



# TEMUAGACH

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ETHIOPIAN BAR ASSOCIATION NEWSLETTER

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

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## Editorial

### For A Strong Justice System & Professional Association

Legal professionals have a significant role in the justice system of a country. Legal professionals have the necessary legal consciousness, education and training with regard to understanding the internationally acknowledged basic human rights and are considered major stakeholders in the realization of the rule of law. As a result of this, one of the primary responsibilities of lawyers is the role they play in protecting and strengthening their profession and the rule of law.

At least three major basic points have to be fulfilled for the legal professionals to meet their responsibilities. The first requirement is the ability to freely organize their associations. To form an organization is a basic right and thus lawyers have the right to form their association and be its members. This Association should be formed on the free will of its members.

As pointed out in this publication about legal professionals particularly the basic principles on the role of lawyers, (see page 2) associations of lawyers should protect their interests, expand their horizon of knowledge and guard their professional integrity. Lawyers have a right to form their association without any outside pressure and to be administered by it. The executive members of the Association should be elected by members and must run their business without any external interference.

The second basic principles that are indicated as the role of professionals in this publication are those concerning the responsibilities of the government. Those responsibilities of the government include to give due concern to the affairs of lawyers, to support their association, to raise the awareness of the public on the role and responsibility of lawyers, to create conditions for citizens to have legal aid by lawyers with appropriate legal training.

Lastly, if higher learning institutions, particularly those engaged in producing legal professionals, would work hard in offering training of adequate standard and professional ethics, the service rendered to individuals and the society at large would be qualitatively better. The quality of lawyer is vital as their activities affect life, basic human rights and property ownership. Thus quality training is a decisive factor for quality service. The aforementioned three parties should actively work to seeing to the implementation of this requirement.

If all the above mentioned stakeholders execute their respective responsibilities, a strong justice system and professional associations would be a reality and this would have a decisive role on the construction of a democratic system where the rule of law prevails and human rights are respected.

## EBA Held Annual General Meeting

The Ethiopian Bar Association (EBA) held its 2007/2008 Annual Meeting in its Center for Continuing Legal Education & Attorneys' Club located on Debre Zeit Road behind Lancha.

In the Annual General meeting, reports of the Executive Committee, Internal

Controllers and External Auditors were heard, deliberated at and endorsed by the members present.

Before the closing of the Annual Meeting, certificates were also issued to five former members of Executive Committees in recognition of their services.

## Workshop on Court Reform program conducted

The Ethiopian Bar Association recently conducted a workshop on which a paper on Court Reform Program and the present situation of courts was presented.

Following the presentation of the paper at the Center for Continuing Legal Education and Attorneys' Club,

## A Center and a club became operational

The Ethiopian Bar Association has made its Continuing Legal Education Center and Attorneys' Club operational.

Known officially as "Continuing Legal Education Center and Attorneys' Club," the center provides short term training programmes to foster the legal consciousness of its members while

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## Ethiopian Human Rights Council Publishes A Fact Sheet

The Ethiopian Human Right Council published the Amharic translation of the United Nations Human Rights Defenders Fact Sheet.

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behind Lancha fruitful suggestion and opinions were forwarded. Questions which sought clarification from the presenters were also raised and answered by the presenters and the secretary of the association.

The workshop came to an end with the agreement by participants to give the presenters additional written suggestions and opinions to further improve the paper.

## Basic Principles on the Role of Lawyers

*Adopted by the Eighth United Nations Congress on the prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990*

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, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence.

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms.

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safe guards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance of all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas 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.

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringement, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest. The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

### *Access to lawyers and legal services*

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

## Current Issues

### Basic Principles. . .

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#### *Special safeguards in criminal justice matters*

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

#### *Qualifications and training*

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyers and of human rights and fundamental freedoms recognized by national and international law.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be national of the country concerned, shall not be considered discriminatory.
11. In countries where their exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have district cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

#### *Duties and responsibilities*

12. Lawyers shall at all times maintain their honour and dignity of their profession as essential agents of the administration of justice.
13. The duties of lawyers towards their clients shall include:
  - (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;
  - (b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
  - (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

### A center . . .

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the club serves as a venue where members meet during their free time and discuss ideas of common interest.

The opening of the Attorneys' club is believed to contribute immensely to the strength of the Association and unity of its members.

The Association holds its annual and other major meetings on this premise.

### Ethiopian Human. . .

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The Fact Sheet is prepared to assist the great work of Human Rights defenders and it is primarily aimed at reaching government authorities, national and international NGOs, workers of the United Nations and the private main actors (Including International Corporation) and for Human Rights Defenders themselves.

The Ethiopian Human Rights Council realized the publication of this Fact Sheet with the assistance of a local NGO Known as Initiative Africa.

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14. Lawyers, in protecting the rights of their clients and promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with a law and recognized standards and ethnics of the legal profession.
15. Lawyers shall always loyally respect the interests of their clients.

### *Guarantees for the functioning of lawyers*

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethnics.
17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.
18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.
19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right to a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.
20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.
21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.
22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

### *Freedom of expression and association*

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of other lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethnics of the legal profession.

### *Professional Associations of Lawyers*

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.
25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethnics.

### *Disciplinary proceedings*

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.
27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.
28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.
29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethnics of legal profession and in the right of these principles.

## The Judicial System

*The following script is taken 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 Ethiopian Constitution, Chapter 9 states that Federal and Regional Courts will be established. It recognizes regular courts along with traditional and Religious Courts. Even though it is not stated in the constitution there are also community courts. There is a procedure which allows an appeal to the Regional Courts on the decision given by community courts. However, the procedure pertaining to community courts does not apply to all the Region. The selection of judges, the conditions of service, discipline and the like concern the Federal Judicial Administration Commission. The Judicial Administration in the Regional States also function like wise.

The Ethiopian justice system has basically three major problems. Firstly, it is not easily accessible and it does not respond to the interest of the people of the lowest stratum. Secondly, the administration of justice has to take strong measures to tackle problems of misuse of power and political intervention. In the third place, the small budget allocated to the administration of justice further exacerbates its performance. The confidence of the people on the freedom of courts is very low. Be it in the Federal or Regional States, to execute direct and control the daily work is the responsibility of the Presidents of the Courts. Presidents of Courts work as judges and as administrators. This may do harm to their efficiency. The way the selection and promotion of judges is carried out is not clear and

it does not invite professionals. The performance evaluation has a similar problem. The absence of mechanism for the training of judges is one of the major problems of the justice system of Ethiopia. The handling of cases in court administration is also very weak. Cases handled by each judge have increased during the past years. To get all types of information easily also has limitations. Courts are not able to get promulgated laws easily. Many of the courts have no libraries. The existing ones are not well organized. Many of the decision of courts are not being published. Even though the public understands that courts are the appropriate institutions to resolve disputes, it is only those who have cases who know the procedures of courts. The working environment which is not conducive violates the freedom of judges, impacts on their activity and invites corruption.

## Condolences

As the following members of EBA, whose names are mentioned below, have passed away, EBA would like to express its deepest sympathy for their families.

1. Ato Alamu Fokion
2. Ato Sine Boja
3. Ato Dejene Shiferaw
4. Ato Solomon Alemayehu
5. Ato Assefa Demissie
6. Ato Abera Woldeyohannes

May their souls rest in peace.

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