The Journal of Public Administration and Policy Research (JPAPR) is published monthly (one volume per year) by Academic Journals.

Journal of Public Administration and Policy Research (JPAPR) is a peer reviewed open access journal. The journal is published monthly and covers all areas of the subject such as political science, emergency preparedness, investment policy, industrial policy, tariff and trade etc.

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Immunities and privileges of International Organizations and the international civil service

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Received 29 September, 2009; Accepted 25 February 2010

A fundamental principle of public international law and the law of the international civil service bestows a certain degree of immunity and some privileges to members of the international civil service (those serving in the United Nations system). Therefore it follows that negligence of a member of the international civil service cannot be judged at the same level as that of a member of the public, particularly in relation to professional duties discharged. This is because the international civil service is granted immunity from liability for acts committed and opinions given in the course of their employment, provided such acts related to the performance of official duties. The special position occupied both by an international Organization of nations and its employees in the national courts is due to an explicit recognition of “rootlessness” and international character of both the Organization and its international civil service which, if brought into subjugation by national jurisdictions and legislation, would be rendered destitute of independence in their work for the international community. This article discusses the nature of international organizations and their staff, the types and degree of immunity they enjoy, the difficulties posed by the grant of such immunities and instances of waiver of such immunity.

Key words: International civil service, international organizations, diplomatic immunity, waiver of diplomatic immunity, absolute immunity, qualified immunity, negligence.

INTRODUCTION

Negligence of professionals that gives rise to civil liability is grounded on principles of tort law. However, negligence of a member of the international civil service (a person serving in the United Nations system) cannot be judged at the same level as the international civil service is granted immunity from liability for acts committed and opinions given in the course of their employment, provided such acts related to the performance of official duties. The natural extension to this principle is that the Organization in which the international civil servant is employed is also granted immunity from interference by local judicial bodies and local regulations with the work of the diplomatic corps in a country as such would stultify their mission (Mendaro v. World Bank, 1983).

The separation between the United Nations and its professional staff has always been blurred due to the fact that the above principle can also be applied the other way around, that is, in the context of legal rights and liabilities.
of the international civil service, The immunity granted by
the host country to the Organization also applies to the
staff. Therefore, when discussing professional negligence
of the international civil service the relevance would rest
with the concept of immunity rather than principles of
negligence. This article focusses on the reception of
members of the international civil service and specialized
agencies of the United Nations they serve, in particular
their status as respondents in national courts.

The position of an international organization or an
employee of such an organization as plaintiff or applicant
in a national court does not entail much debate since they
usually have independent legal status as persons and
can enter into contracts, enforce obligations entered into
with others and be sued in tort for negligence. However,
as will be seen later in this article, not all international
organizations nor their employees, possess independent
legal status. A need for inquiry particularly arises in the
issue of an international organization being called before
national court as defendant or respondent, in view of the
special immunities and privileges accorded to these
organizations.

Organizations themselves, as well as their employees
have been called up by national courts from time to time
as parties to litigation. In this respect, besides the inher-
rent legal personality of the international organization, the
employees of the Secretariat of that organization also
have an "essential novelty" where men and women of
various nationalities form the international civil service of
that organization, mostly as internationally recruited staff.
International civil servants so recruited also have a
somewhat different standing in national courts in relation
to any issue arising from the discharge of their profes-
sional duties within the scope of their employment. Article
100 of the United Nations Charter provides that in the
performance of their duties, the Secretary General and
the staff shall not seek or receive instructions from any
government or from any other authority external to the
Organization. They are required to refrain from any action
which might reflect on their position as international officials
responsible only to the Organization. They are not entitled
to the personal immunity otherwise enjoyed by heads of
state. This rule is not found in other organizations.

Article 103 of the Charter identifies as the paramount consideration in the
employment of staff the securing of the highest standards of
efficiency, competence and integrity. The special position
occupied both by an Organization and its employees in
the national courts is due to an explicit recognition of
"rootlessness" and international character of both the
Organization and its international civil service which, if
brought into subjugation by national jurisdictions, would
be rendered destitute of independence in their work for
the international community.

International civil servants are recruited for their su-
perior skills and knowledge and are usually expected to
perform tasks that are normally beyond the capabilities of
the ordinary person. This imparts to the international civil
servant an elevated standard of care as much as is
attributed to members of particular professions such as
medicine law and accountancy. However, here the
distinction ends, as unlike the other categories mentioned;
they are accorded immunity from judicial process in
respect of professional duties performed. There is a line
drawn, however, precluding this category of employee
from shielding himself absolutely from the law. The
delicate balance between immunity and liability was
brought to bear in the 1976 decision of the Criminal Court
of the City of New York in People v. Mark S. Weiner
where the court held that, in an instance where a United
Nations security officer used undue force on the plaintiff,
immunity from suit would be so unconscionable that it
violated on its face the concepts of fundamental fairness
and equal treatment of all persons who sought judicial
determination of a dispute. In the early French case of
Avenol v. Avenol involving the Secretary General of the
League of Nations who claimed diplomatic immunity from
a suit for maintenance filed by his former spouse, the
court held that immunity of League officials was func-
tionally and territorially limited to the exercise of functions
performed for the League and within the territory of the
country in which such official duties were performed.

This article will discuss the nature of the international
civil service and also international status as well as that
of the employers of international civil servants. It will
contain a discourse on immunities and privileges of
international organizations as employers, their employees
and instances and ramifications of waiver of such immu-
nities and privileges. Finally, it will address issues which
are perceived to be dichotomous and which present
problems of a general application with regard to principles
of immunity at international administrative law.

NATURE AND FUNCTIONS OF AN INTERNATIONAL
ORGANIZATION

National profile

In determining the status of an international organization,
the most basic question at issue for the courts would be,
"what is an international organization?" Unfortunately,
there is no specific answer to this question as no over-
arching definition has been developed identifying what an
international organization is in precise terms. One com-
mentator is of the view that at best, we might recognize
one if we see it (Klebbers, 2002). The main reason for the
difficulty in reaching a precise definition or identifying all
encompassing characteristic of an international organi-
ization is that it is in limine a social creation (Abdullah,
1977). Moreover, the creators of an international
Organization do not set off to create it with a pre approved
blueprint. Rather, they carve it to accord with their needs.

The two main characteristics of a specialized agency of
the United Nations are: that it is created by States, or
more specifically, as States themselves are abstractions,
by duly authorized representatives of States; and they
are created by treaty, which is a written agreement signed
by the States’ Parties to it and governed by international
law (Vienna Convention on the Law of Treaties, 1969). States can only act by and through their agents. Different government departments or instrumentalities of State bear responsibility for different international organizations. The third characteristic that distinguishes an international organization as a "club" of States without just being the spokesperson or mouthpiece of those States is that it is expected to have a "will" of its own. Any organization's independent will, recognized by the government of the host country in which that organization is situated for purposes of its activities within the country, is usually encapsulated in a provision which states that the Organization has an identity of its own, and is capable of entering into contracts. This having been said, an international organization, be it a specialized agency or other body, is by no means sovereign in its own right, although courts have on occasion referred to sovereign rights of an organization merely to seek a compromise between absolute acceptance of parity between a State and an organization and absolute refusal of an international organization's ability to perform acta jure imperii (governmental acts). An international organization's identity before courts having national jurisdiction would strictly be restricted to the nature of the organization and the type of work it carries out. Any special privilege accorded to an international organization by agreement or treaty would therefore be applicable only in relation to an international organization's scope of work. Conceptually, it has been argued that in an instance of national litigation involving an international organization, courts would, in the event the litigious issue pertains to the work of that organization, apply the "functional theory" in an acta jure gestionis (commercial act), which means that the organization concerned will not be viewed as having special immunities or privileges. In the 1953 case of Re International Bank for Reconstruction and Development and International Monetary Fund v. All America Cables and Radio Inc., and other cable companies the US Federal Communications Commission was confronted with the argument of the plaintiffs - the World Bank and the IMF – that the purpose of granting privileges and immunities to organizations located in the jurisdiction of a State where national law applied to contracts is to protect such organizations from unfair and undue interference including excessively high rates. The defendant (radio and cable) companies argued that there was no evidence or reason to allow the banks lower-than-commercial rates. The rationale that can be drawn from this case is that the purpose of immunity will be defeated if effect courts were asked to determine the legality of an organization's work if such inquiry were to obstruct the work of that organization.

A question arises as to what extent or within what parameters must a court apply the principle of functional immunity to commercial acts of an international organization. Courts have veered from one extreme, coming close to recognizing absolute immunity as in the case of Broadbent v. Organization of American States to linking key activities of an organization, such as its interpretation and translation services to acta jure imperii (sovereign act) on the basis that language services were integral to the main functions of an organization.

International profile

Violations of international law, however founded, entail responsibility and accountability. This seminal principle, enunciated by the 1927 Charzow Factory Case also established that there would be an obligation to make reparation in one form or another. This principle of responsibility, which applies without any question to States has been questioned in its application to international organizations. The author's view is that what applies to States must also apply to international organizations, not simply because international organizations are formed by and through States and are representatives of States but also because there is accepted precedent which equates the position of the United Nations to that of a State. In the Reparation for Injuries case, where the United Nations sought a legal claim against an entity considered responsible for the deaths of mediators in the issue concerning the establishment of the State of Israel, The UN sought a legal opinion from the International Court of Justice, which opined that the United Nations was to be regarded as having international legal personality thereby having the right to bring an action. Regrettably, the Court did not give the reasoning behind its opinion.

Klebbers makes mention of the “will theory” (or subjective theory) where the court will determine legal capacity of an international organization with an evaluation of the "will" of the creators of the Organization in question, as against the “objective theory” of personality which would be based on certain accepted principles as to the nature of the international organization concerned. Since international law is based on the freely expressed consent of States, the argument has been adduced that international law should apply as recognizing international organizations which are composed of States as having similar status as that of States. The situation became clearer on the subject of international responsibility of an international organization with the voluminous cases arising out of the collapse of the International Tin Council (ITC) in the mid nineteen eighties. One of the similarities between the ITC and An international organization was that in neither of the statutory instruments establishing the two organizations was the word "responsibility", making it difficult for the courts to determine the "will" of the founding fathers. The International tin Council, comprising 32 members, was an organization which bought and sold tin on the international market with a view to sustaining a stable market in tin and maintaining consistent prices. It ran out of financial resources in 1985, collecting in the
United Kingdom alone a debt of several hundred million pounds. The litigation for recovery which followed addressed issues of responsibility as well as immunity. Choice of law issues and issues of jurisdiction were also given some attention along with the main consideration as to who or what the ITC was: whether it was to be treated as a company in winding up proceedings so as to enable creditors to go after the "shareholders"; or whether it was an international organization with immunity from judicial process. In MacLaine Watson v. International Tin Council, one of the several cases involving the ITC, the High Court refused to apply an agency situation between sovereign States which established the ITC and the ITC itself, on the ground that the relationship between the two was created by international treaty which was not enforceable by English courts. If this decision were to be applied to an international organization's position as an agent of States, the approach of the courts would be interesting, particularly if they interpreted an international organization to be an agent of the Contracting States in the event a specific treaty is not signed by States for the purpose. In the MacLean Watson case, on appeal the Court of Appeals upheld the High Court's position that an international treaty was not the business of national courts in England. On further appeal to the ultimate appellate body by Maclean Watson, the House of Lords rejected the claim that the member States were an integral part of the ITC and that they should be held responsible. The court held that the ITC was a separate legal entity distinct from its members and that contracts entered into by it did not bind non-parties (member States).

**AN INTERNATIONAL ORGANIZATION BEFORE THE COURTS**

Although a precise definition may not exist, it cannot be doubted that a specialized agency of the United Nations or any other international organization can be delimited and delineated. The most fundamental delimitation lies in the body of law that governs the Organization. An international organization is primarily governed by international law, being recognized by the United Nations Charter as a specialized agency of the United Nations. It is also governed by two major agreements, one between the United Nations and an international organization and the other between the government of the host country in which that organization's headquarters are located and the particular international organization. Both accord the organization legal legitimacy sufficient for a common law court to follow the principle enunciated in the House of Lords that:

English law will only recognize a foreign entity as having legal personality and therefore a capacity to sue or be sued if such body has been accorded legal personality under the law of a foreign State recognized by this country...

This principle was followed in the United States in a continuation of the case pursuant to the defendant taking up domicile in the United States and filing action for bankruptcy before the defendant taking up domicile in the United States and filing action for bankruptcy before the Arab Monetary Fund could bring an action against him. The bankruptcy court judge followed the reasoning of the House of Lords and held that, while recognizing that although the United States was not a member of the Arab Monetary Fund, and therefore the fund could not be subjected to the national court's jurisdiction, nonetheless the Fund was a juridical person under United Arab Emirates law and therefore its capacity would flow to the United States under customary international law.

Can an international organization be recognized as having legal capacity, firstly in the host country which is home to an international organization's headquarters and secondly in any of that organization's member States? The Headquarters Agreement between ICAO and Canada, in Article 2, explicitly provides that ICAO shall possess juridical personality and shall have the legal capacities of a body corporate including the capacity to contract; to acquire and dispose of movable and immovable property; and to institute legal proceedings. With regard to the question as to whether ICAO can be sued in Canada, Article 3 of the Agreement provides that the Organization, its property and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign states. Canada's recognition of ICAO as having legal capacities of a body corporate is consistent with Article 104 of the United Nations Charter which provides that the United Nations shall enjoy in the territory of each of its member States such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes. The question which naturally arises from these provisions is "what effect does the Headquarters Agreement between an international organization and the Government of the host country have as a legally enforceable document before the local courts"? In the 1988 Applicability of the Obligation to Arbitrate Case, where the International Court of Justice had to consider whether United States anti-terrorism legislation necessitated the closure of the Palestine Liberation Organization's observer mission to the UN in New York, the Court held that the United States was obligated to respect its obligation, contained in Article 21 of the UN Headquarters Agreement with the United States, that the United States had to enter into arbitration in case of a dispute on the interpretation of the Agreement. The court laid particular emphasis on the fact that provisions of a treaty must prevail over the domestic law of a State Party to that treaty. Therefore, there is no room for doubt that an international organization is able to conduct business both in the host state and in the territories of any of its member States as a juridical person.
person. In such an instance there could well be non-recogniton as a legal person under domestic law. It is a pre requisite for an international organization to have the status as a legal or juridical or juristic person to enter into legal relationships. There have been instances where, in the face of a lack of express recognition of the juristic personality of an international organization, national courts have treated them as non-entities, and recognized as having no legal capacity. In such instances, the international organization concerned will be deemed not to exist.

An international organization’s immunities and liabilities

At customary international law, the position of an international organization regarding immunity from suit and other judicial process is unclear and falls within applicable treaty provision, such as the United Nations Charter, Article 105 of which clearly stipulates that the United Nations Organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfillment of its purposes. Immunities of the United Nations system are also addressed in the General Convention on the Privileges and Immunities of the United Nations of 1946, which sheds some light as to the rights and liabilities of the United Nations and its various entities. An international organization’s legal liability within the host country may well hinge on the recognition by the government of that country that an international organization shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign States. Should the matter of an international organization’s immunity be brought before a court within the host country, it might well look into the true worth of the statement.

Immunity of foreign States in a local jurisdiction has undergone an interesting metamorphosis, from the recognition of personal sovereignty to acceptance of more abstract concepts of State sovereignty. The immunity accorded to an international Organization by the host country would impute to the Organization the independence and equality of a State, which municipal courts would be reluctant to impugn or question unless with the consent of an international organization. Principles of sovereign immunity go back to the early 19th century where the jurisdiction of a State was recognized as being mutually exclusive from the Sovereign immunity of a State. In the well known Pinochet case, Lord Browne-Wilkinson observed that it was a basic principle of international law that one sovereign state (the forum state) does not adjudicate on the conduct of a foreign state. The foreign state is entitled to procedural immunity from the processes of the forum state. The immunity applies both to criminal as well as civil liability. English law is quite clear on the above proposition and is best illustrated by the point made by Lord Millett in the case of Holland v. Lampen-Wolfe, decided in 2000 that:

State immunity...is a creature of customary international law and derives from the equality of sovereign states. It is not a self imposed restriction on the jurisdiction of its courts which the United Kingdom has chosen to adopt. It is a limitation imposed from without upon the sovereignty of the United Kingdom itself.

Immunity from jurisdiction of the courts does not mean exemption from the legal system of the State in which the Organization resides. Although the two concepts are similar and the former meant that the courts had to respect the sovereignty of foreign states, it was merely a procedural tenet that could not always impugn the constitutional roots of an internal legal system.

It must be noted that international and domestic instruments explicitly prohibit sovereign immunity in cases of tortious liability involving civil wrongs. The Canadian State Immunity Act of 1982, in Section 6, allows for compensation for civil wrongs caused in Canada, resulting in death, damage to tangible property or personal injury. An analogy can be observed in the European Convention on State Immunity of 1972, which in Article 11 admits of redress for injury to the person or damage to tangible property, if the facts which occasioned the injury or damage occurred in the territory of the forum, and if the author of the injury or damage was present at the time of the act. Similarly, The United Kingdom State Immunity Act, in Section 5, provides that a State is not immune in respect of proceedings relating to death or personal injury, or damage to or loss of tangible property, caused by an act or omission in the United Kingdom.

The conceptual basis for granting international organizations immunity regarding their professional activities was well brought out in the 1983 case of Mendaro v. the World Bank, where the US Court of Appeal held that the reason for granting immunities to an international organization is to enable them to pursue their functions more effectively and particularly to permit organizations to operate unfettered by unilateral control of a State over activities conducted within its territory. In Iran-US Claims Tribunal v. AS, the Dutch Supreme Court acknowledged that immunity in its absolute form gives an international organization a guarantee that it could perform its functions without being controlled by domestic policy and law. The Swiss Labour Court held in ZM v. Permanent Delegation of the League of Arab States to the UN, that it is incontrovertibly at customary international law that international organizations, whether universal or regional, enjoy absolute jurisdictional immunity and that they can only carry out their tasks assigned to them if they were not deprived of this immunity.

The above discussion seemingly establishes that jurisdictional immunity is awarded to international organizations as a matter of course. The real issue however, with respect to immunity particularly that of an international organization as recognized by the government of the host
country, is the extent to which immunity will be granted as per existing norms of international law. For example, the Headquarters agreement between ICAO and the Government of Canada (the host country) merely stipulates that ICAO will have the same immunity from suit and every form of judicial process as is enjoyed by foreign States. The operative question is “what is the immunity that is enjoyed by foreign States in the host country in this context?” Is it an absolute form of immunity or a qualified immunity? This brings to bear the relevance of early doctrinaire distinctions drawn by jurisdictions of Belgium and Italy, where courts recognized two forms of immunity based on the type of activity carried out. The first applied to sovereign acts of a government or jure imperii and the second applied to acts of a commercial nature or jure gestionis. This distinctive approach often referred to as the doctrine of restrictive or relative immunity is applied unreservedly by courts of many countries while others, including the host country vili, apply the restrictive immunity doctrine only in principle.vixx.

The approach taken by courts to acts of sovereign authority and acts of a private character in the context of restrictive immunity will largely depend on whether the act in question was a commercial act performed on the basis of a private relationship such as a contract. Another criterion might well be whether an act in question was performed on behalf of a State or Organization by an individuali. Courts in Australia and the United Kingdom have used three methods to determine the extent of immunity that should be granted: consideration as to whether granting a general immunity from jurisdiction is justified; creating a list of specific immunities and detailed exceptions; and refusal of immunity in instances where the property of a foreign state has been used for commercial purposes. The United States courts have held that some acts deserve exclusive and absolute immunity, such as internal administrative acts, diplomatic activity and the grant of public loansii. In the 1988 case International Tin Council v. Amalgamet Inc.,iii the plaintiff ITC averred that it was not obliged to go in for arbitration on the ground that it was an international organization and action under the litigation was performed by the plaintiff as an act of State. The court found this argument untenable as it could not find a “sovereign” character in the contract in question. This decision can be distinguished from an international organization situation as the ITC had not been given the status of a foreign States as an international organization under its agreement with the host country.

Issues regarding immunities and privileges of international civil servants

Members of the international civil service are protected in their official correspondence through the Vienna Convention on Diplomatic Relations, Article 27(2) of which states that the official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions. Article 31 of the Convention which states that a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State and also enjoy immunity from its civil and administrative jurisdiction, makes some exceptions except in the case of a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission; an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; and an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions. The operative question is whether an international Organization or its staff must wholly be at the mercy of a national court. The argument has been adduced that domestic courts should not have absolute jurisdiction or adjudicatory authority over international organizations since such exercise of authority might cause damage or adversely affect that organization’s independenceivi. The rationale of this argument was accepted by the Quebec Superior Court in 2003vii where, in an instance where a former employee of ICAO sued the Organization et al for wrongful dismissal from his position at ICAO, the court recognized the need to grant immunities to international organizations so that they could sustain their independence and freedom.

The court drew a parallel between freedom and independence of the Organization with the notion of immunity, recognizing that neither an international organization nor a State should be subject to the laws and conditions of the courts of another State. The Court acknowledged the bifurcation of immunity into absolute and functional immunity and concluded that ICAO has quasi-absolute immunityviii in this particular case. According to the Court, functional immunity would be conferred regarding acts performed by officials of an international organization in the course of their duties and within the scope of their employment.

Article 29 of the Vienna Convention declares inviolable the person of a diplomatic agent against arrest or detention. The United Nations has endorsed this principle in Resolution 53/97 of January 1999 by strongly condemning acts of violence against diplomatic missions and agents. This Resolution followed condemnation in the Security Council of the murder of nine Iranian diplomats in Afghanistanviii. In the 1988 case of Boos v. Barryix the US Supreme Court handed down its decision that diplomatic immunity is reciprocal among States based on mutual interest founded on functional requirements and reciprocityx. This effectively precludes the punishment of a member of the international civil service in a general sense, where the only remedy available to the host State against alleged offences of diplomat or a member of the
international civil service to declare him persona non grata.\textsuperscript{ix} While this principle is seemingly reasonable, given the service and contribution provided by the international civil service, and the detrimental effect of interference by States of the provision of such services, an absolute application of this principle could tip the balance to the disadvantage of the public. In this context, specific problems have surfaced with regard to the conduct of the members of the international civil service which results in instances of criminal liability such as when a diplomat or member of the international civil service causes motor accidents and injury to third parties through their negligence.\textsuperscript{x} Immunity from civil and administrative jurisdiction of the State in which international civil servants serve in an absolute sense could also cause inconsistencies of the administration of justice. Article 31 (1) of the Vienna Convention addresses this issue effectively by having three exemptions where liability would ensue: where the action relates to private immovable property situated within the host State; in matters of succession and litigation related thereto involving the diplomat as a private person; and with respect to unofficial and professional or commercial activity engaged in by the diplomat concerned. A compelling practical example of these exemptions lies in the United Kingdom. The Memorandum on Diplomatic Privileges and Immunities in the United Kingdom of 1987 takes a stringent stand against any reliance on diplomatic immunity which is calculated to evade a legal obligation.

It must be noted that diplomatic immunity afforded to international civil servants, such as exemptions from social security provisions in force in the host State (as per Article 33 of the Vienna Convention), exemptions from taxes and dues regional or municipal (except for indirect taxes), exemptions from dues regarding personal or public services (as per Article 35 of the Vienna convention) and from customs duties and inspection [as per Article 36(1)] of personal belongings and baggage, extends to members of the family of a diplomatic agent forming part of his/her household (as per Article 37).\textsuperscript{xi}

Such immunities start from the moment the diplomatic agent (or member of the international civil service) and his family enter the territory of the host State\textsuperscript{xii}, and last till the persons concerned leave the host country.

The immunity so afforded to diplomatic agents and members of the international civil service does not bind third nations. In a case involving a former ambassador of Syria to the German Democratic Republic, A German Federal Court ruled that benefits of the persona non grata rule applied only to the host State and not to other States such as the Federal Republic of Germany in that case.\textsuperscript{xiii}

Another point of contention arising from the broad principle of diplomatic immunity pertains to contracts of employment. Although generally, States and instrumentalities of State come within the purview of local legislation with regard to the hiring and firing of employees, this principle does not apply to diplomatic missions.\textsuperscript{xiv} A point of concern is that such a principle may give rise to absolute discretion being bestowed on a diplomatic mission in disregarding established community rights such as racial, religious, gender and social equality.

Waiver of immunity

The answer to the problem of according undue flexibility to diplomatic agents and members of the international civil service may lie in the practice of waiver of immunity. There are instances where the courts might deem immunity granted by treaty or other agreement to be waived. Waiver of immunity might result either from express agreement between the parties to a contract or by implied acquiescence of the party purporting to enjoy immunity through overt or covert acts. The leading case in this area concerns a 1967 decision (Lutcher V. IADB 1967) where the District of Columbia Circuit Court ruled that the Inter-American Development Bank did not enjoy immunity as any immunity given to the bank had been waived by the Bank by virtue of Article XI(3) of its Articles of Agreement with a Brazilian Corporation who was the other party to the action. An advance waiver, incorporated in a commercial agreement, even though it is calculated to apply only to a particular situation, cannot be deemed invalid and will be generally applicable according to the merits of the case. In Standard Chartered Bank v. International Tin Council and others\textsuperscript{xv} The Queen's Bench in England rejected the claim that an advance waiver is inapplicable to a dispute if it were meant specifically in the contract to apply to "a particular case", which was interpreted by the court as a particular transaction and not a whole dispute. A choice of forum clause in a specific agreement could also be interpreted as a waiver of immunity from suit that could be effectively performed in advance.\textsuperscript{xvi}

Usually, in the case of diplomatic agents and members of the international civil service, only the sending State can waive immunity.\textsuperscript{xvii} In the case of the international civil service the immunity is granted by the host State and can only be waived by the Secretary General or CEO of the Organization served by the staff member concerned. The General Convention on the privileges and Immunities of the United Nations of 1946 sets out the immunities of the United Nations and its personnel and emphasizes the inviolability of its premises, archives and documents. The privileges and immunities blend with the concept of accountability of an international organization which is broader than principles of responsibility and liability for internationally wrongful acts.\textsuperscript{xviii} The latter acts as a harmonious balance between impunity and answerability of the international civil service.

As stated earlier privileges and immunities are guaranteed by Article 105 of the Charter of the United Nations which provides that an international organization shall
CONCLUSION

Diplomatic immunity and privileges are crucial to the harmonious inter-relationships between States. Despite the inherent disadvantages of their abuse, which has sometimes resulted in harm to members of the public and business enterprise, it must be noted that the origins of diplomacy date back to the period of darkness preceding the dawn of history (Harold, 1953). It is claimed that anthropoid apes living in caves practised a form of diplomacy in reaching understandings with their neighbours on territorial boundaries pertaining to their own hunting grounds. The compelling need to ensure the preservation of life of an emissary, on the ground that no negotiation could take place if emissaries, however hostile, were murdered on arrival, gave rise to the practice of diplomatic immunity, which is attributed to Australian aborigines, and is mentioned in the Institutes of Manu and in Homeric poems. In the modern world, the institution of the permanent diplomatic mission is the cornerstone of international diplomacy and comity and the diplomat carries out the function of diplomacy which is generally termed “diplomatic practice”. These privileges are extremely important if diplomacy is to be effective. The overall aim and objective of diplomacy is to ensure that peace and justice prevails throughout the world and to this end, the institution of diplomacy is a pre-eminent example of the growth of modern civilization. For these reasons the advantages of diplomatic immunities and privileges override their disadvantages.

Conflict of Interests

The author has not declared any conflict of interests.

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Tolley’s Professional Negligence, 2000: p. 35


The Corporate Manslaughter and Corporate Homicide Act of 2007, provides that an organization is guilty of an offence if the way in which its activities are managed or organized causes a person’s death, and amounts to a gross breach of a relevant duty of care owed by the organization to the deceased. The Act applies inter alia to a corporation. The offence is termed “corporate manslaughter”, in so far as it is an offence under the law of England and Wales or Northern Ireland; and “corporate homicide”, in so far as it is an offence under the law of Scotland. An organization that is guilty of corporate manslaughter or corporate homicide is liable on conviction to a fine and the offence of corporate homicide is indictable only in the High Court of Justiciary. See generally, Ruwantissa Abeyratne, Negligent Entrustment of Leased Aircraft and Crew: Some Legal Issues – Air and Space Law, Vol. 35, No.1, 2010, at 33-44. Also, Ruwantissa I.R. Abeyratne, Negligence of the Airline Pilot, Tolley’s Professional Negligence, Volume 14, Number 4, 1998, 219-231 Also, R.I.R. Abeyratne Negligence of the Aircraft Commander and Bad Airmanship - New Frontier, Air and Space Law, Vol.XII, No.1; 1987: p. 3-10. R.I.R. Abeyratne, Viagra, Substance Abuse at the Workplace and Negligence of the Airline Pilot, The Aviation Quarterly, Part 1; January 2000: p. 35-5. Ruwantissa I.R. Abeyratne, The Application of Multiple Systems of Law to Professional Negligence in Sri Lanka, Tolley’s Professional Negligence, Volume 12, Number 2, 1996, 46-53. immunity from national courts, on the premise that any

Article 57 of the Charter of the United Nations provides that the various specialized agencies, established by inter-governmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields, shall be brought into relationship with the United Nations in accordance with provisions of Article 63 of the Charter. Article 63 provides that the Economic and Social Council (ECOSOC) of the United Nations may enter into agreements with any of the specialized agencies, defining the terms on which such agencies may be brought into relationship with the United Nations. Some prominent specialized agencies of the United Nations are the World Health Organization (WHO), the Food and Agriculture Organization (FAO), the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO).

For example in the case of the International Civil Aviation Organization, headquartered in Montreal, Canada, The Headquarters of the United Nations (UN), Headquarters of the International Atomic Energy Agency (IAEA), and the Headquarters of the World Health Organization (WHO), and the United Nations Conference on Trade and Development (UNCTAD), are all situated in Vienna, Austria, and enjoy the privileges and immunities that are necessary for the execution of duties by the United Nations in that jurisdiction.
Agreement between ICAO and Canada, in Article 2, explicitly provides that ICAO shall possess juridical personality and shall have the legal capacities of a body corporate including the capacity to contract; to acquire and dispose of movable and immovable property; and to institute legal proceedings. With regard to the question as to whether ICAO can be sued in Canada, Article 3 of the Agreement provides that the Organization, its property and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign States. See Headquarters Agreement Between the International Civil Aviation Organization and the Government of Canada, ICAO Doc 9591. For further information on the agreement see Michael Milde, New Headquarters Agreement Between ICAO and Canada, (1992) Annals Air and Sp. L. Part II, 305-322.

ix R. James, The Concept of the International Civil Servant, in International Administration: Its Evolution and Contemporary Applications (R. Jordan ed.: 1970), 53

x 378 NYS 2d 966.

xi Id. 975.

xii Juge de Paix Paris 8 March 1935.

xiii See the Permanent Court of International justice’s advisory opinion in Certain Questions Relating to Settlers in German origin in the territory ceded by Germany to Poland, [1923] Publ. PCIJ, Series B No. 6 at 22.

xiv See Lord Strang, The Diplomatic Career, London:1962, at 107, where it is said that in 1962, some twenty different government departments in the United Kingdom were responsible for different international organizations.

xv Supra. note 5.

xvi See for example Branno v. Ministry of War, decision of 14 June 1954 by the Italian Court of Cassation, 22 ILR 756-757 where the Court held that NATO’s member States are not legally entitled to exercise judicial functions with regard to any public law activity of the North Atlantic Treaty Organization linked with its organization or in regard to acts performed on the basis of sovereignty.

xvii In United States v. Malekh et.al., 32 ILR 308-334 (1960) where the defendant, a United Nations employee, was charged with espionage, the US District Court for the Southern District of New York held that neither the defendant nor his employer should have any claims to immunity as espionage was not a part of the functions of the United Nations.

xviii 22 ILR 705-712.


xxi Case Concerning the Factory at Chorzow (Claim for indemnity), [1927] Publ PCIJ Series A, Judgment no. 8 at 21.


xxiii The ICJ in the Barcelona Traction Case held: [An essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis a vis another State in the field of diplomatic protection. By their very nature, the former are the concerns of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes.

xxiv Barcelona Traction Light and Power Co. Ltd., ICJ Reports 1974 253 at 269-270.


xxvi Supra note 9 at 52-53.

xxvii See the Lotus Case [1927] Publ PCIJ Series A, no. 10.

xxviii 1977 ILR 41 per Millett J, Chancery Division of the High Court

xxix Arab Monetary Fund v. Hashim (no. 3) [1995] 2 All ER 387 at 403.

xxx 188 Bankr. 633 at 649 (D. Arizona 1995)

xxxi Supra, note 4.

xxi “Assets” include funds administered by An international organization in furtherance of its constitutional functions.

xxxiv By virtue of Article 57 of the United Nations Charter, which provides that the various specialized agencies shall be brought into relationship with the United Nations, the acknowledged status of the United Nations as per Article 104 can be applied to An international organization.

xxxv ICJ Reports 1988, 12; 82 ILR 225.

xxxvi ICJ Reports 1988, id. 33-34.

xxxvii All these terms are used in treaties, legislation and literature on the subject.


xlix For the military analogy, see F. Lazareff, Status of Military Forces under Current International Law, Leiden: 1971. Also, lan Brownlie, Principles of Public International Law, 4 ed., Oxford University Press:1990, 372. These authors refer to the NATO Status of Forces Agreement of 1951, the provisions of which exclusively governed the relations between the State sending troops and the state receiving them. The courts held that the state sending troops to another State has overall jurisdiction of the troops in terms of offenses committed in the receiving State, although the latter may prosecute foreign troops in its own soil if an offense were to be committed which was illegal in that State’s jurisdiction. However, the overall principle recognized by the courts was that the sending State has primary jurisdiction over its subjects (or troops) sent on mission if the offense committed related to the performance of duty. See also J. Woodcliffe, The Peacetime Use of Foreign Military Installations under Modern International Law, Dordrecht: 1992 at 298.

xcxxiii See Ex parte Pinochet (No.3) [2000] 1 A C 147 at 201 (per Lord Browne-Wilkinson) and 268-9 (per Lord Millett).

xcxxiv See The Schooner Exchange v. McFadden, 7 Cranch 116 (1812) where Chief Justice Marshall declared that the jurisdiction of a State, although exclusive and absolute, did not encompass foreign sovereigns.

xcxxv Supra. note 38.

xcxxvi Id 201.

xcxxvii [2000] 1 WLR 1573, also 119 ILR 367.

xcxxviii Id. 1588.


xcxxx Similar legislation can be found in the South African Foreign Sovereign Immunity Act of 1981: Section 6, Singapore State Immunity Act of 1979: Section 7. A notable exception is the United States Foreign Services Immunity Act of 1976, which includes exceptions relating to a State’s discretionary functions and to claims arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contractual rights.

xcxxxi Supra, note 2. (717 F.2d. 610).

xcxxii Id. 615-617.

xcxxiii 94 ILR 321.

xcxxiv In Eckhardt v. Eurocontrol No 2, [94.331] 1207 the District Court of Maastricht held that the fact that an international organization is
created by treaty ipso facto, gave that organization a right to immunity from jurisdiction based on customary international law to the extent necessary for that organization to perform its functions. For similar views expressed by the courts, see also FAO v. INPDAF 87 ILR 1, at 6-7, Minimini v. Bari Institute of the International Center for Advanced Mediterranean Agronomic Studies, [78.112, 87.28] 1208 and Makaro v. European Bank for Reconstruction and Development [1994] ICR 897.

xvi 116 ILR 643
xvii Id. 647.

xviii The State Immunity Act of The host country, 1982 does not provide a uniform solution to the dichotomy, nor does it provide specific provision as to whether foreign State immunity would mean absolute immunity or restrictive immunity. Other legislation which have adopted a similar approach are the European Convention of 1972, the United Kingdom State Immunity Act of 1978, and the Australian Foreign States Immunities Act of 1985.


xx In Arab Monetary Fund v. Hashim, (No.3) [1991] 2 All E.R. 387, the House of Lords delivered its judgment that although an individual of an international organization, performed within the scope of his employment, cannot be impugned, a private act by the individual can be brought into question by the courts.

xxi The Victory Transport Case, ILR 35 at 110.


xxvii 09 LEd 2d 333, 346 (1988); 121 ILR at 678.

xxviii It should be noted that official recognition of this principle can be seen in the 1973 United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons.

xxix Under Article 9 of the Vienna Convention on Diplomatic relations, a receiving State may “at any time and without having to explain its decision” declare any member of a diplomatic staff persona non grata. A person so declared is considered unacceptable and is usually recalled to his or her home nation. If not recalled, the receiving State “may refuse to recognize the person concerned as a member of the mission.” While diplomatic immunity protects mission staff from prosecution for violating civil and criminal laws, depending on rank, under Articles 41 and 42 of the Vienna Convention, they are bound to respect national laws and regulations (amongst other issues). Breaches of these articles can lead to persona non grata being used to ‘punish’ erring staff. See 94 AJIL 2000 at 534 where it is reported that an attaché of the Russian embassy was declared persona non grata for suspected bugging of the State Department of the United States.

lix A diplomat or member of the international civil service who is a national or permanent resident of the receiving State will only enjoy immunity from jurisdiction and inviolability in respect of official acts performed in the execution of his professional duties. See Article 38 of the Vienna Convention on Diplomatic Relations.

lx Members of technical and administrative staff of a diplomatic agent may also benefit from such privileges.


lxii 121 ILR 352.

lxiii Sengupta v. Republic of India, 64 ILR 372.


lxix ICJ Reports 1988 at 12. Also at 82 ILR at 225.

lxix Mendarro v. World Bank, Supra note 2. (717 F.2d. 610). See also Iran-US Claims Tribunal v. AS 94 ILR 321 at 329 where a Dutch court held that immunities and privileges guaranteed that an international organization may carry out its duties without let or hindrance.

lix Id. P. 3

lix The terms ‘diplomat’ or ‘diplomatic’ are essentially modern and derive their origin from the latin word “diplomas” meaning official documents emanating from the princes. See B. Sen, International Law Relating to Diplomatic Practice, Metropolitan Book Co. Ltd.: Delhi, 1950. Introduction. See also, Vienna Convention on Diplomatic Relations, United Nations: New York, 1961, A/CONF.20/14/Add.1 Article 1 for various definitions pertaining to categories of diplomats.

lixii Ibid.
Public administration reform in Eritrea: Past trends and emerging challenges

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Received 6 May, 2014; Accepted 18 August, 2014

Public administration has always been the tool available to African governments for the implementation of developmental goals and objectives. It is seen as being crucial to the growth and development of African economies. To this end efforts have been made in many African countries to increase efficiency through decentralization, restructuring and privatization. This study presents Eritrea's public administration reform experience, and assesses the extent to which Eritrea has taken up New Public Management reforms. The aim is to show the outcome of reforms on civil service, public enterprises and local government management.

It is found that in Eritrea there is a need for periodic review and continuous administrative reform. In the civil service there are absence of promotion, retirement, and lack of competitive wages and salary increments. In local government there are lack of administrative capacity, absence of clear accountability lines and fiscal decentralization, and lack of coordination and information sharing among local government units and line ministries. The Eritrean government should now emphasize on investment in developing human capital towards effective policy formulation, analysis, implementation and evaluation, and on the reform of the public sector itself besides privatization aimed at allowing public enterprises to operate more efficiently and effectively.

Key words: Eritrea, reform, public administration, local government, civil service, public enterprises.

INTRODUCTION

Eritrea, being the youngest African nation, became a sovereign nation in 1993. Since 1993, Eritrea has embarked on a multifaceted nation-building and reconstruction process in which the civil service is one aspect. The critical challenge that faces Eritrea today is the establishment of economic, social, administrative and political institutions and the development and utilization of human resources to enable these institutions to operate effectively (Gafer, 1996; Haregot et al., 1993; UNDP, 2002; UOA, 1997). Eritrea, as a new nation, is confronted by three challenges of transition: a transition from a state dominated economic order to market based economic system; a transition from colonial military regime to a just nomadic or agro-pastoralists. For the year 2010, the GDP for Eritrea was estimated at US$3.625 billion together with a per capita estimate of US$681 (World Bank, 2010).
and democratic society; and a transition from conflicts and strife to political reconciliation and economic rehabilitation. These transitional challenges demand for civil service, public enterprises and local government reforms.

Eritrea inherited obsolete institutions and weak instruments for managing its economic policies. The inherited colonial bureaucracy was inefficient and characterized by a corrupt nature of administrative infrastructures. It had many attributes that render it unsuitable for many challenges of the Eritrean government. It was filled by administrators without adequate professional qualifications, excessively dependent on seniority rather than merit considerations with negative implication for moral and efficiency. It remains also both understaffed and overstaffed. It was significantly understaffed in professional and managerial areas and overstaffed in semi-skilled and unskilled areas. The inherited public enterprises have been also accused of wasting resources and operating inefficiency with low profitability or even financial difficulties. They were over centralised, undercapitalized and supervised under a regime of controlled prices. Under Ethiopian rule the Eritrean provincial administration had little autonomy and policy making capacity, as the result provincial government officials had little technical and managerial capacity to co-ordinate and supervise the overall planning and implementation of governmental functions. Many community leaders in Eritrea are also not in a position to lead the needed transformation and to take charge of the subsequent change in working out procedures the new technology require and induce due to the educational gap and unfamiliarity (UN, 2001).

Since 1995 Eritrea has been conducting civil service, public enterprises and local government reforms. These reforms were triggered by the quest for efficient and effective public administration influenced by the Structural Adjustment Programs (SAPs) and New Public Management (NPM) movements of the 1980s. In this paper, therefore, we intend to assess public administration reforms in Eritrea (past trends and emerging challenges). The paper reviews also public sector reform experience in African. The aim is to show how such experiences can help Eritrea to improve the content and approach to public administration reforms. In this study three broad sets of questions are addressed: (1) How were the various public administration reforms (civil service, local government and public enterprises) initiated in Eritrea to improve state capacity and what were their outcomes? (2) How effective were the strategies implemented to promote accountability and minimize corruption? And (3) what are the possible policy options for the future and how relevant are they in addressing the challenges facing public administration?

REVIEW OF RELATED LITERATURE

Public Administration Reform can be very comprehensive and include process changes in areas such as organizational structures, decentralization, personnel management, public finance, results-based management, regulatory reforms etc (UNDP, 2004). Cited in Ayee (2008), Turner and Hulme (1997), Peters (1992), Dror (1976), and Caiden (1978, 1991) have identified a number of strategies that have been employed in administrative reform. These are administrative restructuring, decentralization, enhancing accountability measures, public–private partnership, privatization, contracting out, streamlining, downsizing, etc. These strategies are associated with the New Public Management (NPM) perspective, which often focused on positive, action-oriented phrases such as: reinventing government, re-engineering, revitalization of the public service, organizational transformation, total quality management, paradigm shift, entrepreneurship, empowerment, results-over process, downsizing—and ‘right sizing’, lean and mean, contracting out, offloading or outsourcing, steering rather than rowing, empowering rather than serving, and earning rather than spending (Frederickson, 1996).

In developing countries public administration reform derives from three main intellectual threads (UNDP, 2004: 2-3):

a). New public management – the NPM seeks to roll back the role of the state by applying private sector management principles to government organizations. A number of Anglo-Saxon countries (the UK, New Zealand, Australia, the United States and Canada) starting in the early 1980s, began implementing wide ranging reform programs that provided both the model and the experience that could be applied in developing countries. The relevance of the NPM to public sector management can be found in four main areas: (i) decentralizing management, disaggregating and downsizing of public services; (ii) performance contracting, which has become an instrument to reform state-owned enterprises (SOEs); (iii) contracting out of the provision of public services is part of efforts to reconfigure state-market relations in order to give more prominence to markets and the private sector; and (iv) the introduction of user fees or charges, which is one of the major developments in the provision

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of public services under structural adjustments programs (SAPs) if privatization is not being pursued (Ayee, 2005). NPM shifts the emphasis from traditional public administration to public management, and pushes the state towards managerialism. The traditional model of organization and delivery of public services, based on the principles of bureaucratic hierarchy, planning, centralization, direct control and self-sufficiency, is replaced by a market-based public service management or ‘enterprise culture’ (Larbi 1999; Walsh 1995; Hood 1991; cited in Ayee, 2005).

b). Structural adjustment reforms -- in the mid 1980s, efforts at reforming the public administration in developing countries, supported by the international financial institutions, focused on reducing overall costs of the government, mainly through privatization of state owned enterprises and reduction of the wage bill to bring government spending down to sustainable levels and free resources for other uses more beneficial to the overall economy, devaluation of currencies so that exports will be cheaper to foreign buyers, cut setting of agricultural prices and elimination of subsidies to urban consumers, ending import restrictions and increasing bank interest rates to encourage savings to generate capital investment (Ayee, 2008; Gordon, 1992).

c). Transition from central planning to market economy and from single party systems to multi-party democracies (Beyene and Otobo, 1994). The fall of the Soviet Union has persuaded governments of previously socialist countries to transform their economies to adhere more to market principles often linked to political reforms. In the 1990s, a large number of economies, especially in Central and Eastern Europe (but also in countries in South-East Asia) began this transition. This implied the reorientation of the system of public administration.

Since the early 1980s, significant efforts have been made in Africa toward the reform and transformation of public service management2. Those efforts have been driven primarily by the fact that state bureaucracies in Africa under perform; are invariably too large and corrupt; and lack a sense of responsibility and accountability (Hope, 1997, 2001; Hope and Chikulo, 1999). These reforms sought to reduce the role of the state in production as well as service delivery and encourage the deregulation of public enterprises. The state is expected to provide an enabling environment for private sector economic activities by implementing appropriate economic policy reforms and providing the necessary legal and regulatory framework. It is also expected to provide some of the social and physical infrastructure, sometimes in partnership with community based organizations. The emphasis was on maintaining macro economic stability, lowering inflation, cutting deficit spending, and reducing the scope and cost of government (Ayee, 2008). Yet these new roles for the state are not necessarily easier and in many respects may be beyond the capacity of many developing country governments.

However, the outcome of structural adjustment in African countries was not encouraging, because the reform depended on ready markets for exports and substantial investments from industrial countries, which, for the most part, were not substantiated (Ayee, 2008). Devaluation of currencies in many African countries lead in to inflation and thriving black markets, on the other hand, freezing of government salaries resulted loosing of competent government employees because they move to private and non-government organizations at a higher salary. Poor pay for managers frequently impedes recruitment and performance. It is estimated that in Anglophone Africa, public sector wages declined 80% in real terms between the early 1970s and 1980s (paralleling the general decline in GDP per capita) (Van de Walle, 2001: 134). During this period therefore the now familiar problems of moonlighting and absenteeism, low morale, corruption and politicization of recruitment emerged (ECA, 2010). There is little doubt that in many countries the capacity of ministries including finance ministries to fulfill even basic tasks virtually collapsed.

The reforms related to the functioning and role of the state in the economic sphere have, in some countries produced positive results. For instance, public management reforms in Botswana produced successive development plans. Some of the reforms include the adoption of the performance management system, work improvement teams, computerized personnel management system, organization and methods reviews, performance based reward system and decentralization (ECA, 2010). Ministries and departments were rationalized in order to improve efficiency and effectiveness in service delivery and autonomous authorities were established to work largely on commercial principles (ADB 2005; Olopa 2009, cited in ECA, 2010). A key thing to note is that the reforms, unlike in most African countries, have largely been driven by a succession of competent leadership and dedicated workforce who are committed to continuous administrative reform. Local government reforms also produced positive results in South Africa, Uganda and Ethiopia. In South Africa and Uganda, decentralization has been regarded as a way of re-unifying their countries (World Bank, 1999). In South Africa, decentralization reversed the dual system of government based on race and the limited access to public goods and services in the “homelands” and “townships” (Ayee, 2005). In Ethiopia decentralization is used as an instrument for deflating secessionist tendencies. The transformational leadership good practices have also been recorded in Ghana,
Liberia and Rwanda where the leaders have designed policies and programs in the areas of good governance and the economy to ensure the realization of the millennium development goals (ECA, 2010).

The literature shows that public administration reforms enhanced best practices in some Africa countries. The best known example is Botswana, which is reputed for its good institutions, prudent macroeconomic management, political stability and efficient civil service. However, the lessons of experience have shown also some limitations of the SAPs of the 1980s, and have pointed to the need to broaden the agenda of public sector reforms. It is now being acknowledged that States with weak institutions are not well prepared to face the adjustment costs of globalization. Without complementarities between domestic strategies for institutional reform and strategies for opening up to global market forces, African countries risk exposing themselves to the kinds of protracted crises from which some have just begun to recover.

METHODOLOGY

The data for this study were collected in 2013 in ten months period from September-June. Senior public administration students were involved in the data collection process. As part of their senior research project the students were advised to conduct research on public administration reform in Eritrea with a focus on civil service, public enterprises management and local government administration. This study used primary and secondary data sources. First, it reviews the literature on public and civil service reforms globally and in Africa to assess the trends, processes and challenges of administrative reform. Secondly, the paper draws on documentary sources such as the constitution, proclamations, and government and UN publications and reports, which give official views of reform initiatives and processes. Thirdly, we conducted interviews with 50 key government officials (15 public enterprises managers, 20 top level civil servants and 15 local government administrators). The interviews were carried out to help analyze the outcomes of the reform efforts of the government. It is always advisable to accompany secondary data with some in-depth interviews, even if time permits only a limited sample (Gobo, 2004; Soeters and Nijhuis, 1988). The rationale for using multiple sources of data is the triangulation of evidence. Triangulation increases the reliability of the data and the process of gathering. Ghauri and Gronhaug (2002: 181) defined triangulation as “the combination of methodologies in the study of the same phenomena”. Triangulation compares the results from either two or more different methods of data collection (for example, interviews and observation) or, more simply, two or more data sources (for example, interviews with members of different interest groups). Triangulation helps the researcher to develop patterns of convergence or to corroborate an overall interpretation. Triangulation is better seen as a way of ensuring comprehensiveness and encouraging a more flexible analysis of the data.

To check the reliability of data and information we have asked similar questions to government officials at different levels. As a further proof of reliability we have asked also similar questions to the same informants at different times. Thus we have designed the interview questions to support the reliability and objectivity of the data collected. Through such method qualitative data was collected both from primary and secondary sources on the three vehicles of public administration: civil service, public enterprises and local government. Qualitative data helps the researcher to obtain detailed information about the case under investigation.

In this study, public administration is defined as the aggregate machinery (policies, rules, procedures, systems, organizational structures, personnel, etc.) funded by the state budget and in charge of the management and direction of the affairs of the executive government (UNDP, 2004:1). Administrative reform is seen as a deliberate plan to change public bureaucracies and organizational structures, with the aim of improving the capacity of institutions to make policy and deliver services in an efficient, effective and accountable manner (ADB, 2005; Cited in ECA, 2010:5). In this paper, civil service is used to describe two sets of ideas, namely, (i) it refers to the body of permanent officials appointed to assist the political executive in formulating and implementing governmental policies, who are referred to as civil servants; and (ii) it refers to ministries and departments within which specific aspects of government work are carried out (Adamolekun, 1999, cited in ECA, 2010:4).

Limitations of the study

This research can be considered to be the first exploratory research into public administration reform in Eritrea. Owing to the sensitive nature of the topic, the author refrained from asking personal questions pertaining to age, education, salary, rank, party affiliation, place of work, and type of work. Therefore, the author was unable to link the characteristics of individuals or groups of civil servants, local government officials and public enterprise managers. The data analysis was done at an aggregate level. The collected data was also a qualitative nature, hence not convenient for descriptive (statistical) analysis.

ANALYSIS OF THE RESULT OF PUBLIC ADMINISTRATION REFORM IN ERITREA

In most African countries, the transition to independence was smooth, and administrative institutions continued to be run on the bureaucratic principles and practices that had been introduced under colonial rule. However, in Eritrea the transition to independence was not smooth; Eritrea gained its independence from Ethiopia after 30 years of bloody war. The bureaucracy inherited from Ethiopia was inefficient and characterized by a corrupt nature of administrative infrastructures. Eritrea as a new nation faces a number of administrative problems requiring reform to meet the global needs and demands of the twenty first century. These problems were inherited from the Ethiopian colonial bureaucracy. The inherited colonial bureaucracy was inefficient and characterized by a corrupt nature of administrative infrastructures. It had many attributes that render it unsuitable for many challenges of the Eritrean government. It was filled by administrators without adequate professional qualifications, excessively dependent on seniority rather than merit considerations with negative implication for moral and efficiency. It remains also both understaffed and overstaffed. It was significantly understaffed in professional and managerial areas and overstaffed in semi-
skilled and unskilled areas. To rectify this the Eritrean government conducted a functional review of ministries in 1995, which has a number of outcomes: a reduction of the number of civil servants, higher pay for the remaining government employees, clarification of the roles of ministries, emphasize on increasing efficiency, a decision to privatize state owned enterprises and decentralization to regions. But there are a number of challenges remaining: these are educational capacity development gap, many ministries are devoid of modern planning tools and many community leaders are, in general, due to educational gap and unfamiliarity, not in a position to lead the needed transformation and to take charge of the subsequent change in working procedures the new technology require and induce (United Nations, 2001:25).

The Eritrea government has adopted also new policies to recover the war-ravaged economy based on self-reliance, technological transfer and private investment to stimulate economic growth and flow of foreign capital. Besides the task of economic recovery the creation of democratic institutions and secular government is one of the nation’s priorities. The leaders of the newly independent state are confronted with formidable challenges. Prominent among these were promoting accelerated socio-economic development, fostering national identity which requires welding together the multi-ethnic and multi-religious entities, and creating the structure of governance, in particular public service which has the commitment and competence to support and facilitate the task of nation building.

Civil service reform

Civil Service Reform programs have increasingly been adopted in Africa often linked to structural adjustment efforts. The purpose is to improve the effectiveness and performance of the civil service and to ensure its affordability and sustainability over time. The ultimate goal is to raise the quality of public services delivered to the population, and to enhance their capacity to carry out core government functions.

Eritrea, just like most developing countries, introduced civil service reforms (1995–1997) that led to (1) streamlining of about 34 per cent of the Eritrean civil servants (UOA, 1997); (2) the establishment of the Eritrean Institute of Management (EIM) in 1995; (3) the introduction of a new salary scale in 1997; and (4) the launching of the Eritrean HRD Project (1998–2003) (EHRDP, 2003). The key elements of the process of reform of the civil service in Eritrea have been centered around pay and employment measures; productivity enhancement; capacity building; training; improving accountability and transparency; and making management more effective.

The Eritrean government undertook civil service reforms in two phases: 1995-1996 (first phase) and 1997 (second phase). The central objective of the reforms was to create an Eritrean civil service that possesses attributes such as: a lean, efficient, well-paid, well motivated, well managed, and well trained public service (Gafer, 1996:1). The civil service has undergone very extensive restructuring both functionally and organizationally. Because of restructuring and streamlining Eritrean civil service staff positions reduced by 34%, down to 18,500 employees from over 30,000 employees (Tessema, 2005).

Currently, in Eritrea three new concerns are needed to civil service reform efforts. These are public expenditure management, institutional reorganization, and strengthening of policy analytic capacity. The civil service improvement activities falling under the category of public expenditure management include budgetary management, management of public investment programs, external debt management, auditing, tax administration and procurement. The institutional re-organization activities consisted of employment reduction and growth control, reviewing of salary and compensation policies, job classification and evaluation, documentation and records management, and personnel management. Among these groups of activities, the employment reduction mechanisms such as elimination of “ghost” workers, retrenchment, and voluntary departure, attrition through hiring freeze and enforced retirement had been intensively adopted; and thus resulted in a reduction in the size of the civil service. Enhancing the policy analytic capacity of the civil service is the third important area, which took form the renewed emphasis of the government on professionalization of the civil servants and community leaders in the sense of equipping them the skills of policy implementation and evaluation of development programs.

Despite all the above civil service reform efforts, the environment within which Eritrean civil servants are employed does not seem to attract, motivate and retain competent civil servants (Tessema & Soeters, 2006). Like most African countries Eritrea has acute shortages of qualified staff. It is a paradox of today's world that developing countries, like Eritrea, that have the greatest need of competent civil servants to economic and social development are losing many of their educated young men and women to the developed world. It is difficult to replace the knowledge, skills and experience of competent civil servants. These skills are only acquired over a long period of time and are accompanied by extensive experience. Eritrea today is experiencing a growing need for civil servants who are capable of efficiently, effectively and creatively mobilizing the available scarce resources to achieve national objectives.

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1 The vast majority of them were from lower positions such as janitors, receptions, guards, and typists. The streamlined civil servants were given six months salaries. Unlike in other African countries, it was not voluntary.
Public enterprise reform

Public enterprises reform in Eritrea was driven by three main considerations, namely: to increase their efficiency; reduce the twin burdens of fiscal deficits and external debt to which the public enterprises were contributory; and to stimulate an expansion of competition in the economy by reducing the monopoly powers of some public enterprises. These reforms evolved along two interrelated paths. One centered on privatization programs which involves share of shares, assets or outright closure. The other focused on improving the performance of enterprises retained under state control which included such measures as management contracts, contract plans, improving the macro-economic environment, and rationalizing institutions for public enterprises control and commercialization which forced public enterprises to face hard budget constraints.

The Eritrean government initiated its reform program by classifying public enterprises into three main categories: strategic enterprises slated to remain in the state portfolio; commercially viable enterprises to be privatize; and non-viable commercially oriented enterprises slated for liquidation. The key challenge for Eritrea is to find an optimal size of public and private sectors in a mixed economy that will promote both ends of the spectrum and approximate, or even satisfy the broad general public interest, and not particular powerful elites. The management of public enterprises faces formidable challenges of maximizing internal efficiency, which is characteristics of the market, on the one hand, and upholding the equity and politics of the government on the other; this involves an interaction of politics and market (Farazmand, 1996). In practice, achieving the dual economic and political goals has not been easy.

Privatization

The term privatization is defined in various ways, connoting different things for different people. In this study privatization is defined both in its narrow and broad meaning. In its narrow meaning, it simply entails a shift of productive activities or services being undertaken by the public sector to private ownership or control. In its broader meaning, it refers to a process by which the state’s role within the economy is circumscribed while at the same time the scope for the operation of private capital is deliberately extended (Young, 1991:50).

Eritrea has opted for an open, private sector led, free market economy. The Eritrean Government, as stated in its macro-policy (1994), is aiming at developing a capital and knowledge intensive and export-oriented manufacturing sector as part of its socio-economic transformation. The government has been taking necessary policy and other supportive measures to promote, encourage and develop the private sector and to protect its interests (Stifanos, 2001). Based on its free market policy, the Government of Eritrea returned nationalized housing residents and other buildings to their owners. The government privatized also 700 small-scale shops.

To privatize medium and large scale public enterprises the government issued proclamation No. 83/1995 for the establishment of the National Agency for the Supervision and Privatization of Public Enterprises (NASPPE). The objectives of NASPPE as stated in GOE (1995:4) are “to privatize public enterprises and until such events, implement an appropriate management policy, function, duties to vitalize, optimize and transform productivity and establish a competitive and conducive economic ambience in all public enterprises for and in the enhancement of their privatization”. In 1996, NASPPE divided the 46 state-owned enterprises into three groups: (1) those that are retained by the state as strategic industries; (2) those that are assigned to the Eritrean People Front for Democracy and Justice (EPFDJ the ruling political party); (3) those that are offered for domestic as well as foreign buyers publicly; and (4) those that are liquidated.

The government retained four strategic enterprises [Red Sea Flourmills, Dekemhare Flourmills, BarkaCanneris and Dogali Printing Press]. The government also assigned a printing press [Adulis Printing Press] to EPFDJ. Two public enterprises were liquidated [Denden Glass Works and Ethiopian Domestic Distribution Corporation]. The remaining 39 public enterprises were slated for privatization.

As in many African countries, the record of privatisation and commercialisation in Eritrea has been patchy, slow and modest. Out of the 39 stated owned enterprises lined up for sale only 18 were privatized during the period 1996 to 1999. The sales of the remaining 21 enterprises have not yet realized. Absence of capital markets, in Eritrea, is a major obstacle for the privatization plans.

The privatization process, in Eritrea, takes a long time, and destroys the value creation potential of the companies. It affects enterprises’ working and fixed capital investments, and financing. A long privatization process hinders innovations, plans and investments. This phenomenon was labeled by Stifanos (2001) as “privatization trap”. The privatization process did not vest a complete and real authority upon managers rather it creates uncertainty and confusion. The managers and the employees are uncertain about their position and their fate after the sale of the companies. Privatization in its very beginning accompanied by layoffs, more often it is not a good means of job creation because most of the public enterprises are over staffed. This would raise the growing number of unemployment until potential investors create

(Tessema and Soeters, 2006).
a job opportunity for the local people (Farazmand, 1996). Striking a balance between privatization and retention of public enterprises is a major challenge for many African countries. Few countries in Africa, such as Ghana, Zambia and Uganda have vigorously pursued privatisation, while a majority of the countries including Senegal, Tunisia, Benin, Côte d’Ivoire, Togo, Cameroon, Kenya, Guinea and Nigeria have either made modest or limited progress, or reversed privatisation policies at periodic intervals (Lalaye, 1999). Other countries such as South Africa, Zimbabwe and Tanzania have remained strongly tied to public ownership. They have therefore taken limited steps towards privatization and commercialization because of their leaders’ strong attachment to state capitalism.

Local government reform

Following their independence in the early 1960s most African countries supported the idea of a strong central government to secure social justice for all citizens and Eritrea was not an exception. The new regimes and central governments were considered as facilitators of wealth distribution. Politically, the one-party system was portrayed as an embodiment of the people’s will and a way of uniting the new nation (ECA, 2003). In the 1990s, however, domestic and external forces started to exert considerable pressure on African governments to liberalize the political space. Consequently, democratic systems were introduced, which embarked upon ambitious program of political, institutional and economic reforms. The objectives of those reforms, along other things, involved restructuring and decentralization. Decentralization of responsibilities in its various forms is advocated as a means of achieving public service effectiveness and ensuring that public administrations are more responsive to citizens’ needs. To strengthen the capacity of decentralized agencies, substantive measures have been recommended (ECA, 2003:54):

1. Delegation of authority in respect of finance and personnel management to managers at lower levels within the framework of broad guidelines from the center to strengthen field administration, and laterally from policy making units to implementing organs;
2. Empowerment of communities by strengthening local governments through the revitalization of local authorities and municipal governments;
3. Mechanisms for full participation of the private sector and civil society organizations in public policy formulation and decision-making should be established in order to improve local democracy, accountability, efficiency, equity, effectiveness and sustainability in the provision of social services countrywide; and
4. Providing civic training on rights and obligations (in local languages).

In view of the above context, local government reform in Eritrea was driven by restructuring, decentralization, and accountability measures. The aims of these reforms were to stimulate participation at the grassroots level through devolution and de-concentration. The Eritrean people want the state and its public administration to act as a social and economic promoter, capable of ensuring equitable distribution of opportunities, sustainable management of resources and equitable access to opportunities (political, economic, social and cultural) (GOE, 1993).

Restructuring

Restructuring involves the redesigning of the structure of organizations to improve effectiveness and efficiency. Restructuring devices include eliminating red tape, downsizing, decentralizing authority, and improving organizational effectiveness through privatization, commercialization, partnerships and coproduction (Ayee, 2008). The reform agenda usually includes an attempt to address the rigidities and dysfunctions associated with mechanical structures, a process referred to as ‘de-bureaucratization’ (Turner and Hulme, 1997; Caiden, 1978, 1991; cited in Ayee, 2008).

Eritrea inherited obsolete institutions and weak instruments for managing its economic policies. While it was part of Ethiopia, and in the context of the centrally planned economy, the provincial administration in Eritrea had little autonomy and policy making capability. The Eritrean government reformed the inherited administrative system by issuing proclamation No. 37/1993 that defines the powers and responsibilities of the local government units, and establishment of the Ministry of Local Government. The National Assembly entrusted the Ministry of Local Government to undertake the task of redrawing the boundaries of the 10 inherited regions. With this mandate a committee, from the various government agencies, for the restructuring of the regions was established. As a result, the 10 provinces, 50 sub-provinces, 194 districts and 2580 villages were restructured into 6 administrative zones (zobas), 58 sub-zone (sub-zoba), and 699-village/area administrations. To this effect the government of Eritrea issued Proclamation No. 86/96 announcing the establishment of six administrative zones (zobas) in Eritrea. The six administrative zones (zobas) are: DebubawiKeih-Bahi, Gash-Barka, Maekel, SemenawiKeih-Bahri, Anseba, and Debub. The main objectives for undertaking the restructuring program were: to minimize the levels of administrative tiers vertically and horizontally and speed up the process of decentralized administration and devolution of authorities, ensuring democracy and sustainable development,
throughout the country; to bolster equitable economic growth; and to strengthen the unity of the people.

Proclamation No. 86/96, gives way for the establishment of four layers of government in Eritrea: Central, Regional, Sub-Regional, and Village/Area Administration. The regional and town administrations are composed of the legislative council (Baito), executive, and judiciary bodies, while the village/area administrations have a general assembly (Megaba’aya) constituting all residents above 18, in addition to the executive and judiciary. The public administration structure of the Eritrean urban towns includes legislative, executive, and judiciary branches. The purpose for a three-part division system is the prevention of abuse of power by any single branch (Proclamation No., 23/1992). Each town, thus, shall have the Legislative (Baito), Executive and the Judiciary. The Executive organ of each Region is made up of: a) Governor, b) Executive Director, c) Line Departments and Staff Function Heads, and the Executive organ of towns is composed of: a) Town Administrator, b) Executive Director, c) Line Departments and Staff Function Heads.

The executive bodies are made up of a mayor, a deputy mayor and various functional units. They are part of the municipal local government, responsible for executing administrative services and other routines and developmental and reconstruction activities, on behalf of the councils. The municipal chief executive is appointed by the government, and the structure is operating under the Ministry of Local Government. Among the major tasks of local executives is to coordinate and supervise the overall planning, program identification, implementation, and management processes taking place at the local level in collaboration with line ministries. Besides, they assist the local councils in the preparation of development plans and budgeting and allocation of central government budgets.

The legislative body, namely Baito or ‘council’ is made of democratically elected community representatives. The regional council is made up of sub-regional representatives, and the sub-region council by village representatives, and the village council by community members eligible to vote i.e. over 18 years old. The number of Baito members or seats depends on the size of the area, the number of registered adults and composition of ethnic groups and sex. In Eritrea the regional assemblies are directly elected by the people while the governors are appointed. The practice of democratic election has a long-standing history. Local elections have been organized by local people in their villages and the practice continued during the struggle for independence. The voting systems in the villages are accomplished by direct show of hands and open debates. The council of elected village elders are traditionally in charge of organizing the Megaba’aya and rekindling people’s participation in administering various socio-economic activities.

There is an elected chairperson and a secretary, who permanently represents the council and follows up routine activities and is supported by permanent and temporary committees. The committees are delegated to handle specific duties and responsibilities. The permanent committees are the functional committees who are responsible for legislating, financial management, agriculture, trade and industry, social affairs, health, education, culture, information and construction. Temporary committees are also established for accomplishing specific assignments such as arranging ceremonial celebrations, etc.

The councils are the highest decision-making organs responsible for policy formulation, implementation, monitoring and evaluation. As legislative bodies, they are responsible for legislating and monitoring the performance of their constituent executive bodies such as municipalities and town administrators and heads of functional units. Along with the responsibility for approving budgets the Baitos are empowered to levy taxes. They are also responsible for approving submitted projects programmes and related budgetary plans. It reviews reports, evaluations of the executive and accordingly makes its own suggestions and views. If any objection is raised, it sends its findings with its objectives and reservations together with its recommendations to the Ministry of Local Government.

The judiciary, consisting of the various courts will safeguard the individual, collective and governmental rights, liberties and properties guaranteed by law. The judicial branch functions independently of both the legislative and executive branches (Proclamation No. 23/1992).

In Eritrea urban areas are classified into three categories depending on the area they administer. The lowest urban centre in Eritrea is presumed to have at least 5 Baito (Legislative council) members. By the same token this particular urban centre should have a population of 5000 to 10,000 because a population of 1,000 to 2,000 is represented by a Baito member. The town and urban councils have been graded by the Ministry of Local Government. The Grading Criteria, among others, were:

1. Population - population density and distribution;
2. Economic Development - gross domestic product, cash crops, food crops, other economic activities such as industries, public corporations etc.
3. Economic Infrastructure - roads (paved and unpaved), district roads vital for agricultural procedure and other commodities, post and telecommunications.
4. Social Services - education (number of schools, pupils and other facilities), health, water, water facilities etc.
5. Revenue Generating Capacity - the numerical weight given to the revenue generating capacity is based on collective and subjective judgement.

The central government defined the general principles of
municipal administration by way of national legislation. These include defining the general and specific mandates of local government, tax legislation, and state supervision, under which local authorities carry out their functions.

**Decentralization**

The concept of decentralization defies a clear-cut definition. Rondinelli (1989) defines decentralization as the transfer of authority to plan, make decisions and manage public functions from a higher level of government to any individual, organization or agency at a lower level. To Smith (1985:1), decentralization means ‘reversing the concentration of administration at a single center and conferring powers on local government’. In this study, decentralization is considered the opposite of centralization or concentration, and involves delegation of power or authority from central government to the periphery.

The Government of Eritrea has adopted administrative decentralization as a national policy in May 1996. In an interview, in 2013, higher government officials in the Ministry of Local Government stated that the very essence of decentralization, in Eritrea, is to increase the space for decision-making at the local level for the local people, so that government officials will be more responsive to local needs and thus more effective and efficient in the provision social/public services. Delegating responsibility to local governments can influence also the incentives for competition between jurisdictions to provide improved public goods.

Decentralization and devolution of power has been pursued in Eritrea for the last ten years (1997-2006). While considerable achievements can be noted for Southern Administrative Zone and Gash-Bark, human resource and material limitations and the conflict with Ethiopia have hampered progress in other regions. Decentralization helps the local people to resolve their social problems through personal contact with local leaders. Local workers are better able to identify problems and opportunities, more likely to use area –and culture-specific solutions and better able to match supply decisions to local situations. The nature of the social environment within which such spaces for local discretion are created is thus likely to be a critically important factor in the realization of the policy vision of the Eritrean government.

According to the Regional Administrations Proclamations No.86/1996, generally recognised municipal functions have been specified which include the following:

1. Upon approval levy and collect urban land rent, service charges and urban house tax charges.
2. Enforce laws pertaining to the administration of the urban centres, the security of the urban centre and the health of the urban dwellers.
3. Prepare and submit to the local government and when approved implement the master plan of the urban centre and administer urban land in accordance with the approved plan.
4. Without prejudice to the power given by law to other government offices, organise, prepare, maintain streets, squares, bridges, utilities as water, electric light, grand market place, cemetaries, abattoirs, drainage systems, public baths, theatres and public halls, schools and the like.
5. In co-operation with appropriate central government offices: ensure the provision of adequate transport services, operate and co-ordinate social service programmes, ensure and supervise the orderly construction according to plan of water pipe lines, sewerage system and houses.
6. Organise and provide fire-fighting ambulance, and sanitary services.
7. Ascertain that any work done by or under any family, individual or organisation is not contrary to the requirement of public health and safety; and issue permits thereof.
8. Collect charges, rents, taxes and fees due to municipality under various laws previously in force, implement powers and duties conferred on municipalities under various laws previously in force in so far as they are not inconsistent herewith and the government ownership of land.

All of these functions are assigned to local authorities, although, understandably, the smallest municipalities are unable to perform these duties on their own. Hence, the proclamation reserves the following responsibilities to the central government bodies. These include:

1. Responsibilities related to defence and national security, citizenship, immigration, issuance of passports, protection of refugees, and expulsion and extradition;  
2. Foreign affairs, national economic policies, justice and general auditing;  
3. Establishment and administration of institutions of national significance and banking and banking-related activities;  
4. Issues related to national parks (land and sea), museums and historical preservation, national holidays, working days and hours.

In Eritrea, however, central authorities regularly excuse
continued involvement in local level provision because of capacity limitations at local government level. They argued that financial management, project implementation, construction and planning have to be centralized because of poor capacity. Decentralization requires local level managerial and technical capacity, particularly planning, operations and maintenance (Andrews and Schroeder, 2003). Lack of technical and managerial competence, and human resource capacity constraints are the major limit to the planned decentralization process in Eritrea. In the health sector, for instance, there are acute shortages of indispensable staff for planning, management and operation of health facilities at the local levels. There are shortages of surgeons, health laboratory technicians, midwives, and experienced administrative personnel with good planning and management practices.

A second aspect of capacity involves institutional abilities for intergovernmental coordination. In functional areas, in Eritrea, there are clear pictures of deficits; coordination, cooperation and information sharing between ministries are often based on informal networks and initiatives of gifted individuals (UN, 2001). Long-term planning and more importantly, prioritization within Eritrea institutions are a problem despite concerted efforts by the government in this area.

A third aspect of capacity pertains to fiscal management. Effective decentralized service provision requires an adequate level of local governance, including legal and financial capacity (Peterson, 1997). This requirement extends to both monetary resources, i.e. a fiscal base sufficient to ensure funding for maintenance and operations, and personnel and processes, i.e. appropriate staff and systems for managing the money. Where these capacities are limited locally, fiscal management tends to be centralized. In most African countries the absence of fiscal decentralization is a constraint for effective provision of public services. Local governments do not reallocate funds between sectors or retain revenues collected from public services. Centralized decision-making over the allocation of financial resources made local governments heavily dependent on the center. If local authorities do not have financial control for their activities, they cannot be flexible enough to cope with the emerging needs or problems of the population of their jurisdiction. In developing countries like Eritrea, there is a need for legislation that requires the decentralization of central budgets and the devolution of some fiscal authority.

Decentralization within the context of a unitary state is beneficial for Eritrea. Decentralization will make local administrators more responsible and quick to respond to local needs. Decentralization, however, cannot be created or accelerated by policy decisions alone, it will instead evolve over time as regions, local economies and cultures transform themselves (Rweyemamu, 1982).

Accountability

Accountability is one of the most important objectives of administrative reforms. In the words of Paul (1992, cited in Ayee, 2008), accountability is the ‘driving force that generates the pressure for key actors involved to be responsible for and to ensure good public service performance’. It involves not only tackling corruption, but also improving public sector performance, effectiveness, efficiency, achievement of goals, probity and regularity on the part of public officials who are expected to follow formal rules and regulations (Ayee, 2008). Rondinelli (1989) further noted that it is through open, transparent and accountable government that we are able to distribute power and influence so that no one institution, no one organization or no one individual can dominate the public agenda. A range of institutions has been created to promote accountability, including auditors and ombudspersons. A key question remains: to whom is the public servant accountable? (Paul, 1992, cited in Ayee, 2008).

For a government bureaucracy to be accountable to its citizens, provisions must be made for the citizens to control and monitor the use of discretionary power by bureaucrats. Accountability therefore, implies that citizens have certain new democratic rights. This new set of values include: the right to a clean and honest government; the right to high quality public services and products; the right to question and appeal against bureaucrat’s decisions and rulings; the right to know what government officials are doing; the right to self government especially at the local level; and the right to remove a bad government official. In other words, a government bureaucracy that is accountable is one that is uncorrupted, efficient, transparent and open, decentralized and removable, therefore, temporal (Bowornwathana, 1996;7).

In developing countries like Eritrea, weak public institutions and lack of capacity to manage development were acknowledged as causes of lack of economic progress and accountability. To this end a number of administrative problems requiring reform became apparent in Eritrea in the early 1990s. These problems were rigid structures, and hierarchical organization, recruitment of generalists in to the administrative service, and a system of promotion based on seniority rather than merit, remuneration being out of line with prevailing levels in the private sector and lack of job evaluation, poor intra- and inter-sectoral mobility, weak administrative leadership, over centralization, poor staff development and training arrangements, anachronistic administrative management practices and lack of effective coordination.

DISCUSSION

In an interview, in 2013, almost all civil servant officials stated that delay in the enactment of civil service laws,
absence of promotion, retirement, and salary increment are the major problems of the Eritrean civil service system. Because of that recruitment and promotion systems overly concerned with formal education, and fail to attract or promote qualified staff. Politicization of the civil service is another problem. Erosion and compression of salary scales are also claimed to be the two major contributions to bureaucratic corruption. Most of the civil servants, interviewed, recommend for the review of compensation system in Eritrea, to ensure that salary levels and working conditions reflect market scarcities, cost of living and the productivity of each unit of government. Emphasizing on the importance of pay, in an interview in 2013, a civil service officer also stated that those that manage public service employment must not lose sight of the fundamental relationship between pay, motivation and performance. In poor countries like Eritrea pay plays a great role in public employees’ motivation. There are reports that many countries, including the Gambia and Guinea, have made considerable progress in simplifying their grading structures (Hope, 2002). This, in turn, has acted as a magnet to attract and motivate some top professionals including those with scarce skills such as physicians and accountants. The reality in Eritrea, however, is that even the government has made tremendous efforts to improve living wages in public services, there remains the problem of paying competitive wages that will retain or attract the best staff. Despite reforms, salaries are still low in the Eritrean civil service system and are not able to retain professional staff, which has contributed to the “brain drain” that many African countries have been experiencing during independence. Significant increases in salaries to attract and retain well-skilled staff may, of course, affect resources for other service delivery inputs. How to improve public sector pay and the quantity of other inputs that are essential for efficient service delivery remains a challenge for Eritrea.

The public service should be an ethical institution as the protectors of the public interest. One of the major challenges that Eritrea faces is the maintenance of social values in the civil service system. Such values include integrity, honesty, dependability, helpfulness, impartiality, courteousness, commitment and fairness. These were the cardinal values of EPLF. Unfortunately, in most African societies, there is no system for reinforcing these values (Agere and Mendoza, 1999: 26). A key factor underlying the ineffectiveness of administrative and financial accountability systems is the endorsement of “wealth at all costs” by many African societies. Public office holders and public servants who do not appear to have “prospered” from occupying public positions are treated with scant respect in many African countries. This declining value tends to encourage inefficiency and misappropriation of public money.

Government accountability is a key issue in Eritrea. In an interview in 2013 a civil service officer said that “without a transparent and effective civil service, government business and service delivery to the public will be crippled and mired in dishonesty and graft. I am convinced that an efficient, transparent and accountable civil service should be the hallmark of our democratic transformation and development. The Eritrean people deserve nothing less”. The argument is that all government agencies and organizations should develop a performance measures by clearly stating their objectives and the relationship between their inputs and outputs; workload and productivity; outcomes of products and services; service quality and customer satisfaction. The central theme of the argument is that the public needs to know what government organizations are doing and how their work is performing and government organizations need to understand for themselves how well they are performing their task and what the results are. In general transparency and customer satisfaction required objective published standards by which the public could judge whether government agencies were performing satisfactorily and even doing a good job (Caiden, 1998:3). Governments should enhance public reporting systems on the financial performance of government agencies. This involves providing information on the financial and managerial performance of public departments that enables the public to monitor and assess performance of government activities. The aim is to encourage dialogue so as to lead to improved service delivery. The IMF and other international bodies have developed a number of codes and standards that set out “good practices” in the areas of policy transparency, data dissemination and financial regulation, and supervision.

In the context of Eritrea’s administrative reform, efforts to make public service agencies more accountable to the public should include the adoption of Citizens Charters. Citizens should be consulted about the level and quality of public services and, whenever possible, be given the choice of services. Citizens should also be informed about the level and quality of services they will receive, and they should have equal access to the services to which they are entitled. Moreover, they should be informed about how national departments and provincial administration are run, how much they cost and who is in charge. The citizens charter can be designed to raise the standard of public services and make them more responsive to their users (Butcher, 1997:55) and to encourage public servants to think about what they do in relation to how it affects their customers.

In an interview in 2013 almost all public enterprise managers complain of having to cope with excessive, rigid, time consuming and inappropriate bureaucratic procedures. They have contended that the civil service procedures are incompatible with commercial operations. Because of that they are not able to suspend, fire, or indeed sanction in any meaningful way their large and costly work force. Nor do they possess discretionary...
power on salary and benefits. They have neither sticks nor carrots. The Eritrean government should focus on the reform of the public sector itself besides privatization aimed at allowing public enterprises to operate more efficiently and effectively. This can be done through organizational development, more accounting, more efficient management practice, isolation of state owned corporations from the whims of politicians, management contract, worker incentives, shared savings, productivity councils, management service, operations research, improving the macro-environment, rationalizing institutions for public enterprises control, and special training programs tailored to the unique need of public enterprises. Aylen (1987:23) argues that the weakness of capital markets in developing countries is a major obstacle to plans for privatization for this reason alone, public enterprises seem more likely to grow in importance rather than decline. Significant stock markets exist only in few African cities such as Addis Ababa, Harare, and Nairobi. It is not realistic to suppose that direct foreign investment will compensate for failure of domestic equity markets. The western value concept of efficiency and the British approach to large-scale privatization are generally not applicable to developing countries with an underdeveloped and corrupt private sector itself in need of government support itself (Farazmand, 1996:40). In the LDCs and post conflict countries like Eritrea, underdeveloped private sectors require the public administration to play a major role in the delivery of services and the provision of much needed economic infrastructure.

Most local government officials, in an interview in 2013, stated that lack of managerial and technical capacity, absence of fiscal decentralization and budget constraints as their major problems. A major drawback with many decentralization initiatives is the lack of administrative capacity of the public administration at the local levels and the absence of accountability lines of this administration to the local people. For decentralized government to succeed there needs to be a center to enable it; thus attention must focus on, for example, fiscal transfer mechanisms; mechanisms for ensuring local level planning and budgeting; systems for monitoring and oversight linked to the budget; and appropriate human resource development systems. The Eritrean government should now emphasize on investment in developing human capital towards effective policy formulation, analysis, implementation and evaluation.

Emerging challenges

Although the efforts of the Government of Eritrea are encouraging and commendable some challenges are still remaining. The government has not yet enacted: civil service law; co-operative laws as well as legislations governing non-profit organizations all of which have an impact on public administration. The United Nations Common Country Assessment Group (2001) has identified also many challenges that have to be addressed by Eritrea. These are: (1) delays in devolution of power; (2) shortage of skilled human resource in the public sector management; (3) inadequate systems, procedures and controlling mechanism in public sector management; (4) lack of access to information; (5) rigidity of internal structures, not necessarily reflecting the powers and function of individual ministries; (6) backlog on unmet needs due to the two year state of war with Ethiopia.

The delays in the devolution of power (decentralization) are associated with the particular circumstances of the country. Local government authorities are short of fiscal resources and trained manpower, which are qualified and experienced and the lack of awareness of the people to take charge of their own local affairs effectively. However, common factors to all of the key challenges are the lack of qualified personnel and material resources. After many years of colonization and deprivation, the education system in Eritrea is weak and is unable to supply the number of qualified persons needed to establish strong civil service and private institutions (UN, 2000). The UN report further added that due to the educational gap and the unfamiliarity many community leaders in Eritrea are not in a position to lead the needed transformation and to take charge of the subsequent change in working out procedures the new technology require and induce.

Transitional challenges

Eritrea is a country in transition: (a) a transition from a state dominated economic order to market based economic system; (b) a transition from colonial military regime to a just and democratic society; and (c) a transition from conflicts and strife to political reconciliation and economic rehabilitation. The transition from a state dominated economic order to market based economic system, however, is not without challenge. The transition to market economy had three main challenges to Eritrea, namely: providing an effective regulatory framework for efficient functioning of markets; reorienting the public service to be efficiency conscious with regard cost and time; and enhancing reliance on market mechanisms for the management of public organizations (Beyene and Otobo, 1994). The economic transition demands also difficult tradeoffs between the market, the state and the international arena. Striking a balance between Eritrean national interests and the international economic community was also a challenge quite for some time (Ruth, 1995: 143).

The transition to democracy poses the challenges of creating or strengthening watchdog mechanisms-organizations for upholding accountability whether democratic, legal or professional, enhancing the institutions for checks and balances; and promoting the neutrality and professionalism of the civil service (Beyene and Otobo, 1994). As
regards the transition from conflicts to reconciliation, the main challenges are instilling public trust in the discipline of law and order agencies; fostering policies that promote economic and social equity; and increasing opportunities for popular participation in decision-making (ibid.).

The formation of a 'constitutional state' is an important task for Eritrea. A constitutional state requires an in-depth overhaul of the judicial and administrative system and the taking into account of individual and group differences. The power and scope of authority between the different branches of the government such as the legislative, executive and judicial should be clearly defined and determining the principal means for exerting control over the bureaucracy from sources outside it. In other words, there must be constant control both by checks and balances within the government and through outside control. Various ways of control can be devised such as 'administrative law', which is designed to counteract arbitrary, malicious, capricious and erroneous bureaucratic decisions and to control biases, misuse of power, inadequacy of investigation, and incomplete action or refusal to act.

The other control mechanism is through the establishment of an independent press or through the interference of a special interest group. In most African countries the press is still far from being an effective corrective mechanism. It still suffers from lack of professionalism and political obstacles. But in the long-run independent and indigenous press will help the ordinary citizens to protect themselves from the mercy of officious and sometimes corrupt bureaucrats.

Another solution is through the use of the ombudsman office. The ombudsman is a Scandinavian institution for the observance of 'public administrators conduct'. It investigates all forms of illegal or improper conduct by an official; be an executive officer or even a judge. The citizen doesn't need legal council or advice nor does he/she need approval of a superior authority to have recourse to the ombudsman.

Bentil (2004) suggests also the declaration of a 'civil service week', which gives the public, the press and the government the opportunity for an open debate, and helps to define the kind of services the public really want and how those services can be effectively rendered. This system was used in Eritrea extensively; citizens forward their questions, comments or ideas to the president via the ministry of information. The president gave answers to all citizens' questions, which was broadcast by the television, at the month of September each year. Government officials also show up, more frequently, on the national television in order to justify government policies and actions.

The challenges of war

Eritrea's initial promising growth was disrupted by the sudden out break of the border war with Ethiopia in May 1998 and the continuation of the war until June 2000. The war has reversed the positive economic trends of the pre-conflict post independence period of Eritrea. The prolonged conflict has had also devastating human and social impacts. As the result of the conflict over 70,000 Eritreans and Ethiopians of Eritrean origin have been forcibly deported from Ethiopia; about 1.1 million people were driven from their homes, the great majority women and children; over 250,000 men and women between 18-40 were mobilized for national defense (GOE, 2001:13). They are workers, farmers, professionals, civil servants and business people, and are among the nation's most productive citizens. Many provide most of their family's income. This widespread mobilization is costly to the economy both in terms of direct costs, as the government provides subsistence to the soldiers and financial support to their families, and indirect costs due to the divers in labor from productive activities to national defense.

The real cost to the nation, however, is not limited to financial and economic sacrifices. The separation of family members for long periods due to deportation, internal displacement and mobilization has created social and psychological scars that are deep and serious. Dependent children and the elderly are affected. No family has been spared from this tragedy, and the social and psychological impact of the trauma will take a long time to heal.

Before the outbreak of the war most of the transition issues had been addressed in Eritrea, investor confidence was beginning to grow, private investment in a number of sectors was increasing and the economy was growing rapidly. Significant progress has also shown in education and health. Primary and middle school enrollment increased from about 178,800 in 1991-92 to 370,000 in 2000 (GOE, 2001) and there was a sharp decline in infant and child mortality rates; under five mortality rate declined from 203 to 89 and infant mortality declined from 135 to 47 (per 1000 live births) during the period 1993 to 2002, respectively. No cases of polio or diphtheria have been reported since 1998 and all immunization diseases and malaria have declined.

CONCLUSION AND POLICY IMPLICATIONS

Introducing reform programs in the government administrative system is a complex process requiring support at the highest levels and great internal management confidence and skill. The more comprehensive the reform is,
the more complex the process, the greater the management capacity required to implement it successfully. Administrative reform is a long-range process and requires careful planning and sustained action. It is a continuing task and implies a need for periodic review and improvement. Within this context we would like to forward the following remarks on Eritrea's Public Administration reform:

1. The environment within which Eritrean civil servants are employed does not seem to attract, motivate and retain competent civil servants. The civil service values are declining. Competitive wage structures have to be designed to retain and attract competent civil servants and to regain the societal values of civil service.

2. Decentralization requires local level managerial and technical capacity. Lack of competent staff at the local level is a major impediment in Eritrea. Decentralization cannot be created or accelerated by policy decisions alone, it will instead evolve over time as regions, local economies and cultures transform themselves and acquire the necessary kills and knowledge.

3. Performance measurement and evaluation of the public sector can be seen as critical to efforts to streamline governments; gain greater efficiency, productivity and effectiveness; enhance transparency and accountability; regain public trust in governmental institutions; and contribute to a reorientation of the role and functions of government. To this end, the Eritrean government should set up productivity units to monitor performance and render periodic reports to the executive, the legislature and the public.

4. Maintaining a balance between efficiency and equity is a formidable challenge for the management of public enterprises in Eritrea. Achievement of the dual economic and political goals is not easy. The government has to find an optimal size of public and private sectors, in a mixed economy.

5. Capacity development in the Eritrean public administration system needs to be addressed at three levels: the individual level, the institutional level, and the societal level. Thus, the government should focus on human capital development, institution building and process improvement.

Conflict of Interests

The author have not declared any conflict of interests.

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