

The Eritrean Notary Public in the Context of Global Notaries System

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Brief Geography & History



- Eritrea: located in NE Africa/ Horn of Africa
- Area: 124,320 km² , Population: 4 million
- Bounded by the Sudan in the west and NW, Ethiopia in the south, Djibouti in the SE, and the Red Sea in the east
- Administratively, divided into six zones
- Occupation by Ottoman Turks(1557-1857) followed by the Egyptian rule
- Italian colonialism (1890-1941) followed by British occupation (1941-52), federation with Ethiopia (1952 -1962) & Ethiopian rule until 1991
- 30 years War of Liberation (1961-1991)
- 1993 formal independence with 99.8% of the people voting for independence

1. Global Overview of the Notaries System

Notary Public defined

- Notary Public is an officer authorized by state law to certify certain documents and to take oaths (World Book Encyclopedia, 1994)
- ‘Notary Public’ in common law countries is a public officer constituted by law to serve the public in non-contentious matters concerned with estates, deeds, powers of attorney, & foreign & international business’
- ‘Whereas in civil-law or latin notaries, they are lawyers of voluntary private civil-law offices who draft, take, & record legal instruments known as notarial acts or deeds for private parties, provide legal advice & give attendance in person, & are vested as public officers with the authentication power on behalf of the state’ (Wikipedia, 2011)

1.1 Historical Development

- ‘Notary’, ‘notarial officer’, or ‘public notary’ has a long history that traces to the Fertile Crescent of ancient Babylon & Greek city states & later adopted under the Roman Empire
- The origin of the notary is also found in Hammurabi’s Code in 2000 BC, & in ancient Greece in 360 BC
- Initially, the ‘notary’ or, ‘notarius’ wrote statements in shorthand in the form of minutes
- Later, ‘notarius’ applied to registrars attached to courts of provincial governors & other government bodies

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- The notary continued in many parts of Continental Europe despite the collapse of Western Empire in the 5th AD
- The Civil Law revived its renaissance during medieval Italy from 12th C & the notary established as central institution of that law
- The development of modern 'notariat' happened with the opening of school of 'notariato' in Bologna (1228) that influenced Europe
- Notarial Acts: in France (1270), Portugal (1315), Spain (1333) & in Germany a modified latin type notary ('natar')

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- We now find 'notaire' in French, 'notaio' in Italian, 'notario publico' in Spanish & 'notarius' in the Netherland, etc
- In England a common law, free from most influences of the Roman Law developed in the 13th & 14th C

Duties and functions:

'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,....'

1.2 Notarial Requirements & Practices

- Appointing bodies for notaries vary from country to country: in 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 Government
- Appointing bodies in civil-law notaries: in France, the Ministry of Justice, Germany, the state, Netherlands, the Crown, Eritrea, the Judiciary, etc
- 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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- The purpose of notarization is to protect those who use them from forgeries
- Thus, 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'
- In the US & Canada: lay notaries, limited to domestic affairs, briefer period, unlimited number
- Lay notaries are not lawyers, but take relevant courses to carryout their duties restricted to the administration of oaths, witnessing signatures on affidavits & statutory declaration, certify true copies, provide acknowledgements, etc

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- In France, Germany & many other EU countries (34), Russia, Turkey, China, Japan, Latin American (23) & many other countries the civil-law notaries are judges & lawyers
- In France group liability for professional errors are paid from nation-wide consolidated fund, which is unknown in any other profession
- Notaries in many EU countries are modeled on the French system, appointment based on nationality, limited number, usually for life, & are qualified lawyers

- In England & Wales they are common law notaries & qualified lawyers
- Civil-law notaries, or Latin Notaries whose main practices are property conveyance and registration, contract drafting, commercial transactions, successions and other estate related matters are lawyers of private law and unlike lay notaries public provide legal advice and prepare instruments with legal effect

2. The Eritrean Notary Public

2.1 Background:

- Notary public was established at the end of 19th C during Italian colonialism
- At the beginning the colonial power authorized the Governor to appoint them
- Later it was instituted according Italian law of 1935 & continued with minor amendments of proclamation of 1952
- The Eritrean Notary Act(1956): specified method of appointment, number of notaries to be licensed, criteria for nomination, withdrawal of license, etc
- Mandate: preparation & authentication of contract agreement in the transactions of immovable property

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- During the Ethiopian Military rule (1970s) all extra houses were confiscated, owners lost security of property ownership, & registration of private houses was discouraged as bourgeoisie practice
- The relevance of both Notary and Cadastre offices was questioned, however, narrowly survived as institutions
- Post December 1995 Notary restructured under Central Region Administration- in other regions not yet re-constituted
- Transfer of property through purchase becoming insecure in other regions

2.2 Current Role

The main functions of the Eritrean Notary Public:

- Preparations of contract agreements of immovable property transactions through sale, inheritance, donation, exchange, partition & wills
- Charges appropriate fees for services rendered
- Land is state-owned and not subject for sale or any other form of transactions

2.3 Immovable Property Registration

- The Cadastral Office registers all land, rights over land, immovable property & their transactions, mortgage, pledge, etc.

3. Professional Ethics

All 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 a 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

4. Reflections

- Need for notaries has grown with the internationalization of market & business
- Documents related to deeds, contracts, businesses & others need to be notarized to be legally effective
- Thus, legal security remains more important today than ever before
- Eritrean notary need to embrace other notarial services beyond contract agreement of property transfer
- Different experiences in dealing with notaries (appointment & duties) depending on history, political, & socio-economic conditions of the country
- Reinstate notaries in all administrative regions of the country is essential to ensure secured property transfer

5. Concluding remarks

- Duties & functions of the notaries need to expand beyond transfer of property
- Notaries need to be reinstated in all administrative regions
- Skillful application of other countries' relevant experiences in notarial services

Thank you!

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