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Follies of Ethiopia's Data Protection Legislation

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Abstract: This opinion offers critical reflections on a major flaw of Ethiopia's new data privacy legislation. Going further, it considers how this folly is reflective of the overall apathy towards the sacred act of lawmaking in particular and rule of law generally in the country.

Keyword: data protection, data privacy, lawmaking, rule of law, national data protection authority, Ethiopia.

1 Introduction

On 4 April 2024, Ethiopia's House of Peoples' Representatives adopted Proclamation No. 1321/2024 (Proclamation), establishing a data protection law. This comes more than five decades after the adoption of the first-ever data privacy legislation in the German State of Hessen in 1970, and a decade after African Union's Malabo Convention in 2014. Policymakers have indeed mulled the idea of a data protection law at least since 2009. As someone who researched, taught, and written about the topic for more than a decade, this offers an opportune moment to reflect on what this tells about the nation's approach to legislation. Focusing on a particular legislative folly of the data protection law – and the legislative history of other cognate pieces of legislation, I seek to show how lawmaking in general and legislative drafting in particular are trivialized in the country. I further implore readers to reflect on what this tells us about the current dreadful state of law and order in the nation.

Data protection law is an area of law within the broader field of law customarily called by nomenclatures like 'cyberlaw', 'information technology law', or 'law and technology'. By its nature, data protection law is a bureaucratic regime that lays out the legitimate ways in which data relating to an identified or identifiable person (formally called 'personal data') may be collected, stored, processed, used, and shared. In the process, it seeks to meet two mutually reinforcing objectives: facilitating the free flow of (personal) data for legitimate purposes such as international trade without unduly infringing upon the enjoyment of the fundamental right to privacy. At its inception in Europe, data protection law's economic *raison d'etre* prevailed but modern data protection law puts data privacy front and centre.

2 Follies of the Proclamation

Ethiopia's data protection law is largely aligned with this global approach to data protection legislation. But it has taken a rather absurd turn in one particular respect: organization of a national

data protection authority (DPA). An archetypal DPA, which forms a key part of any data protection legislation, is an independent administrative agency installed to oversee the implementation of data privacy principles, respect for data subject rights, and fulfilment of duties by data controllers and processors. Key to any DPA is its institutional independence. As it would regulate data processing both in the public and the private sectors, a DPA should be independent of the executive branch of government. This was rightly reflected in the initial draft version of the Proclamation. Upon adoption, the law takes a U-turn and bestows upon the Ethiopian Communications Authority (ECA) the role of DPA.

This had stirred legitimate questions from stakeholders during the public consultations held early this year. But the response from officials has been rather staggering. That is where the point I seek to make in this piece lies: the apparent trivialization of legislation in general and the drafting of laws in the cyber domain in particular. In defending the decision to make ECA the DPA, the Director General of ECA made the following comments to The Reporter:[1]

> Establishing a new institution to regulate data privacy would be *redundant*. It would be better to give the role to an existing institution that has a similar mandate. The Authority is a *free and independent federal institution accountable to the Prime Minister*. It is the right institution for implementing the personal data proclamation. ECA's *establishment proclamation grants it a similar mandate* [*emphasis added*]

The comment is unsettling on multiple levels, I address two of them here. One is the Director's claim that ECA is a 'free and independent' agency which he (however) negates in the same breath by highlighting ECA'S accountability directly to the Prime Minister. That does not need further commentary: ECA is not inherently an independent body by the sheer fact that it is made accountable to the head of the executive. I should also remind readers that the Prime Minister appoints – and hence removes – not only the Director General but also the Management Board of ECA.[2] One may hesitate to blame the Director here, not just because is not trained in law, but also because the Proclamation strangely declares that ECA is 'hereby established ... as an independent federal government Authority'.[3] But to suggest in any way ECA is independent would be just inaccurate.

That takes me to the second point. The official claims that the ECA has already been given a similar mandate, i.e., to regulate the processing of personal data both in the public and private sectors. That would make – the argument goes – creating a new DPA redundant. This reading of ECA's mandate is plain wrong. ECA is a telecom regulator, and as such, its mandate is restricted to that sector. That means any mandate relating to data protection covers only the processing of personal data by telecom operators, not other bodies such as (let us say) a Woreda administration or a certain company that routinely processes personal data. Indeed, Proclamation No. 1149/2019 does not even recognize any meaningful role to ECA when it comes to telecom privacy. The closest it comes is when the law mandates ECA to 'promote information security, data privacy

[1] Ashenafi Endale, *Critics Fear Comms Authority Personal Data Dominion, Impartiality in Legislative Wrangle*, The Reporter (13 Jan. 2024), www.thereporterethiopia.com/38279 (accessed 22 May 2025).
[2] *See* Communication Services Proclamation No. 1149/2019, Arts 7-8.
[3] *Ibid.*, Art. 3.

and protection'.[4] Of course, the ECA had proceeded to issue a Directive where protection of 'consumer privacy' is addressed to a degree (Telecommunications Consumer Rights and Protection Directive No. 832/2021). My critical take on the ways in which this Directive misconceives data privacy is addressed elsewhere,[5] but it suffices to note here that even the Directive relegates the matter of data protection to a future data protection law.[6] In the ultimate analysis, ECA does not have a data protection mandate that would justify its newfound powers in the data protection legislation in any way, form, or shape.

ECA cannot thus be a pertinent DPA. But the decision to randomly replace the Data Protection Commission – i.e., the DPA originally envisaged in the 2020 version of the bill – with ECA – speaks volumes to the prevailing approach to legislation and legislative drafting in the country. For many years, Ethiopia followed a largely decentralized approach to legislative drafting. Each government department would initiate legislative proposals, which then would be hurled over to the Ministry of Justice and the Office of Prime Minister for commentary and priority decisions. Other actors such as members of Parliament have the privilege to initiate laws *de jure* but this has rarely, if ever, occurred.[7] That means only rarely have bills been developed by a central body with no input from sectoral government agencies. A virtue of a decentralized drafting regime is that bills would be drafted by people with specialist expertise. To my knowledge, this continues to be the main approach to legislative drafting in Ethiopia, at least at the stage of initiating legislation.

But there is still a tendency to undermine this long-established drafting practice. Once a draft bill is sent over from the respective sectoral department, significant changes are made to the text by the Ministry of Justice and standing committees of Parliament. On a number of occasions, the changes have resulted in flawed pieces of legislation. An older example is the Trade Competition and Consumer Protection Proclamation No. 813/2013. During the second reading of the bill, several parliamentarians and chairs of relevant committees stated that they had to 'rewrite' the bill to make it fit for purpose.[8] According to one report, the Trade Affairs Standing Committee revised, deleted or otherwise shoehorned forty provisions of the bill altogether (note: the final version has forty-nine provisions).[9] Despite being adopted as recently as 2013, Proclamation No. 813/2013 does not embody progressive legal standards on consumer protection, particularly in light of the new ways in which consumer welfare is affected in the digital economy. To be fair, the Electronic Transactions Proclamation No. 1205/2020, which addresses electronic commerce among other themes, somehow fills the gap with modern consumer protection rules.

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[4] Proclamation No. 1149/2019, Art. 6(25).

[5] Kinfe Yilma, *Beware of Overboard Cyber Legislation*, Fortune (16 May 2020), addisfortune.news/beware-of-overboard-cyber-legislation (accessed 22 May 2025).

[6] Telecommunications Consumer Rights and Protection Directive No. 832/2021, Art. 16(1).

[7] የሕግ አወጣጥ ሂደትና የሕግ ረቂቅ ዝግጅት ማኑዋል (የኢፌዴሪ የሕዝብ ተወካዮች ምክር ቤት: መጋቢት 2013 ዓ.ም) [Legislative Process and Drafting Manual (Federal House of Peoples' Representatives: Mar. 2021)] 25. (Author's Translation).

[8] *Draft Legislation Stirs Unusual Debate in House*, The Reporter (14 Dec. 2013) 13, 27 www.thereporterethiopia.com/news-headlines/item/1373-draft-legislation-stirs-unusual-debate-in-house (accessed 22 May 2025).

[9] የሚኒስትሮች ምክር ቤት የሚልካቸው ህጎች የጥራት ጉድለት ፓርላማውን አከራከረ [Poor Quality of Council of Ministers Draft Laws Stirred Parliamentary Debate], The Reporter (6 Dec. 2006) 3, 50. (Author's Translation).

While members and committees of Parliament may initiate legislation, I do not think the idea behind this privilege is that members would literally engage in (re)drafting of bills. Legislative drafting is a niche endeavour, a profession that requires specialist skills and training. In other jurisdictions such as the US and Great Britain, legislators do initiate legislation; but they have dedicated offices with a team of experts who help develop policy ideas or 'drafting instructions' into bills. That is not the case in Ethiopia. In fact, I do not know of any case where a member of Parliament presented a bill that she either drafted single-handedly or with the help of others.

This comment applies to the Ministry of Justice whose alterations of draft pieces of legislation presented by government departments have likewise been problematic. The Ministry, which has a specific mandate in legislative drafting, is equipped with prosecutors who (I hear) double, at times, as drafters. Among the mandates of the Ministry is the following:[10]

> በፌዴራል መንግሥት የሚወጡ ሕጎች የሕግ ረቂቅ ዝግጅት ይሰራል፤ *የመንግስት አካላት የሚያዘጋጁት ረቂቅ ሕግ ከሕገ መንግስቱና ከፌዴራል ሕጎች ጋር የተጣጣመ መሆኑን ያረጋግጣል፣ ለሚመለከታቸው ክፍሎችም አስተያየት ያቀርባል*፤ ... [*emphasis added*] [perform preparation of draft laws to be promulgated by the federal government; *ensure that draft laws prepared by government organs are consistent with the Constitution and federal laws; provide legal opinion to concerned bodies*; assist in the preparation of draft laws when so requested by the regional states …] [official translation]

It has a mandate to initiate/draft federal legislation, but its role when it comes to bills drafted by other entities is rather limited: (1) to provide feedback, *and* (2) only on whether the respective bill is in line with the Constitution and other federal laws. That simply means the Ministry has no mandate to introduce significant alterations to bills presented for comments. Nor does it have the requisite specialist knowledge base. The Ministry's legion of prosecutors, through the Legal Research, Drafting and Consolidation Directorate (hoping this office still exists), could help examine specific bills against the federal government's broader legislative agenda. But the Ministry has, on many occasions, gone overboard, and made unwelcome interventions. I recall, in this regard, the substantial revisions made to the then draft cybercrime bill originally drafted by the Information Network Security Agency (now Administration).[11]

This raises the question of whether standing committees or the Ministry had the requisite specialist knowledge and drafting skills to make such changes. I think a similar misadventure may have played a role in installing ECA as the DPA instead of the Commission proposed in the initial bill prepared under the auspices of the Ministry of Innovation and Technology. While presenting the data protection bill for the plenary, the Chair of the Human Resources Development, Placement, and Technology Affairs Standing Committee reportedly said the following:[12]

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[10] Federal Attorney General Establishment Proclamation No. 943/2016, *Federal Negarit Gazeta*, Art. 6(5(a)).

[11] *See* Kinfe Yilma, *Some Remarks on Ethiopia's New Cybercrime Legislation*, 10 Mizan Law Review 449 (2016).

[12] Ministry of Innovation and Technology – Ethiopia, የህዝብ ተወካዮች ምክር ቤቱ የግል ዳታ ጥበቃ አዋጅን አዋጅ ቁጥር 1321/2016 ብሎ አጽድቋል። [The House of Peoples' Representatives approved the Personal Data

> በሪፖርታቸውም ረቂቅ አዋጁ ለዝርዝር እይታ ለቋሚ ኮሚቴው ከተመራ ከህዳር ወር 2016 ዓ.ም. ጀምሮ በርካታ ሂደቶችን ማለፉንና ጠቃሚ ግብአቶች የተገኙበት መሆኑን አስታውሰው፤ ግብአቶቹን ማካተትና ማሻሻያዎችን ማድረግ እንዲሁም አሻሚ ትርጉም ያላቸውን ቃላቶች ግልጽ ማድረግ በማስፈለጉ አዋጁን ማሻሻል አስፈልጓል ብለዋል:: [*emphasis added*] [In their report, they noted that the draft proclamation had gone through many processes since November 2023, when it was referred to the Standing Committee for detailed review, and that valuable inputs had been received; *they said that the proclamation needed to be amended* to include the inputs, *make amendments*, and clarify ambiguous terms.] [Author's translation]

This remark suggests that several amendments have been made to the bill once it was forwarded to the House. That is where the concern lies. While valid feedback could be made during public consultations, the question of whether changes should be introduced by members of the House or the relevant committees remains. I have already alluded to the lack of domain expertise as well as in legislative drafting expertise in the Parliament, particularly so in specialist fields like data protection law.

3 Final Remarks

But what is the main takeaway from the foregoing folly of data protection (and the other pieces of) legislation? At one level, it reveals the value attached to lawmaking as a sacred democratic exercise. By arbitrarily altering bills, lawmakers and government's casual legislative drafters are not just showing apathy to the vitality of expertise in carefully crafting legislation. I think this speaks also about the value attached to lawmaking itself. Lawmaking is the vessel by which policymakers direct attention and limited resources toward meeting socioeconomic and political needs. But churning out legislation whose objectives are thwarted by misplaced alterations are doomed to fail in meeting their objectives. One objective of the Proclamation is to uphold data privacy and provide effective remedies when violations occur. But ECA is unlikely to provide effective remedies or act as a reliable vanguard of privacy protection by public sector data controllers.

Pointing such follies of legislation out at a time when the country flounders in desperate lawlessness may sound ironic. But I think the trivialization of lawmaking also suggests something about our collective thought about law and its role in society. If the nation's law and policymakers take with little care their solemn duty of legislation, would you expect widespread reverence to the law by the laypeople? My bigger point is that the possible explanations for the current numbing lawlessness are far more complex. But one point that has become pretty clear in the past six or seven years is that the old claim that we have some reverence for the rule of law often encapsulated in the age-old adage በህግ አምላክ [By God of Law] is unravelling. Reinforcing this point is the public's overall numbness to and apparent readiness to shoulder unimaginable cruelty, tyranny and injustice, and the deafening silence – and in many cases, central and ongoing role – of the nation's political, cultural and intellectual elite to the same. One should, however, give credit to the sole parliamentarian who registered the only vote of objection while the data protection law was adopted, regardless of their motive. Not least because voices of reason, common sense and

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Protection Proclamation as Proclamation No. 1321/2016] [Author's translation], Facebook (4 Apr. 2024), https://tinyurl.com/mubf44su (accessed 22 May 2025).

courage are few and far between in contemporary Ethiopia which, over the years, have become unrecognizable to yours truly.