

Structuring Eritrean Law

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A proposal for the hierarchy, naming, organization and drafting of Eritrean legislation

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A legal system should reveal its constitutional structure in the names of its laws. A reader should be able to tell, before opening an instrument, whether it was enacted by the National Assembly, made within the executive by the President or a ministry under lawful authority, issued by an agency, or adopted by a legally autonomous institution.

Assembly Act → Executive Regulation → Agency Rule → Institutional Bylaw

The case for reform

Eritrea's inherited legislative vocabulary does not perform this basic explanatory function. A statute has traditionally been called a proclamation, while much delegated legislation has been published as a legal notice. Those expressions are familiar to Eritrean lawyers, but they are poor instruments of public legal education. "Proclamation" does not disclose whether the text originated in a legislature, a president, a transitional authority or an executive office. "Legal notice" is still less informative: it sounds like a method of publication or notification, not a class of binding law. It does not tell the reader which institution made the instrument, the source of its authority or its position in the legal hierarchy.

The problem is not merely linguistic. Legal nomenclature affects accountability. If the title of a law identifies its maker, a citizen can ask the correct institutional question: Did the National Assembly decide this policy? Did a ministry act within a delegation? Did an agency remain within the sphere assigned to it? When a broad category such as "legal notice" conceals all these possibilities, the public must undertake legal research merely to discover who exercised public power.

The 1997 Constitution illustrates the constitutional principle on which a future system can be designed. Article 32 identifies the National Assembly as the supreme representative and legislative body and provides that no other person or organization may make decisions having the force of law unless authorized by the Constitution or by law enacted by the Assembly. Article 33 separately assigns presidential signature and publication functions. The distinction is important: drafting, signing and publishing a law do not determine who enacted it.

Historical evidence: the lawmaker behind the label

One significant research contribution, "The Nebulous Lawmaking Process in Eritrea," demonstrates why this reform is necessary. Its historical survey of the transitional framework found that lawmaking authority was not clearly divided among the National Assembly, the President and executive institutions. It identified both thematic uncertainty—who could legislate on which subject—and hierarchical uncertainty—which instrument prevailed when different lawmakers acted. The absence of clear competence and priority rules created the conditions for institutional power to be exercised without a visible legal chain.

The study identified legislation attributed to four categories of makers: the President, the National Assembly, executive bodies such as ministries, departments and offices, and the undifferentiated "Government of Eritrea." The last designation was particularly defective. Government included legislative, executive and judicial institutions and therefore could not accurately identify a particular lawmaker. According to the study, more than sixty per cent of the instruments examined had been

issued in the name of the Provisional Government or Government of Eritrea. That formulation diminished the visibility of the National Assembly and, in practice, could conceal presidential lawmaking behind the name of the whole state.

The problem was reinforced by process. Assembly deliberations were not publicly visible, laws sometimes appeared without a publicly traceable legislative history, and instruments continued to be issued in the name of Government during periods in which the National Assembly had not met. The study also found the formal labels unreliable as indicators of rank: the National Assembly itself was reported to have made only two legal notices, even though a legal notice was treated as subordinate to a proclamation. The nomenclature therefore failed to correspond consistently either to the identity of the maker or to constitutional status.

Treaty ratification supplied a further example. Negotiation, signature, legislative ratification and publication were not clearly allocated, and the same broad word—proclamation—could obscure whether the executive was merely publishing a legislative decision or purporting to legislate itself. The lesson for future design is direct: the maker, immediate authority, ultimate authority, date, place, commencement and legal rank must appear on the face of every instrument. A name such as Assembly Act, Executive Regulation or Agency Rule should make institutional responsibility harder to disguise.

Legal clarity is economic infrastructure

Eritrea should design its legal system for the country it seeks to become, not only for the administrative habits it has inherited. A country seeking substantial foreign investment, international partnerships and a larger expatriate community must make its law readily intelligible to people who did not grow up with its terminology. Investors, lenders, insurers, expatriate professionals and their advisers routinely ask the same threshold questions: What is the controlling statute? Which ministry regulates the activity? Which agency issues the detailed requirements? Is the document binding law, internal guidance or merely a notice?

The proposed words—Act, Regulation, Rule and Bylaw—do not eliminate the need for legal advice. They do, however, reduce avoidable translation costs. “Act” is widely recognized as legislation enacted by a national legislature. “Regulation” is widely understood as executive legislation made under constitutional or delegated authority. “Rule” is commonly associated with detailed norms made by an agency or specialized authority. “Bylaw” conveys a norm of limited territorial, institutional or membership application. These words give an international reader an accurate starting assumption rather than an unexplained local label.

This is relevant to investment because legal certainty and regulatory predictability affect whether investors can evaluate risk and plan over time. Recent World Bank investment-facilitation guidance

expressly connects legal certainty and a predictable regulatory framework with attracting and retaining investment. Terminology alone cannot create the rule of law, but terminology that exposes the source and rank of legal authority is a modest, practical component of transparency. It also benefits Eritrean citizens, who have the strongest claim to laws that are accessible and understandable.

The proposed hierarchy

The recommended system has three ordinary national levels and one conditional fourth level. It is a branching hierarchy rather than a single chain. Rank operates vertically, while assigned competence operates horizontally. Education and health regulations may be equal in rank but govern different fields; curriculum and examination rules may be equal in rank but govern different functions.

Level	Instrument	Maker	Principal provision
1	Assembly Act	National Assembly	Article
2	Executive Regulation	President or relevant ministry; jointly where necessary	Regulation
3	Agency Rule	Department, agency, authority, commission or directorate	Rule
4	Institutional Bylaw	Authorized public institution	Bylaw

Recommended controlled vocabulary. The fourth level is available only when superior law confers institutional lawmaking authority.

The compound names are transitional

Assembly, Executive, Agency and Institutional are teaching words. They should be used during the establishment of the new system because they tell the public who normally makes each class of law. They need not remain permanently attached to every title. Once citizens, officials, courts and legal publishers have become familiar with the fixed meanings of Act, Regulation, Rule and Bylaw, the institutional adjectives may be dropped.

At that mature stage, “Act” would by itself mean primary legislation enacted by the National Assembly; “Regulation” would mean second-level legislation made by the President or a ministry; “Rule” would mean third-level legislation made by an agency; and “Bylaw” would mean limited institutional legislation. Education Assembly Act could become Education Act; School Standards Executive Regulations could become School Standards Regulations; Examinations Agency Rules could become Examinations Rules; and University Conduct Institutional Bylaws could become University Conduct Bylaws.

The transition should be made legally rather than by casual usage. The Legislation, Interpretation and Publication Act should prescribe the compound forms initially and permit the National Assembly, after a public review, to authorize the short forms. Dropping the adjective must not remove accountability: the title block, authority statement, official identifier and electronic register must continue to name the actual maker. The shorter noun would communicate rank; the maker line would communicate the particular institution.

Assembly Acts

An Assembly Act is primary legislation enacted by the National Assembly. The word “Assembly” identifies the maker; “Act” identifies the legal form. The title should not change merely because a ministry drafted the bill or because the President signed and published it. A government-sponsored bill becomes an Assembly Act when the Assembly enacts it.

Acts should contain the essential policy choices: basic rights and duties, taxation, public institutions, criminal offences, substantial penalties, compulsory powers and the permissible boundaries of delegated lawmaking. They may authorize ministries to fill in administrative and technical detail, but they should not surrender the essential content of legislation.

Executive Regulations

An Executive Regulation is second-level legislation made under authority conferred by the Constitution or an Assembly Act. In the ordinary case it would be made by the ministry responsible for the regulated field. In the Eritrean arrangement contemplated here, the Council of Ministers need not assume collective legislative responsibility. The responsible ministry is the rule-maker. When two or more ministerial domains overlap, the ministries may make a Joint Executive Regulation without creating another rank in the hierarchy.

The term is preferable to “legal notice.” “Executive” identifies the governmental level, while “Regulation” communicates that the instrument implements superior legislation. The instrument must identify the ministry that made it and the article of the Assembly Act supplying authority.

Legislation made by the President under a clear constitutional power or a clear delegation in an Assembly Act should also be an Executive Regulation. It should have the same rank as an Executive Regulation made by a ministry. Presidential authorship should not create a separate class and should not, by itself, make the instrument superior to ministerial Regulations. A conflict must be resolved by the Constitution, the enabling Act, assigned subject-matter competence or an express priority clause—not by the status of the office-holder.

Where identification of the maker is useful, the title may add “Presidential Regulation” in parentheses: for example, National Emergency Executive Regulations 2031 (Presidential Regulation). The parenthetical expression is descriptive only. “Executive Order” should not be used as a legislative class because it carries foreign constitutional associations and can suggest an internal presidential command rather than generally applicable delegated law. If the President lacks constitutional or statutory authority, calling the instrument an Executive Regulation cannot validate it.

Agency Rules

An Agency Rule is a detailed or technical instrument made by a department, agency, commission, authority, bureau, directorate or specialized office within a ministerial field. “Agency” can be statutorily defined to include these sub-ministerial bodies. The designation should depend on genuine rulemaking authority, not merely on who signs the document. A director signing for the ministry does not convert an Executive Regulation into an Agency Rule.

The immediate delegation need not come directly from the National Assembly. An Assembly Act may authorize a ministry to make Executive Regulations and may permit those Regulations to confer defined rulemaking authority on agencies. The resulting Agency Rule draws its immediate authority from the Regulation and its ultimate authority from the Act. Unauthorized subdelegation should be invalid. This is consistent with the widely recognized principle that delegated legislation cannot create further legislative power unless superior law authorizes the subdelegation.

Institutional Bylaws

The fourth level should exist as a legal possibility but need not be widely used at the outset. An Institutional Bylaw would be made by a public university, public hospital, port authority, professional body or other legally autonomous institution under express authority. It would govern the institution, its property, its services and persons who voluntarily or legally enter its sphere.

Size alone does not make a school or university a legislature. A public university may deserve bylaw-making authority because it is a statutory corporation with autonomous governing organs and disciplinary jurisdiction. An ordinary school normally administers education law and may issue internal policies, but it should not make public legislation. Institutional Bylaws must be published, reviewable and subordinate to all applicable Acts, Regulations and Rules. Comparative systems do recognize university statutes, ordinances, regulations and bylaws; Kenya and the United Kingdom provide examples.

A hierarchy with parallel spheres

The proposed hierarchy does not imply that every instrument at one level governs every institution below it. Different ministries may make parallel Executive Regulations within their assigned fields. Different agencies within one ministry may make parallel Agency Rules governing distinct functions. Different universities may make parallel Institutional Bylaws governing their own communities.

Parallel authority is legitimate only while the spheres are genuinely distinct. If two equal-ranking instruments impose incompatible requirements on the same conduct, the legal system needs a solution: a joint instrument, a statutory lead-authority rule, an express conflict clause, ministerial resolution or judicial review. It is not enough to say that conflicting instruments can coexist. They can coexist only when each operates within a separate competence or when superior law supplies a rule of priority.

A later rule made by one agency should not automatically repeal an earlier rule made by another agency. Chronology cannot give an agency power it never possessed. Competence must come first; rules such as “later law prevails” or “specific law prevails” should operate only after confirming that both makers acted within authority.

The provision name should reinforce the hierarchy

The reform should operate inside instruments as well as in their titles. The principal numbered provisions of Assembly Acts should be Articles; those of Executive Regulations should be Regulations; those of Agency Rules should be Rules; and those of Institutional Bylaws should be Bylaws. This creates a second, reinforcing signal of legal origin.

A lawyer, official or citizen encountering “article 12” would immediately expect a high-order text: the Constitution, a ratified treaty or an Assembly Act. “Regulation 12” would signal ministerial delegated legislation. “Rule 12” would signal agency legislation. “Bylaw 12” would signal limited institutional legislation. The system therefore teaches constitutional structure through everyday citation.

The convention is not universal. Some countries divide both primary and delegated legislation into sections, while others use articles, regulations or rules according to instrument type. The United Kingdom, for example, recognizes regulations, rules and orders among its principal statutory-instrument forms, while Australia uses an umbrella category of legislative instruments and emphasizes standardized naming and registration. Eritrea is free to adopt a more deliberately educational domestic grammar.

The signal should remain a presumption rather than the sole means of citation. Constitutions and treaties also use articles, and court rules may use the word “rule.” The first reference should therefore be complete—“article 12 of the Education Assembly Act,” “regulation 8 of the School Standards

Executive Regulations,” or “rule 4 of the Examinations Agency Rules.” Shortened references can follow once the instrument is identified.

Subdivisions can remain uniform: article 12(2)(a), regulation 8(3)(b), rule 4(1)(c) and bylaw 6(2). Books, Titles, Chapters, Sections and Schedules may be used where the scale and subject require them. The principal provision word carries the institutional signal; the subordinate numbering remains familiar and efficient.

How Eritrean legislation should be organized

A naming system will succeed only if the internal architecture of legislation is equally disciplined. Eritrea should prescribe one drafting grammar for every class of instrument. The grammar should move from broad conceptual groupings to increasingly precise propositions. The established Codes should retain their existing sequence of Book, Title, Chapter and Section. A Paragraph may be used as an additional grouping below a Section, but it should ordinarily be avoided; drafters should proceed directly from Section to the principal Article whenever possible. Shorter instruments may omit every higher grouping and begin directly with Articles, Regulations or Rules. Empty structural ceremony—such as a Title containing only one Chapter or a Chapter containing only one Section—should be avoided.

Order	Unit	Function
1	Instrument	The complete Act, Regulations, Rules or Bylaws.
2	Book	Reserved principally for Codes and exceptionally large Acts.
3	Title	A major subject or functional block within a Book.
4	Chapter	A coherent topic within a Title.
5	Section	A focused grouping within a Chapter.
6	Paragraph	An exceptional grouping below a Section; ordinarily avoided.
7	Principal provision	Article, Regulation or Rule, as the case may be; Bylaw for an authorized fourth-level instrument.
8	Subprovision	A numbered unit in parentheses: (1), (2), (3).
9	Subparagraph	A lettered unit: (a), (b), (c).
10	Item	A roman-numeral or capital-letter unit: (i), (ii), then (A), (B).

The principal provisions are the constitutional identifiers. An Assembly Act contains Articles; Executive Regulations contain Regulations; Agency Rules contain Rules; and Institutional Bylaws contain Bylaws. Their subdivisions should follow the same sequence. Thus a precise citation would read article 12(2)(a) (i), regulation 8(3)(b)(ii), rule 4(1)(c), or bylaw 6(2)(a). Numbering should ordinarily run continuously

through the instrument; renumbering should be avoided after enactment because it destabilizes judicial decisions, contracts and cross-references.

The order of an instrument

Every instrument should begin with an official title block stating its class, number, year and maker. It should then contain an enactment or authority formula. An Assembly Act should state that it is enacted by the National Assembly. An Executive Regulation, Agency Rule or Institutional Bylaw should identify both its immediate authority and the complete chain back to an Assembly Act or constitutional provision. The study of Eritrea's nebulous lawmaking process shows why "Government of Eritrea" is insufficient: the actual institution exercising legislative power must be named.

After the title and authority formula, the ordinary sequence should be: short title and citation; commencement; purpose and objects where useful; application and scope; definitions; substantive rights, duties and institutions; powers and procedures; enforcement and sanctions; review and appeal; delegated or subdelegated powers; amendment and repeal; savings and transitional arrangements; and schedules. The maker's authentication, signature, place and date of adoption should appear at the end. An explanatory note should accompany the instrument but remain outside the enacted text.

A preamble should be used only when it explains constitutional authority, legislative purpose or indispensable background. Definitions should not be used to conceal substantive rules. Each principal provision should have a short descriptive heading and should ordinarily state one coherent proposition. Cross-references should identify the exact Article, Regulation, Rule, Bylaw or Schedule. Schedules may contain forms, technical tables, lists and detailed procedures, but binding obligations should not be hidden in an unpublished annex or administrative manual.

A draft before the National Assembly may refer to its principal provisions as clauses for parliamentary amendment purposes. Upon enactment, those clauses should become Articles. Amendments must name the instrument and exact provision affected and state whether words are inserted, substituted, repealed or renumbered. Every amending instrument should carry the same class and rank as the maker authorized to amend the target text; a lower instrument must never amend a higher one.

Treaty ratification Acts

International treaties are an important exception to the proposed domestic drafting grammar. When Eritrea ratifies a treaty, the treaty should retain its original title, recitals, article numbering, annexes and authentic formatting. It should not be rewritten into the internal structure of an Eritrean Assembly Act merely to conform to domestic drafting conventions. Preserving the agreed text also avoids creating doubt about whether Eritrea ratified the same instrument negotiated and authenticated by the parties.

The National Assembly may instead enact a short Treaty Ratification Act, ordinarily consisting of one substantive Article or paragraph, identifying the treaty and approving its ratification. The complete treaty should be attached to the Act as a Schedule or annex in its original format. The ratification Act and the attached treaty should be published together, while remaining legally distinguishable: the Act records the Assembly's decision; the attachment records the international obligations accepted. If performance of the treaty requires changes to domestic rights, offences, taxation, appropriations or administrative powers, those changes should be made expressly in the ratification Act or in separate implementing legislation rather than being inferred from the attachment.

Codes are Assembly Acts with a special title

Eritrea should preserve the established titles Penal Code, Civil Code, Commercial Code, Maritime Code, Criminal Procedure Code and Civil Procedure Code. The word “Code” has accumulated public, professional and historical meaning. Replacing it would create needless disruption. But a Code should be understood technically as an Assembly Act: it has the same constitutional rank, must be enacted by the National Assembly and should be divided into Articles.

The distinction between an ordinary Act and a Code should not depend on prestige or political preference. A Code should be a single Assembly Act that systematically and comprehensively organizes a substantial field of law in book form. A size threshold of more than 100 pages can provide an objective additional safeguard, provided “page” means a page in a legally standardized official format. Without standardized type size, margins, language layout and page dimensions, a page threshold can be manipulated.

The better test is therefore cumulative: the legislation must be enacted as one Assembly Act; govern one field or a coherent group of closely related subjects; arrange the law systematically; be intended as the principal consolidated statement of that field; and exceed 100 official-format pages. The 100-page criterion should establish eligibility for the title “Code,” not convert every long Act into a Code. A 250-page appropriations schedule or a repetitive technical annex is not necessarily a code. Conversely, the established Eritrean Codes may retain their titles by express transitional recognition even if a historical edition does not satisfy a new formatting test.

Proposed rule: “Code” means an Assembly Act, ordinarily exceeding 100 pages in the prescribed official format, that systematically and comprehensively states the law governing a substantial field. The title “Code” does not alter its rank as an Assembly Act.

How the new system should appear

The published title, authority statement and provision vocabulary should work together. A few examples demonstrate the resulting clarity.

Education Assembly Act 2030: Article 80. Power to make Executive Regulations. Mature short title: Education Act 2030.

School Standards Executive Regulations 2031: Regulation 42. Power of the Examinations Agency to make Agency Rules. Mature short title: School Standards Regulations 2031.

National Emergency Executive Regulations 2031 (Presidential Regulation): Regulation 1. Constitutional authority and application.

Examinations Agency Rules 2032: Rule 16. Security of examination materials. Mature short title: Examinations Rules 2032.

University Conduct Institutional Bylaws 2033: Bylaw 6. Academic disciplinary procedure. Mature short title: University Conduct Bylaws 2033.

Penal Code 2034 — an Assembly Act: Article 215. Elements of the offence.

Implementation without legal disruption

The reform should be implemented through a Legislation, Interpretation and Publication Act. That Act should define the four instrument classes, establish their hierarchy, regulate delegation and subdelegation, prescribe titles, internal drafting units and provision names, require an enactment or authority statement, govern official numbering, and create an authenticated electronic register. It should also distinguish binding legislation from administrative decisions, notices, circulars, guidance and internal policies.

Existing proclamations and legal notices should not become invalid merely because their names change. A transitional schedule can classify each existing instrument according to its maker and authority. Existing proclamations enacted as primary legislation can be deemed Assembly Acts; existing legal notices can be classified as Executive Regulations, Agency Rules, administrative notices or other instruments according to their substance. The official register should display both the former and new citation during a transition period.

Future enabling provisions should use the new vocabulary consistently. An Assembly Act should state whether it authorizes an Executive Regulation, whether the President or a ministry is the authorized maker, whether a ministry may confer rulemaking power on an agency, the permitted subject and limits

of that power, and the applicable publication and scrutiny procedure. Every subordinate instrument should state its complete legal ancestry on its first page.

During the educational transition, official titles should use Assembly Act, Executive Regulation, Agency Rule and Institutional Bylaw. After a statutory review confirms that the shorter meanings are established in public and professional usage, the National Assembly may authorize Act, Regulation, Rule and Bylaw as sufficient formal designations. The register should retain both forms as searchable aliases so the change produces no break in citation or legal continuity.

No press release, circular, manual, directive, notice or unpublished policy should impose a legal obligation on the public. If a ministry or agency intends to make binding law, it should use the legally prescribed instrument, follow the legally prescribed procedure and accept the corresponding accountability. Naming discipline therefore becomes procedural discipline.

Conclusion

Eritrea should replace “proclamation” and “legal notice” as the ordinary names of legislation. The historical record shows that those expressions could obscure the constitutional identity of the rule-maker and make the legal system harder to navigate than it needs to be. A modern system should initially announce its hierarchy directly: Assembly Acts, Executive Regulations, Agency Rules and, where expressly authorized, Institutional Bylaws. Presidential legislation made under valid constitutional or statutory authority should remain within the Executive Regulation category and should not acquire a separate rank.

The corresponding provision vocabulary—Article, Regulation, Rule and Bylaw—would reinforce the hierarchy every time a law is cited. A uniform internal architecture, running from Instrument through Book, Title, Chapter and Section—and only exceptionally Paragraph—to the principal provision and its subdivisions, would make legislation easier to draft, amend, consolidate and cite. Treaties should retain their agreed international format and be attached to short Assembly ratification Acts rather than being redrafted as domestic legislation. The established Codes should remain Codes by convention and public familiarity, while being legally designated Assembly Acts. Future use of the title “Code” should be reserved for comprehensive, systematic, book-length Assembly Acts and may be supported by a standardized 100-page threshold.

As public understanding matures, the teaching adjectives can fall away. Act, Regulation, Rule and Bylaw can carry the hierarchy, while the title block and authority statement identify the maker. This shorter vocabulary would serve citizens, officials, businesses, investors and residents. By requiring every delegated law to declare its maker, level and authority, Eritrea would achieve better drafting and better government.