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Independence of the Lawyer Profession in Ethiopia

**An International Bar Association Bar Issues
Commissions Report on Missions to Ethiopia**

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I. Background

Ethiopia has undergone considerable reforms towards democratization and a more open society since its new leadership came into power in April 2018. Before, the country had suffered from almost 3 decades of repression, which weakened the political opposition, the media, civil society organizations and the justice system. The new leadership under Prime Minister Dr. Abiy Ahmed started an ambitious program of reforms in order to build a legislative framework for modernizing, democratizing and strengthening those institutions relevant for an open society.

It is noteworthy that the process for these reforms was organized according to an open, “bottom-up” approach. The government established an independent 13-member Advisory Council for Law and Justice Reform (AC) in June 2018, comprised of academics, lawyers, and government representatives. The AC is presided over by Professor Tilahun Teshome, a former Supreme Court judge and eminent legal scholar at Addis Ababa University, and is comprised of working groups of specialists and stakeholders from various parts of society. These working groups have been asked to prepare draft laws on a voluntary basis which, following discussion, public consultation, possible amendment, and approval, are to be submitted to the Federal Parliament in order to go through the legislative process. This early stakeholder involvement has gained international acclaim as a model for public participatory processes of legislative drafting,¹ which – according to our assessment – is due in large part to the excellent work of the Advisory Council and the experts they selected to discuss and prepare draft legislation.

The reforms themselves have included a revised anti-terrorism law, a more liberal media law, a law guiding future elections which are to take place in 2020, and a new charities and societies law to strengthen freedom of association. Perhaps most importantly for our purposes, reform efforts have also focused on concerns relating to the Ethiopian justice sector more broadly.

Reform of the justice sector seemed particularly important because, as reports state, and as many interlocutors have confirmed, there is a widespread perception in Ethiopia that the judicial system suffers from corruption and discrimination. Tackling these issues is crucial: corruption in the justice sector undermines efforts to control corruption in other sectors of society, weakens the rule of law, and hinders positive economic development.²

It was these efforts aimed at addressing corruption and discrimination in the justice sector, and the resulting creation of a new proclamation intended to modernize the lawyer profession, that led to the involvement of the International Bar Association in the reform processes in Ethiopia.

¹ United Nations Special Rapporteur on the right to freedom of opinion and expression, End of mission statement (2019), www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25402&LangID=E: (last accessed: March 26, 2020)

² Cf. The World Bank (2012). *Diagnosing Corruption in Ethiopia*, pages 181-236; World Justice Project (2020). Rule of Law Index: <https://worldjusticeproject.org/rule-of-law-index/factors/2020/Ethiopia/> (last accessed: March 30, 2020)

II. The International Bar Association

The International Bar Association, the global voice of the legal profession, is eager to support Ethiopian efforts to modernize the legal framework for the lawyer profession, and to enable independent regulation of the profession in the public interest.

The International Bar Association, established in 1947, has since contributed to global stability and peace through advocating for the rule of law. The IBA's membership consists of 80,000 individual lawyers and law firms, and over 190 bars and law societies from more than 170 countries. As the global umbrella organization for the legal profession, the IBA has supported the establishment of mandatory bars and voluntary bar associations in many jurisdictions. The IBA has a long-lasting relationship with its member, the Ethiopian Lawyers' Association (ELA), which plays a key role in organizing the discussion about law and justice reforms in Ethiopia.

In 2018, the ELA asked the IBA to provide expert advice on the reform process to the justice sector. The IBA responded by assisting the working group tasked by the AC with preparing a draft statute, including providing best practice examples from other jurisdictions. An IBA delegation visited Ethiopia in April 2019, conducting stakeholder workshops and meetings in Addis Ababa, and in the wider country. During further work visits, an IBA expert³ had the opportunity to discuss the situation and challenges facing the legal profession with academics, lawyers, federal and regional government representatives, members of the judiciary, the private sector, and representatives of civil society organizations. This allowed the IBA to provide even more targeted advice.

II. Independent regulation of the lawyer profession in the public interest⁴

The aim of the new statute is to modernize the legal framework for the individual lawyer, to allow for professional cooperation of lawyers, and to grant independence to the profession as a whole by creating a system of independent regulation in the public interest.

The statutory framework for the lawyer profession is not self-serving. Independence of the profession is the basis for improving access to legal information and justice in a country where distrust in the administration of justice contributes to fragility in great sections of society.

Strengthening the lawyer profession, which is part of the administration of justice, will help to increase access to justice, as well as economic growth.⁵ Stable institutions in turn bring internal peace when the rule of law is implemented and enforced.

³ Dr. Cord Brügmann, Lawyer and former CEO of the German Bar Association

⁴ This report uses the term "independent regulation" to make clear that regardless of terminology it is the contents of a lawyer proclamation which are important, and not if the legislator decides to label a system "self-regulation" or "co-regulation".

⁵ According to the 2012 Report of the Special Rapporteur on the independence of judges and lawyers, UN DOC A/67/305 para 30, "an independent and honest judiciary will encourage fair competition and economic growth, as there is a clear correlation between the level of economic activity in a country and an effective judiciary combating corruption."

This is reflected in the United Nations' 1990 Basic Principles on the Role of Lawyers⁶, as well as the AU African Commission on Human and Peoples' Rights' 2003 Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa⁷. These commit governments to providing a legal framework for an independent legal profession, which is instrumental to protecting the public's fundamental rights and freedoms, and granting access to justice.

In addition, as a study commissioned by the CCBE, the umbrella organization of the lawyer profession in Europe, also notes, „... [T]he institutions (including laws and norms) of a legal system condition and determine economic performance. Institutions that are stable and credible facilitate economic development and lead to higher levels of economic activity. In addition, although political institutions determine important aspects of the structure of a legal system, and whilst the judiciary determines how given laws are implemented, lawyers actively contribute, through their everyday actions and conduct, to both the shape of a legal system and how effectively it operates and functions.“⁸

By modernizing the legal framework for the lawyer profession, the Ethiopian government acknowledges the important role of both individual lawyers and the lawyer profession as a whole as part of the administration of justice. Proper and effective administration of justice is the backbone for good societal and economic development. Bars (and bar associations) have a somewhat hybrid function between public administration and civil society; they can serve as models for both good regulation of the lawyer profession in the public interest, while also supporting access to justice in wider civil society.

III. The way to a draft proclamation

Until December 2018, the working group established by the AC did the ground work for an extensive study about the legal profession in Ethiopia, identifying possible gaps between needs, the existing legal framework, and its implementation. The IBA provided an extensive report on international laws and best practice models for good independent regulation through an external expert who was able to provide assistance during the whole process. The working group also organized focus group discussions in Addis Ababa which took place subsequently. After evaluating the focus group workshops, the working group finalized their study, and submitted it to the AC in January 2019.

We want to highlight one aspect of the study which shows the necessity for - at the very least –a gradual shift towards independent regulation, which was confirmed in many meetings and discussions. Members of the lawyer profession, the judiciary, and stakeholders repeatedly mentioned instances of politically motivated (re-licensing and disciplinary) decisions by government officials vis-à-vis lawyers whose work interfaced with repressive laws, such as the 2009 Anti-Terrorism Proclamation. Some described this as harassment, others as intimidation, or as a biased disciplinary system which not only affected lawyers, but also judges and public

⁶ www.un.org/ruleoflaw/files/UNBasicPrinciplesontheRoleofLawyers.pdf (last accessed: March 28, 2020)

⁷ www.achpr.org/legalinstruments/detail?id=38 (last accessed: March 28, 2020)

⁸ Yarrow, George and Decker, Christopher. (2012) Assessing the economic significance of the professional legal services sector in the European Union. Summary ii.

prosecutors. All this leads to a considerable level of distrust towards the regulatory system among key stakeholders. In the focus group's discussions and stakeholder meetings, representatives from many groups called for a more pro-active, independent regulation of the lawyer profession.

Upon receiving feedback on the study from the AC, the working group started to prepare a draft statute. While working on the draft, stakeholder meetings were conducted in Addis Ababa, Bahir Dar (capital of the Amhara region) and Awassa (capital of the Southern Nations, Nationalities, and Peoples' region), together with an international IBA delegation. It seems noteworthy that all interlocutors – be it members of the legal profession, or from outside of the profession – seemed to agree that independence of the lawyer profession is necessary for the successful development of Ethiopian society and the economy.

During further discussions, particularly careful attention was paid to the issues of licensing and supervision over possible self-governing bodies. The government made it clear that they did not yet want to fully hand over licensing and annual re-licensing to the profession.

Subsequently, the working group submitted their final draft in August 2019. At the same time, the IBA and the working group (partly with support of the German GIZ) started to work on a capacity building plan. Through the work on this plan, all actors had a chance to gain a common understanding of the steps necessary to actually implement the policy goal to establish and strengthen the independence of the lawyer profession. This plan shows what is necessary; it makes clear that the process will be incremental, and that it will take 3-5 years to reach the policy goals.

After a few months in which the process seemed not to develop any further, in December 2019 the office of the Attorney General unexpectedly presented an alternative draft proclamation. This draft proclamation was subsequently discussed heavily in the legal community, thanks to open consultations conducted by the office of the Attorney General, but also because of the ways in which it seemed to undermine much of the consensus that had been reached between the various parties up until that stage.

Neither the working group draft nor the draft prepared by the office of the Attorney General have been submitted to the Council of Ministers yet. The legislative process seems to have come to a halt, partly due to the fact that there is crowding of legislation at the Council of Ministers.

IV. IBA assessment

The process the Ethiopian government chose to reach draft legislation is exemplary. In particular, establishing the Advisory Council, making use of the expertise of the profession itself through the working group from an early stage, and listening to stakeholders from the profession and from outside the profession are all very well suited to building trust in the process and the outcome.

The alternative Attorney General draft proclamation, though, seems to have come as a surprise. Its contents, if adopted without changes, would constitute a large step backwards from what can and should be achieved by any new legislation. From the perspective of the IBA,

the original working group draft is very well suited to reaching the legislative goals that were communicated during the process.

In case the office of the Attorney General feels that they cannot yet endorse the working group draft, the IBA wishes to state what the minimum contents of a law establishing a solid framework for an independent legal profession are from an international perspective:

1. Independence

- Independence of the individual lawyer: the law has to include a section on the core values of independence, professional secrecy, and avoidance of conflict of interest. Although, according to the UN Special Rapporteur on the independence of judges and lawyers, “lawyers are not expected to be impartial in the same way as judges, they must be as free from external pressures and interferences as judges⁹ [in order to exercise their profession in accordance with the UN Basic Principles on the Role of Lawyers¹⁰].”
- Independent regulation: this includes institutions for independent administration of non-discriminatory admission and licensing, quality assurance, and a fair disciplinary system, as well as a statutory framework for the adoption of subsidiary rules and regulations with a stable mandatory bar having a considerable role in these tasks.
- Independent supervision of decisions and measures of the regulatory institution(s); supervisory power restricted to reviewing the lawfulness of decisions and measures.

2. Principle-based legislation

It is advisable that the actual statute contain general rules (principles) which lay the ground for specifics regulated in a code of conduct.¹¹

3. Law firms

In the Ethiopian context, allowing the establishment of law firms seems like an important legislative goal, especially when it comes to international collaboration in advising and representing clients who conduct cross-border business. Ethiopian lawyers need to collaborate in firms in order to keep up with the professionalization of legal services delivery to business clients.

4. Transition process / Timeline

Since it is neither reasonable to change the system at the push of a legislative button, nor does the Ethiopian government wish to hand over all regulatory functions in the

⁹ *UN Report of the Special Rapporteur on the independence of judges and lawyers.*

UN DOC A/HRC/26/32/Add.1 para 78.

¹⁰ *UN Basic Principles on the Role of Lawyers.* (1990).

<https://www.un.org/ruleoflaw/files/UNBasicPrinciplesontheRoleofLawyers.pdf> (last accessed: March 27, 2020)

¹¹ The IBA is willing to support the work towards a code of conduct through its IBA Professional Ethics Committee.

immediate future, it seems necessary to adopt - as part of the lawyer proclamation explicitly - the legislative goal to one day create independent regulation, and a timeline stating under what conditions and when that goal shall be achieved. The timeline should be mutually agreed between the actors, with enough flexibility to adapt if circumstances make a departure from the original timeline necessary.

V. Conclusion

The IBA wants to congratulate the persons and institutions involved in the process to strengthen the independence of the lawyer profession in Ethiopia so far. The IBA also wishes to voice concern over setbacks to the process, but remains confident that with the changes necessary from an international legal and best standards perspective, significant steps towards the independence of the lawyer profession can be reached, and thus access to justice, democratization, economic stability and the rule of law can be improved.

The IBA is willing to support the process and to provide assistance for the steps to come, be it in further assisting the ELA and the working group, or in discussions with the Ethiopian government.

Last, but not least, the IBA wants to thank everyone in Ethiopia for sharing information about the country and its current challenges. It was always a pleasure to discuss various topics pertinent to the rule of law, democratization, and the international exchange of best practices in the lawyer profession.