

The Importance of Notary Public in the Eritrean Cadastre System

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1. Purpose of the Study

The purpose of the study is to identify the gap in institutional development of Notary Public and propose course of action in the management of property transactions



2. Brief Country Background

- Eritrea: NE Africa, 124,320 km² , about 4 million people, six administrative zones
- Bounded with Sudan in the W and NW, Ethiopia in the S, Djibouti in the SE, and the Red Sea in the E
- Occupation: Ottoman Turks (1557-1857) followed by Egyptian rule, Italian colonialism (1890-1941), British occupation (1941-52), federation with Ethiopia (1952 -1962) & annexation until 1991
- War of Liberation (1961-1991), formal independence (1993), with 99.8% of the people voting for independence
- 1998-2000 'Border War' with Ethiopia; April 2002 final and binding ruling by Boundary Commission, but Ethiopia refused to abide

3. Origin and duties of NP

3.1 Origin

- Oldest existing legal profession, credited to ancient Rome
- Initially, a notary public (“notary” , “public notary”, “*scribae*” or “scribe”, “*tabellius*” or “*notarius*”, notaire’, ‘notaio’, ‘notario publico’) denoted to a person who noted down statements in shorthand in the form of minutes
- later, the title *notarius* was applied to senior gov’t officials, courts of law, governors and secretaries to the Emperors
- NP survived during the Dark Ages in the 5th century AD, in Continental Europe; Civil law flourished during medieval Italy from the 12th century in most of Europe, S. America and other parts of the world
- In England, the common law developed free from the impacts of the Roman law, and the NP was introduced during the 13th and 14thC

3.2 Notary defined

- Notary Public: “an officer authorized by state law to certify certain documents and to take oaths” (World Book Encycl.1994, p. 550).
- Bowen (2009): notary public (NP) as a “public official that performs invaluable services for the legal, business, financial and real estate communities”.
- Thus, NP is a public officer constituted by law to serve the public in **non-contentious matters** usually concerned with estates, deeds, powers of attorney, and foreign and international business engagements.

3.3. Duties and Functions of the NP

‘A notary public...whose public office and duty it is to draw, attest or certify under his official seal, deeds and other documents, including wills or other testamentary documents, conveyances of real and personal property and powers of attorney to authenticate such documents under his signature & official seal in such a manner as to render them acceptable, as proof of the matters attested by him,...’ (Brooke’s Notary, 2002)

3.4. Varieties of Notary Public

- NP in all civil-law countries (Europe, Latin America, Asia, Africa) are lawyers of voluntary private civil-law who draft, take, & record legal instruments (notarial acts or deeds) for private parties, provide legal advice & give attendance in person; they are vested as public officers with the authentication power on behalf of the state
- NP in the UK and Wales belong to the common law tradition, but are legal practitioners and executives
- NP systems in most USA, & some parts of Canada, are lay notaries limited to domestic affairs.

3.5. Notarial Requirements & Practices

- Appointing bodies vary: in France, by the Ministry of Justice; Germany, by the state; Netherlands, by the Crown; Eritrea, by the Judiciary, etc.
- In the UK & Canada by Court of Faculties, in USA by Governor or State Secretary or by State Legislature, in Australia by Supreme Court, in New Zealand & Queensland, Australia by Archbishop of Canterbury acting through the Master of Faculties, & in India by the Central Gov't
- Both the civil law & common law notaries agree that many documents - deeds, businesses, etc. must be notarized before becoming legally effective

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- In France, Germany & other EU countries (34), Russia, Turkey, China, Japan, Latin American (23) & many other countries the civil-law notaries are judges & lawyers
- Notaries in many EU countries are modeled on the French system, appointment based on nationality, limited number, usually for life, & are qualified lawyers
- In France group liability for professional errors are paid from nation-wide consolidated fund, unknown in any other profession
- In the US & Canada: lay notaries (not lawyers), limited to domestic affairs, briefer period, unlimited number
- The 'notary signs the document to certify that the individual who signed it appeared in person and swore to the notary that the signature on the document is genuine'

4. Professional Codes of Conduct

Notaries have to ensure that documents are genuine & legally effective

Principles or codes of professional conduct:

- Serve the public in an honest, fair & unbiased manner
- Act as an impartial witness and not for profit
- Require the presence of each signer and oath-taker
- Not execute false or incomplete certificate
- Give precedence to the rules of law

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- Act as a ministerial officer
- Not allow notarial symbol to be used by another
- Record notarial act in a bound journal or other secure recording device
- Respect the privacy of each signer/only official purpose
- Seek instruction on notarization, & keep current on laws, practices & requirements

5. The Eritrean Notary Public & Cadastre

- Notary public was established at the end of 19th C during Italian colonialism era
- Initially, the colonial power authorized the Governor to appoint them
- Later, it was instituted according the Italian law of 1935 & continued with minor amendments of proclamation of 1952
- Eritrean Notary Act(1956): specified method of appointment, number of notaries to be licensed, criteria for nomination, withdrawal of license, etc
- During Ethiopian rule (1970s) all extra houses were confiscated, owners lost secure property ownership, & registration of private houses was discouraged as bourgeoisie practice

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- The relevance of both NP and Cadastre offices was questioned, however, narrowly survived as institutions
- Post -December 1995 NP restructured only under Central Region Administration
- Transfer of property through purchase becoming insecure in other regions
- **Duties of NP:** Prepares and authenticates contract agreements of immovable property transactions through sale, inheritance, donation, exchange, partition & wills
- **Cadastral Office:** Registers all land, rights over land, immovable property & their transactions, mortgage, pledge, provides information of property status, etc.

6. Concluding remarks

- With urbanization and modernization of the economy the need for notaries has grown tremendously and thus NP offices need to be reinstated in all regional seats and major towns
- Duties and functions of the Notary Public needs to expand beyond transfer of property to embrace some of the civil-law notarial services in use world-wide
- Specified time for declaration of death needs to be legally issued to activate timely enforcement of the law of transfer of immovable property.

Thank you!

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