



TEMUAGACH

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ETHIOPIAN BAR ASSOCIATION NEWSLETTER

"*Temuagach*" is an Amharic word for litigant, advocate, barrister.

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Editorial

Independence of the Judiciary - one of the Pillars of Democracy

Any democratic system has basic and core pillars by which the system is supported. In any society to say that there is democracy there has to be a periodic free and fair election. There should exist freely competing opposition parties with an alternative economic and social agenda. The government of the day should stand on the free will of the people. There should be a free competition in the economy and last but not least, there should be strong and independent judiciary.

Within the government itself, there should be a check and balance system by which the legislators, the judiciary and the executive coordinate and at the same time control each other. In this process of coordination and control, the existence of strong and vibrant independent press which serves as a "watch dog" of the public is vital.

As a means of a checking mechanism on the executive and for the prevalence of rule of law, a strong and independent judiciary is needed. At the same time as the judiciary is a body that decides on the basic rights, life and property of citizens, in addition to being strong and free, it should be matured.

It is to promote and ensure these requirements that we publish the Basic principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress.

In Ethiopia beside the constitution, there are laws on the independence and regulation of the judiciary. That is one positive aspect in the administration of justice. However, it has become a topical issue to see that the law and its implementation is in line with the international standards. Since the judiciary is an essential element in a democratic system necessary to ensure that the basic rights of citizens and rule of law are respected, it is imperative that all citizens, and especially legal professionals stand for strong and independent judiciary. It is only when we have a strong and independent judiciary, free of a pressure from the executive branch and able to uphold rule of law, that we can speak that democracy and good governance have prevailed.

Attorney's Awarded for Free Legal Aid Service

Attorneys and other law professionals who gave free legal aid service for the needy have been awarded.

The award ceremony took place on Nov. 18/2008, at Ghion Hotel, Sheba Hall.

The opening speech for the award ceremony was made by Associate Professor Tilahun Teshome, the board chairman of APAP and lecturer at Addis Ababa, Law School by which he explained the importance of free legal aid service.

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EBA Won a Case on Compensation Litigation

The Ethiopian Bar Association (EBA) won Birr 150,000 compensation for a victim of bus accident who lost one arm and one leg.

The victim, Ato Fetene Nigussie was hit by Anbessa bus on Feb. 2003 which resulted in his loss of a leg and an arm. The Ethiopia Insurance Corporation, which is the insurer of Anbessa city bus enterprise, paid the claimant 30,000 birr for the damage sustained by the act of the insured party. But the compensation was so little that it could not cover the claimant's expense for medical treatment.

Obama's Victory Triggers Awkward Questions on African Democracy for African Politician

Africa may have hailed his victory, but Barack Obama's election as the first black president of the United States has triggered awkward questions about the continent's own democratic tack record.

As the euphoria fades, opposition parties across the continent contrasted Obama's victory with the shortcomings of their own democracy as a reason for despondency.

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Monthly Discussion on Legal Issues Started

A monthly discussion on topical legal issues has started at EBA's Continuing legal Education Center, which is located on Debrezeit road, behind Lancha.

So far, six lectures were conducted: on the development of the Ethiopian legal system, on the sovereignty of states and the use of force against other states, on International Arbitration, on business negotiation, on corporate crime and on international taxation by prominent Ethiopian and foreign scholars.

Having this situation, Fetene made contact with EBA for seeking a legal aid service. EBA welcomed him and assigned a lawyer, Ato Meheretab Leul, to represent him before a court of law.

On behalf of Fetene, the lawyer sued Anbessa city bus enterprise seeking an additional compensation. He presented a reasonable argument before the court of law and litigated for 3 years.

Finally, the court of rendition passed a judgment in favour of the claimant to be paid Birr 150,000 in compensation.

The president of Ethiopian Bar Association, Ato Tameru Wondem Agegnehu handed over a bank book containing the 150,000 Birr compensation to the victim.

Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist

Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the Judiciary

The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

Current Issues

It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of Expression and Association

In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, Selection and Training

Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of Service and Tenure

The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional Secrecy and Immunity

The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

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Attorney's Awarded

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In addition to the award given, a discussion on a paper on Free Legal Aid took place. It was chaired by Ato Tameru Wondem Agegnehu, the President of the Ethiopian Bar Association. The papers outlined the need for free legal aid in Ethiopia, the legal obligation on Ethiopian attorneys to provide 50 hours of free legal aid service each year, and the experience of other countries in providing free legal aid service. "Although there is the legal obligation mentioned above on Ethiopian attorneys, there is a problem of implementation," the study stressed.

During the discussion on the paper the need for the creation of national institution to coordinate services given by the government and non-governmental organization was underlined considering the demand for the service in the society.

During the award ceremony attorneys and other law professional from Addis Ababa; Harari, Amhara and Oromya regions have received medals, trophies and certificates.

At the closing of the award ceremony and the workshop on legal aid, Ato Dessalegne Berhie, President of the Federal First Instance Court, praised attorneys and other law professionals for the service they delivered. He also said that the federal courts are ready to contribute their part in facilitating the service.

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Basic Principles...

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Discipline, Suspension and Removal

A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.

All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

Obama's Victory ... continued from page 1

When the declaration was made, I broke down and I wept; one-for joy that my eyes have seen the coming of the lord'; number two-I wept in sorrow for my country, " said Former Nigerian Foreign Minister Bolaji Akinyemi, now a member of the National Electoral Reform Committee.

Akinyemi's organization faces an uphill struggle to iron out the democratic wrinkles of Africa's most populous country, where President Umaru Yar'adua's April 2007 poll victory is still subject to approval by the Supreme Court, which recently indefinitely postponed a ruling.

Similar concern surrounded recent elections in Kenya and Zimbabwe, which were marked by widespread violence and intimidation.

And on Monday, the main political parties in the Ivory Coast agreed to postpone November 30 elections until next year because of insecurity and problems with voter registration.

In Harare, opposition leader Morgan Tsvangirai, who believes he was robbed of an outright victory in Zimbabwe's March elections, said Obama's victory has a particular resonance with its lesson of "political maturity and tolerance."

Zimbabweans appreciate the true value of a vote, the preciousness of a poll that is conducted openly and fairly, and a result that is respected by all," said Tsvangirai, who pulled out of a runoff against Robert Mugabe after scores of his supporters were killed.

Human Rights



Universal Declaration of Human Rights (1948)



The Charter of the United Nations of 1945 proclaims that one of the purposes of the United Nations is to promote and encourage respect for human rights and fundamental freedoms for all. With the energetic support of Eleanor Roosevelt, alongside figures such as René Cassin, Charles Malik, Peng Chun Chang and John Humphrey, States, for the first time, sought to set out in a single document the range of fundamental rights and freedoms that belonged to all by virtue of their status as human beings. These efforts resulted in the Universal Declaration of Human Rights, adopted unanimously by the General Assembly on 10 December 1948, henceforth Human Rights Day. This document, expressed as "a common standard of achievement for all peoples and all nations", sets out a wide span of rights covering all aspects of life. Its first article famously describes the idea of fundamental human rights: "All human beings are born free and equal in dignity and rights."

After setting out a general prohibition of discrimination, the Declaration enumerates specific groups of rights: civil, cultural, economic, political and social. Articles 3 to 21 describe classic civil and political rights (including the right to asylum and the right to property). Articles 22 to 28 guarantee and range of economic, social and cultural rights, with the important recognition in article 28 that: "Everyone has the right to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

While the Declaration is, as its name suggests, not a directly legally binding treaty, its importance should not be underestimated. It is of high moral forces, representing as it does the first internationally agreed definition of the rights of all people, adopted in the shadow of a period of massive violations of the rights there described. The Declaration also laid in a direct fashion the groundwork for the treaty structure to be erected in the decades to come. Not least, the Declaration through its comprehensive drawing together of the different types of rights emphasizes the commonality, interrelatedness and interdependence of all rights, a point of basic importance reaffirmed many years later in the 1993 Declaration of the Vienna World Conference on Human Rights.

(Taken from "The United Nations Human Rights Treat System - An Introduction to the core human rights treaties and the treaty bodies, Fact Sheet No. 30).

Law Enforcement Institutions

The following script is take from a "Report of study on General Justice Reform Programme" compiled by the office for the Justice Reform Programme with the Ministry of Capacity Building.

The Public Prosecution Service

The Public Prosecutor Service is formally part of the executive branch of the government. The authority of Federal prosecution is vested in the Ministry of Justice. However, other governmental offices also have prosecutorial authority. On state level, the head of Justice Bureau's functions and authority are similar to those of the Federal Ministry of Justice.

The latter appoints Federal prosecutors, either directly or through a commission, which he appoints. Candidate prosecutors at federal level must have a degree or a diploma in law. The public prosecutor is in charge of criminal investigation and has authority over the police. There is no formal link between PPS and the prison administration.

The bases for the PPS's authority -the criminal code (1951) and the criminal procedure code (1961) - are obsolete. Drafts of new codes have been submitted to the House of People Representatives.

The Federal Ministry of Justice and The head of the Justice Bureau combine judicial and executive powers. This may be detrimental to the independence of PPS. The fragmentation of Public Prosecution weakens the institution; especially as different prosecution authorities are accountable to different ministries. The procedure for the election and appointment of Prosecutors is not open to outside expertise and there is a general shortage of prosecutors. Training is insufficient. Despite the authority given to it by law the PPS, in minimal role in the investigation performed by the police. The shortage of staff and very poor working conditions lead to a very heavy and increasing backlog of cases. Relation with the judiciary, the police and prison administration are poor.

The Police

The Ethiopian Police system consists of a Federal Police Service, nine Regional police forces and the police

force of Addis Ababa and Dire Dawa, which have a special position.

The Federal police commissioner is accountable to the Ministry of Federal Affairs. The Regional states are free to organize their police as they see fit. Nevertheless, all state police forces have a structure similar to that of the Federal Police. They are accountable to the Ministry of State Affairs of their respective state. The commissioners of Addis Ababa and Dire Dawa police are accountable to the Governors of these cities and to the Ministry of Federal Affairs. Police training takes place at the training center for Federal Police, at the Police Collage and at regional training centers. A start has been made in improving conduct and integrity.

Police strength is much higher in Addis Ababa than in the regions. The Militia is a voluntary organization. It is run by professional and paid executives. Ethiopia has one Forensic laboratory. Police resources are limited; vehicles are scarce. The Managers of the Federal Police service have formulated a plan to meet these limitations.

The image on police is very poor. The mentality of police officers is still not entirely de-militarised despite the efforts made to introduce the concept of police by consent. The housing and working conditions of regional training centers are very poor. The training methods at Police Collage are traditional, drilling, as practice is hardly compatible with the objectives of community policing. The ratio of police density in comparison with population is not satisfactory, especially if the recent decision on entrusting police with guarding the national borders is implemented. The resources available to the police are inadequate. There is little use information and communication technology (ICT). As a result it is impossible to establish a strategic prevention strategy. Police mobility is far too limited. Police officers frequently disregard forensic evidence because the only forensic laboratory cannot cop with the potential demand. The fact that the militia operates with a large measure of autonomy is potentially dangerous as they receive no training and are not controlled by the central government. The relations between the PPS and the police are poor. All too often the PPS is unable to control police activities.