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REFORM OF REGULATION OF LEGAL PRACTICE IN ETHIOPIA: DOES IT IMPROVE ACCESS TO JUSTICE?

*Tewodros Meheret**

Abstract—Legal practice has been one of the focus areas of the reform agenda following the appointment of Abiy Ahmed (PhD) as the new Prime Minister of Ethiopia on April 2, 2018 following the resignation of his predecessor. As a response to public discontent which led to the change in leadership, he promised and commenced sweeping changes. Accordingly, working teams were formed under the Advisory Council organized under the auspice of the Attorney General and one of them has been working on regulation of legal practice. It submitted a draft bill to the Office of the Attorney General months back and it is being reviewed by experts of the latter. The draft is expected to be referred to the Cabinet soon. It is worth looking into the existing law to figure out the extent to which the new draft will address the shortcomings of the former in making legal services accessible. One stark criticism against the existing system is that lawyers are licensed and disciplined by the Office of the Attorney General (the former Ministry of Justice), which is a party in all criminal and in some civil cases. The independence of the profession is compromised, which adversely affects the exercise of right to counsel. The new law markedly departs from the existing law as it broadens its scope by introducing new elements such as the establishment and regulation of statutory bar and law firms, and it reforms the existing system such as continuing legal education and pro bono services. Examination of the draft is necessary to determine whether it meets international standards and best practices so as to ensure accessibility, effectiveness, and quality of the service.

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I. INTRODUCTION

One of the hurdles to ensuring access to justice, the realization of human rights, and the vindication of rights, is lack of legal services or their ineffectiveness. Often, the discourse on the reforming and revitalization of the judicial and legal system relegates the role of the legal profession with the dire consequence for failure or ineffectiveness of the endeavor. The CCBE’s Charter of Core Principles of the European Legal Profession & Code of Conduct for European Lawyers evidences that the existence of a legal profession bound together with respect for rules made by the profession itself is an essential means of safeguarding human rights, in face of the power of the state and other interests in the society.¹ This is further buttressed in the preface of the UN Basic Principles on the Role of Lawyers which states that “adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession”²

Despite the importance of the legal profession, sufficient attention was not given previously and it is laudable that the reform took up the matter and included it as one of the areas craving reform.³ Immediately after the advent of the new government in Ethiopia in 2018, a reform program was launched which encompassed improving some selected laws. It was considered as a manifestation of the government’s commitment to make real reform which

¹ CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION & CODE OF CONDUCT FOR EUROPEAN LAWYERS princ. (a), art. 1.1 (COUNCIL OF BAR & LAW SOC’Y OF EUR. 2019).

² U.N. Specialized Conferences, *Basic Principles on the Roles of Lawyers*, at 119, U.N. Doc. A/CONF.144/28/Rev.1 (Sept. 7, 1990) [hereinafter UN Basic Principles].

³ The institutional and regulatory framework remained stagnant despite the increasing population size, number, and complexity of cases; the expanding diversity of clients (foreign, corporate, etc.); and the various phases of reforms within the country which had a direct impact on the provision of legal services. Moreover, many of the reform projects on the legal and judicial systems sidelined private practitioners.

would be carried out by independent professionals. Accordingly, an Advisory Council was established to oversee the reform process and make the necessary decisions towards the content of the laws.⁴ Though it assumed an advisory role as an extension of the Office of the Attorney General, the leeway it was allowed to have was unprecedented. The actual work was undertaken by a team of experts constituted under the Advisory Council, the latter having the final say on the contents of the draft laws drawn up by the teams before it is channeled to the regular law making process. It is in this setting that the preparation of the draft law aiming at reforming the regulation of legal practice commenced.

The efforts under the Advisory Council were undertaken with no policy direction or guidelines. The working groups, therefore, resorted to international best practices and standards with a view to take lessons from the mistakes and benefit from the achievements of other jurisdictions. Recognition must be given to the contribution of an expert commissioned by the International Bar Association which extended unwavering support to the process. The group carried out research to identify shortcomings of and gaps in the existing institutional and legal framework, to unearth international standards and best practices that would instruct the drafting which was further enriched by consultation with stakeholders. The draft legislation, the product of this process, was approved by the Advisory Council and submitted to the Attorney General. The latter organized a team of drafting experts who came up with the final draft.⁵

The working groups formed under the Advisory Council were required to produce policy recommendations as well as the draft law. In the absence of a policy document dictating its contents, the law becomes a policy instrument which requires that the drafting process and the policy development take place concurrently.⁶ The group set out to investigate the laws and institutions relevant to legal practice with a view of identifying key

⁴ *The Council*, LEGAL JUSTICE AFFAIRS ADVISORY COUNCIL (Aug.15, 2019), <http://ljaac.gov.et/About/CouncilStructure> (The Legal and Justice Affairs Advisory Council is an Advisory Council established by the Office of the Federal Attorney General to advise the government in its effort to undertake a comprehensive reform of the country's legal and justice system. The Council provides advice to the Government on eight focus areas of the reform process, one of which is legal and related services).

⁵ Advocates' Proclamation (Draft), 2019 (Eth).

⁶ Katarina Staronova & Katarina Mathernova, RECOMMENDATIONS FOR THE IMPROVEMENT OF THE LEGISLATIVE DRAFTING PROCESS IN SLOVAKIA 4 (2003), <http://www.policy.hu/mathernova/Policy%20Recommend.pdf> (If countries do not have a system of developing policies in advance, legislative acts become policy instruments. For instance, in Slovakia ninety percent of policies developed in ministries have a legislative nature).

policy issues before the actual drafting.⁷ The first step taken immediately after formation of the working group on regulation of advocates was to do research so as to have inventory of issues and concerns, and find out recommendations to these identified problems. The findings include that the legal and institutional framework has remained stagnant and hence is not abreast of the time. It further identified key issues which need to be addressed in the draft.⁸ Succinctly, the drafting passed through a number of steps including consultation with stakeholders, drawing up the first draft and revision by the Advisory Council and finally handing over the draft to the Attorney General. Now, it is being reviewed by the team of experts to give it final shape before it is submitted to the Council of Ministers.

The discussion herein suffers from a shortcoming in that the examination is to be made on a draft bill whose contents may change anytime. During this assessment, the draft was in the final phase to be sent to the Council of Ministers and modifications can be made now or after it has been sent to the Cabinet. The author relied on one of the different versions and the comments herein are not on the “final draft”. Though there can be some modifications, the main principles will remain the same. With this caveat, it can be generally said that though minor alterations are inevitable until the final approval by the legislator, it is believed that the pillars and the policy directions remain the same. Without going deep into the nitty-gritty of the draft legislation, the focus will mainly be on independence of the profession—a litmus to measure adequacy of the draft law. With this assumption, an examination of the draft law has been made herein below based on the available standards, principles enshrined in international instruments, and best practices with a view to gauge the contents in order to determine whether it promotes access to justice. But, first we will have a bird’s eye view of the law in force.

II. THE EXISTING LEGAL FRAMEWORK

It should be underscored from the outset that Ethiopia has a federal state structure and thus a two-tier regulation of legal profession is in place. The federal government regulates advocates appearing before federal courts and courts in Addis Ababa and Dire Dawa, the capital city and a chartered city

⁷ The Policy and Law Making Process, Educ. & Training Unit, <https://www.etu.org.za/toolbox/docs/govern/policy.html> (last visited March 28, 2020) (Generally, the process, which usually takes four stages, was squeezed into literally two or three stages. At the first stage, the ruling party gives direction, vision, and goals; then, the executive draws up policy on issues which will be followed by finalizing the policy, drafting, and passing the law).

⁸ The Working Group on the Law Governing Legal Practice, Reforming the Regulation of the Legal Practice in Ethiopia, Submitted to Legal and Justice Affairs Advisory Council, The Office of the Federal Attorney General, Addis Ababa, January 22, 2019.

accountable to the Federal Government, respectively. Similarly, states enact and enforce the rules for the regulation of legal practice. The attention here is drawn to the draft law the federal government is working on to reform the regulation of legal practice. Hence, the legal framework to be scrutinized here is applicable to advocates appearing before federal courts comprising two pieces of legislation. Federal Courts Advocates' Licensing and Registration Proclamation No. 199/2000 consists of the rules for regulation of the profession, while Federal Court Advocates' Code of Conduct Council of Ministers Regulations No. 57/1999 incorporates the code of conduct and disciplinary procedure and measures. The reform can extend to both although the focus is on the rules of professional regulation. Given this fact, attention will be paid to the proclamation which will be repealed with the enactment of the new law.

The existing legal framework is characterized by full government control of the profession with no meaningful or little participation of stakeholders. It is the Attorney General⁹ which registers advocates, issues, renews, suspends or revokes licenses,¹⁰ administers the entrance exam,¹¹ and keeps the register of advocates.¹² What is remarkable is that the Advocate General is a party to proceedings in almost all criminal cases and in some civil cases, either representing the government or individuals before Federal Courts.¹³ In effect, a party to proceedings assumes a regulatory role against its counterpart in litigation, literally deciding on the entry as well as the exit into the profession. Additionally, the final decision at the first instance is made by the Attorney General whose decision is final regarding issues pertaining to facts.¹⁴ This is a very serious challenge to the existing law in

⁹ FEDERAL ATTORNEY GENERAL ESTABLISHMENT PROCLAMATION NO. 943/2016 art. 22(1) (Eth.) (allowing the Federal Attorney General to replace the former Ministry of Justice).

¹⁰ FEDERAL COURTS ADVOCATES' LICENSING AND REGISTRATION PROCLAMATION NO. 199/2000 arts. 16, 19 (Eth.); FEDERAL ATTORNEY GENERAL ESTABLISHMENT PROCLAMATION NO. 943/2016 art. 6(11) (Eth.).

¹¹ FEDERAL COURTS ADVOCATES' LICENSING AND REGISTRATION PROCLAMATION NO. 199/2000 art. 11(1) (Eth.).

¹² FEDERAL COURTS ADVOCATES' LICENSING AND REGISTRATION PROCLAMATION NO. 199/2000 art. 16 (Eth.).

¹³ FEDERAL ATTORNEY GENERAL ESTABLISHMENT PROCLAMATION NO. 943/2016 art. 6(3)(e), 6(4) (Eth.).

¹⁴ FEDERAL COURTS ADVOCATES' LICENSING AND REGISTRATION PROCLAMATION NO. 199/2000 art. 26 (Eth.). *See also* INT'L BAR ASS'N, DIRECTORY OF REGULATORS OF THE LEGAL PROFESSION 13 (2016), <https://www.ibanel.org/Document/Default.aspx?DocumentUid=199b20ec-b7ab-4ef4-99c4-cd45c7b6371b>. The appetite for this approach of regulation is withering. In a survey conducted by the International Bar Association (IBA), in 223 jurisdictions, only sixteen jurisdictions (seven percent) still maintain this system of regulation. Obviously, a system which accepts the importance of independence of the profession reforms the regulatory system so as to limit the role of government.

ensuring access to clients and effective representation by lawyers.¹⁵ Moreover, it has several shortcomings failing to respond to the current needs of the country.¹⁶ Though law firms are recognized under the law in force, its implementation has been left to detailed rules of a directive to be issued which has not materialized for two decades.¹⁷ As a result, there are no law firms in Ethiopia. Some of the provisions of the existing law have never become operational,¹⁸ some important components are missing,¹⁹ and others cannot be effectively enforced.²⁰ The need for reform was long overdue and thus the reform is a necessary undertaking.

III. STANDARDS AND BEST PRACTICES

States are sovereign in making a law and determining its contents. An exception can be a restriction placed by international obligation on the state. In the absence of such restrictions, states are free to enact laws governing legal practice, which is fully their discretion, save what implicates other international instruments. Take, for instance, the Universal Declaration of Human Rights, which incorporates principles which have bearing on legal practice and the regulation of the profession. It enshrines the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defense of everyone charged with a penal offence.²¹ By the same token, the African Charter on Human and Peoples'

¹⁵ See FEDERAL COURTS ADVOCATES' LICENSING AND REGISTRATION PROCLAMATION NO. 199/2000 art. 26, 29 (Eth.).

¹⁶ For extensive discussion on this, please refer to The Working Group on the Law Governing Legal Practice, Reforming the Regulation of the Legal Practice in Ethiopia, Submitted to Legal and Justice Affairs Advisory Council, The Office of the Federal Attorney General, Addis Ababa, January 22, 2019. To mention few examples, law firms cannot be established, mobility is not provided for, agreements must be in writing not recognizing electronic contracts or documents, etc.

¹⁷ FEDERAL COURTS ADVOCATES' LICENSING AND REGISTRATION PROCLAMATION NO. 199/2000 art.18(4) (Eth.).

¹⁸ See FEDERAL COURTS ADVOCATES' LICENSING AND REGISTRATION PROCLAMATION NO. 199/2000 art.12 (Eth.) (While there exists an obligation for advocates and law firms to have professional indemnity insurance coverage, the obligation is not applicable since the Council of Ministers has not yet issued the regulations detailing the particulars).

¹⁹ FEDERAL COURTS ADVOCATES' LICENSING AND REGISTRATION PROCLAMATION NO. 199/2000 (Eth.) (The omission of continuing Legal Education (CLE) is an example).

²⁰ See, e.g., FEDERAL COURTS ADVOCATES' CODE OF CONDUCT REGULATIONS No. 57/1999 art. 49 (Eth.) (requiring advocates to render 50 hours of free service per year. Because of lack of detailed rules and enforcement mechanisms, the article is a source of controversy between the regulator and advocates).

²¹ See G.A. Res. 271 (III) A, Universal Declaration of Human Rights, art. 11(1) (Dec. 10, 1948) ("Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."); see also G.A. Res. 44/25, Convention on the Rights of the Child, art. 40(b)(i-ii) (Nov. 20, 1989) ("Every child alleged as or accused of having infringed the penal law has at least the following guarantees . . . to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her

Rights recognizes the right to defense, including the right to be defended by counsel of his choice.²² Certainly, it can be gathered that fairness of the process and the guarantee to the right to counsel anticipates a legal profession capable of delivering the service.

Given the fact that there is no international convention or treaty directly pertaining to the legal profession and because of its territorial nature, legal practice is subject to regulation by domestic laws. There are attempts by international organizations and voluntary associations which strive to bring together lawyers practicing in various jurisdictions to develop standards. In line with this, the Basic Principles on the Role of Lawyers envisions that member states will embark on promoting and ensuring the proper role of lawyers and considering these principles within the framework of their national legislation and practice.²³ The Principles stress the importance of promoting and ensuring the proper role of lawyers, which is essential for the realizations of human, political, cultural, civil, and political rights of individuals.²⁴ Legislation is also influenced by core values which are common in most jurisdictions, inspiring how access to justice and the maintenance of the rule of law can be attained.²⁵ Hence, it is plausible to state that the drafting effort should be enriched by international standards, accepted values, and the experience of other jurisdictions which should be used to measure the success of the drafting exercise. It is prudent to take lessons from the experience of other jurisdictions rather than reinventing the wheel.

In such a short article, it is obvious that we cannot look into all the outstanding issues relevant to the discourse. Thus, considering the importance given to it among practitioners and in theoretical discussion as well as in international instruments, the concept of independence of the profession will be employed to gauge whether the draft meets standards, or expectations.²⁶ The UN Basic Principles give paramount importance to

parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence . . .”).

²² African Charter on Human and Peoples’ Rights art. 7(1)(c), *adopted* June 27, 1981, 1520 U.N.T.S. 217.

²³ See UN Basic Principles, *supra* note 2, at 119–20.

²⁴ *Id.*

²⁵ See Council of Bars & Law Societies of Europe, *CCBE Position on Regulatory and Representative Functions of Bars*, at 2 (June 2005), https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/COMPETITION/CPT_Position_papers/EN_CPT_20050630_CCBE_Position_on_Regulatory_and_Representative_Functions_of_Bars.pdf.

²⁶ In the several discussions which took place during the drafting of the law, advocates stressed the need to make the profession independent. Access to justice cannot be effective without effective representation, which cannot be achieved without an independent profession. Because of constraints, one

independence of the profession as the respect of other human rights counts of it.²⁷ Further, one of the core values of the legal profession commonly incorporated in domestic legislations as well as in soft laws is independence of the legal profession. The import of independence in the administration of justice is manifested in the normative recognition in the Constitution and other laws. The Constitution recognizes independence of the judiciary²⁸ while the Federal Attorney General is empowered to discharge its powers and duties based on law independently, free from any person or body's interference.²⁹ It is natural to extend the same principle of independence to one of the components of the justice system and also it is rational to employ this principle to measure laws in order to assess whether effective access to justice can be attained.

In fact, independence of the profession may mean different things. It may refer to self-regulation and the Bar's freedom from outside regulation. It may also mean a "large degree of discretion, of autonomy from outside direction, in determining the conditions of one's work."³⁰ Whichever meaning one adopts, the existing legal framework does not fulfill the requirement of independence of the profession. The existence of an independent bar associations is crucial for "the independence of the profession, as their role is, inter alia, to offer a strong governing structure and leadership; promote the welfare of lawyers; and ensure access to the profession for those who are suitably qualified."³¹ Although, there are those who emphasize independence from the perspective of regulation by a professional association, the focus here is on the independence of lawyers to make free judgment regarding their occupation. In spite of the multiplicity of interpretation of the term and its scope, it is evident that the significance of independence cannot be overstated. As Professor Gordon summarizes it, "disputes over the advocate's proper role cannot really be disputes over freedom *versus* regulation, but rather over what the form and content of regulation should be."³² We will make an examination of the contents of the

of the standards is chosen to assess the existing and the draft law, although it should be underlined that it may not be conclusive as to the effectiveness of a law.

²⁷ UN Basic Principles, *supra* note 2, at 122.

²⁸ CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA PROCLAMATION NO. 1/1995 Aug. 21, 1995, ch.9, art. 78.

²⁹ Federal Attorney General Establishment Proclamation, 2016, art. 16(1) (Proclamation No. 943/2016) (Eth.).

³⁰ Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. Rev. 1, 7 (1988).

³¹ INT'L BAR ASS'N, *The Independence of the Legal Profession: Threats to the Bastion of a Free and Democratic Society*, at 8 (Sept. 2016).

³² Gordon, *supra* note 29, at 10.

draft law in order to determine whether independence in whichever form has been espoused.

IV. SALIENT FEATURES OF THE DRAFT BILL

Regulation of legal practice is meant to achieve several goals that consider a diversity of converging interests. One of them is ensuring that clients are effectively represented in legal proceedings. But this is contingent upon several factors which range from legal training to delivery of the service. Quality of legal education has a direct impact on the quality of legal service citizens obtain. This is, however, beyond the purview of the law under revision. Yet, the law attempts to incorporate mechanisms of ensuring quality of the service. Entry requirements into the legal profession faced by aspiring lawyers may affect clients' access to legal services. If requirements are strict, legal services could be monopolized by the few lawyers who could afford to meet such standards, thus increasing the price of legal services and reducing their broad availability. On the other hand, laxity in admission may diminish the quality of legal service. The draft bill tried to strike the balance between the two by providing for admission requirements which ensure entry only to those who have modest experience in addition to the required training which can be met by applicants with some effort.³³

Further, admission does not necessarily mean that a lawyer is qualified. Legal systems introduce mandatory continuing legal education (CLE) because of the dynamic nature of the law and never-ending new developments in the field. The draft law introduced new ideas to complement and fill gaps in the existing law³⁴ and provide details to make it effective. The draft law introduced detailed provisions governing mandatory CLE,³⁵ illustrating the incorporation of new ideas.

The draft bill made foreign expertise accessible by introducing a new provision which allowed foreign lawyers to practice in Ethiopia in specific situations.³⁶ Departing from the existing law, rather than limiting itself to recognizing law firms and leaving the details to another legislation which made it impossible to introduce the entity, the draft law not only provided

³³ Under article 12 of the draft bill, three years' experience suffices for a degree holder to practice before Federal First Instance Court. But the license is subject to passing an entrance exam, as required in article 12(1)(b) and to completing mandatory Continuing Legal Education under article 26 of the draft bill. Advocates' Proclamation (Draft), 2019 art. 12, 12(1)(b), 26 (Eth.) <https://chilot.me/2019/05/advocates-proclamation-no-2019-draft/>.

³⁴ Trust account, practice by foreign lawyers, compulsory audit, participation of non-lawyers in the provision of legal service and organizing law firms in LLP form are cases in point. Advocates' Proclamation (Draft), 2019 art. XX (Eth.).

³⁵ Advocates' Proclamation (Draft), 2019 art. 26 (Eth.).

³⁶ Advocates' Proclamation (Draft), 2019 art. 8 (Eth.).

for organized legal service but also laid down rules for its establishment as well as operation.³⁷ A subsection has been devoted to indemnity insurance in an effort to protect clients from malpractice or potential incompetence of lawyers.³⁸

It can be seen as a breakthrough to form and involve new entities in the regulation of legal practice. Deviating from the exclusive mandate reserved to the Attorney General, recognition has been given to the role of other stakeholders such as the statutory bar and Advocates Administration Board. For the first time, the draft bill gave way to statutory bar though it has limited function both with respect regulation or promotion of the profession as its role is restricted to supervision of CLE and administration of trust accounts.³⁹ It is also interesting to note that the bar will have a role in protecting interest of its members,⁴⁰ which is usually left to the voluntary associations. The other new organ is the Board which is more of an appellate body essentially with the power to review decisions of the Bar or the Attorney General or specialized committees.⁴¹ Though attempts have been made to undermine the role of the Attorney General, it remains to be the focal body in charge of regulation of legal practice.

It remains to be answered whether these major departures will ensure independence of the profession. It is appreciated that the participation of stakeholders has been broadened.⁴² Yet, the dominance of the Attorney General seems to prevail for years to come.⁴³ If a legal system accepts the significance of independent the legal profession, it is natural that it would introduce a system of regulation which will ensure that advocates are independent in the context that the interest of the public is protected. Other jurisdictions resolved it by going as far as allowing self-regulation, while

³⁷ Advocates' Proclamation (Draft), 2019 art. 37 (Eth.).

³⁸ Advocates' Proclamation (Draft), 2019 art. 33 (Eth.).

³⁹ See Advocates' Proclamation (Draft), 2019 art. 62 (Eth.).

⁴⁰ See Advocates' Proclamation (Draft), 2019 art. 62(15) (Eth.). Protecting the rights of lawyers should be the duty of a voluntary professional association which inherently focuses on its members. The purpose of a statutory bar, on the other hand, is to regulate the profession with a view toward promoting a certain common interest such as consumer protection, justice, setting professional standard, etc. The latter has to strike the balance between conflicting interests while the former stands for its members.

⁴¹ Advocates' Proclamation (Draft), 2019 art. 71 (Eth.).

⁴² Though licensing remained under the decision of the Attorney General, the statutory bar is made to have a role in addition to the Attorney General and the judiciary.

⁴³ Departing from an earlier version prepared by independent experts which gave wider power to the statutory bar, the latest version reinforced dominance of the Attorney General in the administration of the profession. Looking at article 80(1) of the draft bill one cannot miss the point that admission and renewal of license is fully controlled by the Attorney General. Advocates' Proclamation (Draft), 2019 art. 80(1) (Eth.).

others mandated an independent organ such as courts or independent regulatory organ.

V. CONCLUSION

The draft law comes a long way to resolve outstanding issues and address criticisms, fill gaps, and provide details, which is commendable. Several improvements have been made departing from the decades old law. Without going into details, a cursory look at the existing law reveals that the profession is not independent. The prominence of independence of the profession cannot be emphasized enough for effective access to justice. Despite the fact that revisions have been made to the existing law, the draft as it stands now requires further reform to make the profession independent by significantly limiting or excluding the role of the Attorney General in regulating the legal profession.