria. It was initially written in Arabic and later translated into different languages, including Ge'ez and Amharic (Paulos 1968). The Arabic version of the Fetha Negest was initially titled ‘collection of canons’, but scholars commonly know it as ‘the Nomo Canons of Ibn al-Assal’. It was compiled as a guide for the Christian Copts living among Muslim Egyptians. The Coptic Church of Egypt used and regarded it as an extraordinarily authoritative work. Some authors consider it one of the books prepared for church institutions whose judicial nature was permitted to adjudicate certain disputes among Christians (Paulos 1968).

The book has two parts and is divided into 51 chapters. The first part, which contains 22 chapters, is the religious part, whose sources are the Old and the New Testaments; canons of early councils of Nicaea, Antioch, and Carthage; and writings of alleged apostolic origin, such as St. Basel, St. Hippolitus, and others. The second part, the secular part, is composed of 29 chapters that rely heavily on the four canons of the kings. The first is the Procheiros Nomos, a handbook of Roman-Byzantine laws enacted between 870 and 878 by the Byzantine emperor Basilius the Macedonian. The second is ‘The Syro-Romanian book’, an Arabic version of another handbook of Roman-Byzantine laws. The third is the Ecloga of the emperors Leo III (Isauricus) and Constantine V (Compronimus), published in 726 A.D. The fourth canon is the ‘Precepts of the Old Testament’, a compilation of ritual and moral precepts from the Pentateuch, together with some Christian interpolation (Paulus 1968).

4 Fetha Negest in Ethiopia

It is impossible to delineate the exact date when the Fetha Negest was introduced in Ethiopia. However, the Ethiopian tradition holds that the book was imported into Ethiopia during the reign of visionary, author, and firm leader Zar’ a Ya’qob (1434–1468). According to EOTC traditions, one day Abba Petros
Abdel Sayd, an Egyptian, asked the emperor why he felt sad. He responded that his empire’s justice system still referenced the Old Testament while he and his people were in the New Testament. Abba Petros then began to explain the content and features of Fetha Negest, but the emperor interrupted and requested that he return to Alexandria to get the book. Abba Petros went back to Alexandria with 30 bundles of gold (‘weqet work’ in Amharic) as a gift to the Egyptian sultan, brought the book, and translated it into Ge‘ez, the then national language of Ethiopia (የኢትዮጵያ / የኢትዮጵያ / ይተርክሬን 1999). Although the book was imported during the reign of Za‘ra Yakob, it was formally incorporated into Ethiopia’s legal system in 1908 by Emperor Menelik II when the emperor established the Ministry of Justice for the first time in Ethiopia’s history (Al-Assal 1996). According to the Ministry’s establishment law, one of its powers and duties was to check the conformity of decisions with the rules of Fetha Negest (Al-Assal 1996).

In addition to the spiritual services Fetha Negest provides, the book has played crucial roles in the development of the modern laws of Ethiopia. For example, in promulgating the 1930 Penal Code the legislator clearly stated that his work was a ‘revision’ of the Fetha Negest, ‘updated’ to meet the needs of the present time (Tibebu 1995). He emphasized his intention to not depart from the laws of the Fetha Negest (Paulos 1968). Moreover, he made explicit references to the latter in 60 more Articles. Also, the preface of the 1960 Ethiopia Civil Code states that ‘the Codification Commission has been inspired by the genius of Ethiopian legal traditions and institutions as revealed by the ancient and venerable Fetha Negest’ (Paulus 1968). In addition, Article 2 of Menelik II’s law issued to determine the powers and duties of the Minister of Justice stated that ‘the Minister must supervise every judgment diligently and conformably to the expression of Fetha Negest’ (Tibebu 1995).

The book has long been the governing rule of the country for several reasons. First, the scripture is written on parchment (Brana), a traditional EOTC writing system in that the writer puts his notes on processed leather using traditional inks prepared from plants. Unlike paper, parchment can preserve its contents for a long time. Second, the book is very prestigious. The people believe that 318 fathers of the Nicaea Council wrote it. Third, it is taught in the Interpretation School, where students get detailed knowledge of Fetha Negest. The interpretation school is among the three church schools: Reading School (Nebab Bet’ የንባብ ቤት), the altar priest’s training/ melody (Qedasse Bet’ ንዳሰ.sy ቤት), and Higher schools (Kefftegna T/’ከፍተኛ ት/ሔጭ’). Fetha Negest is an indigenous source of knowledge for Ethiopians. It has served the Ethiopian Christian kingdom as a means to secure justice and
maintain peace and security. Although it was not initially an Ethiopian document since it was written in Arabic by an Egyptian Coptic writer Al-Assal, it was translated into Ethiopia's Ge'ez language to be a governing law until the end of Emperor Haile Selassie's reign. Moreover, the book is framed in the domain of the Eastern churches, which are characterized by their uniformity across the globe. Following its adoption, except for it served as a governing rule for all Ethiopians. Menelik II’s declaration on the applicability of Fetha Negest in exercising laws by the Ministry of Justice provides a good example, where it puts an obligation on the Ministry to check its decisions’ conformity with Fetha Negest. Menelik II was the governor of all parts of Ethiopia, including the south and north, and the maker of current Ethiopia. Moreover, Fetha Negest is considered a legal code of the Ethiopian Ge'ez civilization (Tibebu 1995). Since preserving and practicing a given document for a long time is a criterion for having an indigenous right, Ethiopia can claim indigenous rights on the book due to the fact that it has preserved and practiced the book for nearly seven centuries.

5 The Appointment of Judges under Fetha Negest and the Current Law of Ethiopia: A Comparison

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Proclamation 1233/2021 (Common criteria for all levels of courts)</th>
<th>Fetha Negest</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Appointment Processes</td>
<td>The legislature, executive, and judiciary organs take part in the process.</td>
<td>The community and the king appointed judges from among those meeting the requirements of the law and nature</td>
</tr>
<tr>
<td>Nationality</td>
<td>A candidate must be an Ethiopian national</td>
<td>Not clear, but the candidate must be male and a member of EOTC</td>
</tr>
<tr>
<td>Legal Knowledge</td>
<td>The candidates must acquire at least a first degree in law from a recognized institution of higher learning</td>
<td>The candidate must be ‘liq’ or a scholar of Fetha Negest acquired through learning from Interpretation school</td>
</tr>
</tbody>
</table>
Table 1: A comparison between Fetha Negest and the proclamation (cont.)

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Proclamation 1233/2021 (Common criteria for all levels of courts)</th>
<th>Fetha Negest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Training</td>
<td>The candidates must be willing to take training if necessary for a period determined by the Council.</td>
<td>The candidate must be a graduate of Interpretation school.</td>
</tr>
<tr>
<td>Diligence, Sense of Justice, and Good Conduct</td>
<td>Have a proven reputation for probity, integrity, honesty, and be free from morally repugnant conduct.</td>
<td>Honest, wise, and has a fear of God.</td>
</tr>
<tr>
<td>Consent and Declaration</td>
<td>Be willing to serve as a judge, as expressed by an oath in front of HPR.</td>
<td>There is implied consent communicated through a public oath.</td>
</tr>
<tr>
<td>Acceptance</td>
<td>It is implied that the people's representatives accept it.</td>
<td>The people must accept the candidacy.</td>
</tr>
<tr>
<td>Age</td>
<td>A minimum age requirement of 30.</td>
<td>There is no age limit, but we can infer from the practice that in order to be a scholar of Fetha Negest a candidate must learn readings for at least three years, melody for up to four years, poetry for up to seven years, and interpretation, including Fetha Negest, for up to eight years. In sum, he has to educated for twenty-four years. Hence, the candidate would have attained 24 years beyond childhood.</td>
</tr>
<tr>
<td>Health</td>
<td>Be of good health.</td>
<td>Must be free from infectious disease.</td>
</tr>
<tr>
<td>Perspicacity</td>
<td>A judge must be able to see and hear to distinguish buried from unburied.</td>
<td>No explicit rules and regulations on this issue.</td>
</tr>
</tbody>
</table>
Table 1 schematizes the comparison between Fetha Negest, and existing law based on the judges’ appointment criteria. To start with the first criterion, the participants in the appointment processes in the two documents differ. In Fetha Negest the law and nature have crucial roles and central elements in the process. Concerning the first element, the higher God has said in Deotrical 16, 18, and 19 that ‘in all your cities which the Lord your God will give you, you shall appoint judges, so that they may deliver just judgments, and they shall not yield to either party at the time of judgment, nor shall they make distinctions between persons, not accept bribers, because a bribe blinds the eyes of the wise, so much so that they cannot see the justice, and alter the just word’. In addition, nature requires judges because conflicts are inevitable and require human persons to resolve them. In all these processes, the community and kings have a significant role.

However, in the existing law, the three government layers have a say in all the appointment processes, except for the appointments of the federal Supreme Court president and vice president, in which the judiciary has no role (FDRE Constitution 1995. They are appointed by the House of Peoples’ Representatives (HPR) upon the prime minister’s recommendation. Nevertheless, ordinary federal judges at any level are appointed by the HPR from among the prime minister’s candidates. The Federal Judicial Administration Council recruits them as per Article 8/1 of the Federal Judicial Administration Council Establishment proclamation, No. 1233/2021.

Each process in the two documents has its own merits and demerits. The process in Fetha Negest empowers the people to share their views on the candidates. However, the approval lies in the interest of the king, and the candidate has to...
be naturally gifted in reconstructing peace. However, the process in the existing law puts the checks and balances principle into question in that the powers of the three wings of the government are clearly interwoven in the appointment process.

Concerning nationality, being a national of Ethiopia is a requirement under the existing proclamation. However, Fetha Negest does not specify the candidate’s nationality but is strict on the candidate’s faith and sex – the candidate must be a male Orthodox Christian (አለሙ, 2007). Some consider Fetha Negest to be gender discriminatory, yet it is not. The rationale behind this provision is that to be a judge knowledge of Fetha Negest, which can be acquired from different traditional universities, was mandatory. It was difficult for women to move from place to place to acquire the required knowledge. Hence women are marginalized from being a judge to adjudicate cases based on Fetha Negest.

Legal knowledge is the third crucial criterion. Fetha Negest requires essential church education (being a priest) and graduation from Interpretation school. In other words, the prospective judge must be a scholar of Fetha Negest. In contrast, the proclamation emphasizes the candidate’s substantive and procedural legal knowledge. Accordingly, the proclamation requires at least a first degree from a recognized institution of higher learning. In addition to legal knowledge, the candidate must be willing and show readiness to participate in additional training when necessary (The Council 2021).

Regarding consent and declaration, the proclamation requires that the candidate consents to assume judgeship. The candidate takes an oath on his willingness to hold the position and his loyalty in front of the people’s representatives and must get fifty-plus-one votes of the house for their candidacy (The Council 2021). Fetha Negest has no explicit provisions about the oath. Instead, it requires a public declaration and approval from the community.

The fifth criterion, which is concomitant with the sixth criterion, is acceptance. Society’s acceptance is mandatory under Fetha Negest but not in the existing laws. Even though it is challenging to measure society’s acceptance, this criterion is still vital for public confidence. Some argue that the parliament’s approval of the present system can be taken as an expression of people’s acceptance. However, the method of acceptance in the two laws is different. It is direct in the Fetha Negest but achieved through representatives in the proclamation.

The sixth criterion is age. The proclamation sets a minimum age requirement of 30 years for all levels of courts (The Council 2021). However, the recently repealed proclamation No. 684/2010 had made some imperative age limits among the federal first instance, higher, and supreme courts. Accordingly, the minimum age limit in the Federal First Instance Court was 25 years, and not less than 30 years in federal high and supreme courts. Fetha Negest does not
explicitly indicate the minimum age limit, but one can infer it from the minimum years of school attendance described earlier, where a candidate must be educated for 24 years beyond childhood. From this requirement we understand that judgeship requires a stable mind, which is acquired mainly through experience and age. Fetha Negest provides a good instance of this.

The proclamation is silent on the seventh criterion, health, albeit it requires good health of the candidates without defining and clarifying the term (The Council 2021). However, Fetha Negest states explicitly that the candidate must be free from any infectious diseases like leprosy (አለሙ 2007). It might have been better if the proclamation was also explicit in order to comply with Article 79(4)(b) of the constitution, which states that judges can be removed from their bench due to illness, among other things. This criterion has to be incorporated into the existing laws.

Perspicacity is the eighth criterion, related to when two laws have different viewpoints. Fetha Negest specifically delineates that the judge must be able to see and hear to distinguish buried from unburied arguments (Al-Assal 1996). However, the existing law fails to incorporate such vital issues. Most scholars agree that a judge must not have ears alone but also eyes, legs, and hands to investigate the truth. It would thus be better for the current proclamation to incorporate this vital criterion.

The last but not least criterion is language. It is especially crucial for countries such as Ethiopia, home of more than eighty nations, nationalities, and peoples with different languages. Fetha Negest requires the candidate to know the language of the area where he is assigned to work. However, the current law does not explicitly mention language as a criterion even though it is acknowledged that a person cannot do his/her work without knowing the working language of the area. Thus, to comply with the constitution, which declares that the federal working language is Amharic, the proclamation should articulate the issue in a future amendment (FDRE Constituiion 1995).

In a nutshell, the content of the proclamation is more secular, whereas the Fetha Negest has both secular and spiritual parts. In this regard, Fetha Negest is more compatible with most Ethiopian people’s mindset in that most have closer contact with spiritual life. Hence the proclamation should be amended as per the above narration with the framework of Fetha Negest, a precious resource of all Ethiopians.

6 Conclusion

It is noticeable that the people consider judges as gods of the earth. This is because judges’ decisions are similar to God’s power to restrict and take
individuals’ liberty and life. The profession is an esteemed career in Ethiopia. This seems to be why people name their sons 'Dagnachew: judge them'. Thus, appointment criteria and procedures should be free, transparent, and genuine in order to maintain people's attitudes toward this profession. Since earlier times, Ethiopia has used its indigenous criteria for appointing judges. Before Fetha Negest, it used traditional systems. However, since the fifteenth century, Fetha Negest has been a part of the appointment criteria for judges. The book retained its significance for centuries until 1930, when the new penal code was first introduced.

In addition to appointing judges, Fetha Negest has significantly influenced the Ethiopian legal system. For centuries it has been a national resource for education purpose and is still consulted in law matters. It was also cited as an inspiration to the codification commission when the government enacted Ethiopia's civil and penal codes. However, after modern laws were introduced the role of Fetha Negest was forgotten and faced the fate of fading away. Instead, Western laws dominated the country’s legal system and became the source of laws. The current proclamation No. 1233/2021 is one instance that turned to an external source, even though perpetual sources such as Fetha Negest were available. Due to this, the proclamation was amended more than three times in the last three centuries.

This paper aimed to discuss and compare judges’ appointment criteria under Fetha Negest and Proclamation No. 1233/2021. According to the findings, except for some criteria that must be removed, Fetha Negest is superior to the current law. Thus, irrespective of religious differences, all Ethiopians must stand together to preserve this book and other sources of ancient knowledge.

Acknowledgment

The writer thanks all who took part in the study. However, God and his mother, St. Mary, must receive the greatest acknowledgment; they were with me in all my ups and downs. Alemken Jegnie and M/r Betsiha, thank you for your support in providing relevant materials. To my daughters, Ahad and Afomiya, and my wife, thank you for your forbearance! May God bless you!

References

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Notes

1 The Solomonic dynasty is a dynasty that scions claimed discerned from King Solomon of the Jews. The son of King Solomon, King Menelik 1, continued the throne with the name ‘Solomonic dynasty’. It survived until the dynasty's last king, Haile Selassie, was overthrown in 1966, albeit other dynasties interrupted the dynasty (U.S. Library of Congress 1991).

2 Fetha Negest is the combination of two Ge’ez words, ‘Fit’h’ and ‘Negest’. ‘Fit’h’ means judgment and ‘Negest’ means kings. Therefore ‘Fetha Negest’ means the judgment of kings. The book differs from *Awde Negest*, a book not part of the Ethiopian Orthodox Tewahido Church (EOTC), and *Kibre-Negest*, a book about the history of kings.

3 The church school system, one of the oldest in Christendom, originated in the Aksumite Kingdom with the introduction of Christianity at about 34 AD. However, the schools' present structure evolved during the ‘golden age’ of the Church from the thirteenth to sixteenth centuries when the Church's literature peaked.

4 The reading school is the first stage that is found in all churches, monasteries, villages, and compounds of well-to-do landlords. The primary function of the school is to enable children to read and write Ge’ez words.

5 Qedasse Bet is a school for pupils who have completed the Nebab Bet.

6 The third school is Higher School, which includes Poetry School (Quene bet, ‘ቅኔ ቤት’), Church Music (Zema bet, ‘ዜማ ቤት’) and Interpretation School (Metsihafit bet, ‘የመጽሐፍ ቤት’). Poetry school utilizes a metaphorical system in which students learn how to create spiritual and metaphorical poems whenever requested. Church music school teaches Yaredic music education. Yaredic music has been practiced since the sixth century in the Ethiopian Orthodox Tewahido Church. Saint Yared is referred to as the founder of the liturgical music known as...
Zema (chant). However, other music authorities, such as Giorgis Zegasicha, Azaz Gera, and Azaz Raguel, are also called Yaredic music contributors. The third school, Interpretation school, is the pillar of the Church’s teaching in which students learn the arts of spiritual books interpretation, such as the Old and New Testament, and Fetha Negest. The interpretation school answers the worshiper’s canonical and/or dogmatic questions. Significantly, most canonical questions are answered using the interpretations provided under Fetha Negest (Woube 2018).

B. Alemu, interview by A. Mande, 6 June 2021, Gondar, Ethiopia.

A person is considered an Ethiopian when both or either parent is an Ethiopian (FDRE Constitution 1995).

B. Alemu, interview by A. Mande, 6 June 2021, Gondar, Ethiopia.

According to the 2007 census, 43.5 percent of the population identified as Ethiopian Orthodox Christian, 33.9 percent as Muslim, and 18.5 percent as Protestant Christian (Pentay). Only 3 percent were traditional animist believers. This indicates that 97 percent of the people are believers.