REFORMING THE REGULATION OF THE LEGAL PRACTICE IN ETHIOPIA

Prepared by

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This study is prepared as part of the contribution of a team of lawyers[1] Advisory Council to review the basis of existing legal practice in Ethiopia, identify problems and recommend solutions. The study focuses on legal practice by private attorneys or commonly referred to as advocates. It looks at the legal and institutional framework on the basis of which legal practice is currently regulated and also, where appropriate, takes a comparative look by highlighting country and international practice. The study concludes with recommendations that arise from the analysis made in its various sections. Once the recommendations are consulted and agreed up on, new detailed rules informed by the change of policy and forming the institutional and normative framework to regulate legal practice will have to be developed.

1. INTRODUCTION

1.1. The Background of Legal Practice

The historical background of the emergence of legal practice dates back to ancient Greece and Rome. In ancient Greece, the individuals who were described as "lawyers" were the orators of ancient Athens.[2] A litigant would approach a well-known orator or writer and explain his/her case so the orator or writer would provide him or her with a court statement or a documentary evidence to be annexed to the claim.[3] This was the case because the laws of Athens required litigants/individuals to plead their own case at a court of law.[4] However, this law was repealed due to the pressing demand for litigants to be assisted by their friends or other persons at the court of law making it possible for litigants to be assisted by their relatives, friends or other persons who have no direct interest in the case.[5] Nevertheless, there was a legal requirement

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[2] Robert J. Bonner, Lawyers and Litigants in Ancient Athens: The Genesis of the Legal Profession (New York: Benjamin Blom, 1927), page 202.

[3] E. W. Timberlake, Jr., Origin and Development of Advocacy as a Profession, (Virginia Law Review, Vol.9, No. 1 , Nov., 1922), Available at http://www.jstor.org/stable/1065786, (Accessed: 14-03-2018) page 25

[4] Supra note 1, page 202

[5] Legal Profession and Ethics, (Justice and Legal System Research Institute Teaching material, 2009), page 2

prohibiting the payment of any fee for legal representation; although it had not been observed by many due to its unpopularity[6].

In ancient Rome, where the civil law system originated, there were non-official lawyers called juris consulti and patroni.[7] Unlike Greece, the juris consulti were trained in law. However, the Roman lawyers did not have a professional code of conduct.[8] Any person could call himself/herself an advocate or a legal professional. Emperor Claudius legalized advocacy as a legal profession and imposed a fee of 10,000 sesterces for the professional service.[9] A well-established and regulated legal service is said to have started in the Byzantine Empire.[10]

Modern legal profession was started in the 19th century. During those days, lawyers' services were restricted to litigation and court appearances. However, several changes have been introduced to the legal profession around the end of the 19th century. Mainly, the role of advocates extended from court appearance and litigation to facilitating client's businesses in different government offices and administrative courts.[11] Gradually, the legal profession became a professional service provided by skilled persons who are trained in law including services such as legal counseling and court representation; it also became a legally recognized and accountable profession. In the present day, in almost all countries of the world, it has become mandatory for a person providing a legal service to be trained and experienced in law.

In Europe, at the beginning of the modern age, professionalization of lawyers accelerated. Some countries saw a unified profession; in others, the profession was divided in those who advised outside of courts and those who represented clients at court. Some jurisdictions began to require studies of the law at universities and/or completion of a practical training. Regulation came from top to bottom through government decrees, parliamentary statutes, or through courts. It can be said that with a more sophisticated and professionalized judiciary, the need for well-educated and trained lawyers grew in order to provide equality of arms between the different professions within the legal community. Lawyers exercised an increasingly important function beyond

[6] Supra note 1, page 206
[7] Supra note 4, page 2
[8] https://en.wikipedia.org/wiki/History_of_the_legal_profession
[9] Ibid
[10] A. H. M. Jones, The Later Roman Empire, (University of Oklahoma Press, vol. 1, 1964), page 507.
[11] James Willard Hurst, Lawyers in American Society 1750-1966, 50 Marq. L. Rev. 594 (1967). Available at: http://scholarship.law.marquette.edu/mulr/vol50/iss4/6, page 596

representing clients in litigation. As advisors, they worked for private clients and government agencies. Beginning in the late 19th century, the legal profession gradually became a professional service. In the present day, in almost all countries of the world, it has become mandatory for a person providing a legal service to be trained and experienced in law.[12]

In most countries, providers of legal services were supervised by the government – be it the executive or the courts. In Canada, the year 1797 marks the beginning of self-regulation, when the Law Society of Upper Canada was created by statute. Before then, lawyers had been supervised by the judges they appeared before. In the USA, the first – rather informal and private – self-regulation of the profession began in the 19th century when local clubs of lawyers decided to give themselves codes of conduct to fill in the gap in regulatory institutions and standards. In Germany, to give an example from continental Europe, self-regulatory bars were established in the late 19th century, after private associations of lawyers had demanded independence from a government-supervision which was so tight that lawyers were indeed rather civil servants like public prosecutors. Self-regulation in statutory bars was eventually granted to the lawyers in Germany in 1878.

Quite dramatic changes in the way the profession is regulated started only after the turn of the millennium. On the one hand, there was a difficulty to align the regulatory framework which had been created with the image of a solo practitioner in mind, who – as a generalist – dealt with all legal needs of the clients due to superior education and experience, with a reality in which the legal profession had become increasingly heterogeneous. In the UK, for example, law firms had grown, especially since in 1967 when the ban on law firms to have more than 20 partners was lifted by the Companies Act. In the US, very large law firms were formed around the same time. A similar development, even though delayed, took place in Germany after the Federal Court of Justice ruled in 1989 that it was possible to have law firms with offices in more than one district. This led to the development of nationwide law firms. The General Agreement on Trade in Services (GATS) and the European Union (EU) legislation allowed for cross-border practice and multinational law firms since 1994. Countries like Greece or Italy kept a legal framework for the

[12] One of the sources for this study, especially for the international perspective, is a report by the IBA expert Dr. Cord Brügmann (Brügmann, C. (2019). *Reforming Regulation of the Legal Profession in Ethiopia. IBA commissioned report to the working group created by the Federal Attorney General's Advisory Council for Law & Justice Reform.)* Findings from the Brügmann report are used in this study.

profession that kept lawyers in small, local firms, where – until today – they practice as generalists.

A growing perception can be noted since the 1980s that regulators allegedly considered the public interest insufficiently, especially when it came to the enforcement of disciplinary sanctions against lawyers violating professional rules and regulations. Since the turn of the millennium this has led to regulation reforms, to some extent coming from the profession itself, but often driven by courts and legislators. As a result, new systems of regulation are in place now in a number of jurisdictions. They range from more lay involvement in bar leadership to stricter separation from regulatory and representative functions, in some instances by splitting organizations into separate entities to more government involvement. Like it is the case in other markets, today models of co-regulation can be found with varying degrees of government involvement on the one side and fields of self-regulation on the other hand. One recent trend is a focus on entity-based regulation, focusing on the law firm rather than on the individual lawyer. Each system is believed to serve the public and the profession best in the context of their specific legal culture. It can be noted, that a certain reluctance in the legal profession which could be noted in the past has given way to a more open debate about good regulation, with various stakeholders participating in this debate. In conclusion, considering the history of the legal profession in various jurisdictions, one can say that it is the core of a lawyer's role to grant access to justice, thus, to strengthen the rule of law.

1.2. Legal Practice in Ethiopia

One may tend to think that legal practice in Ethiopia would grow in tandem with the growth of a modern legal system in the country. However, many scholars agree that legal practice in Ethiopia dates back to the days where modern legal system was not in place. Even before the provision of legal education, scholars at the church and those who used to frequent the public sphere used to give legal support for other people. As legend has it and evidenced by some documents, there was a litigation system in our country called "*Teteyek*" and parties to the dispute were said to be getting their legal knowledge from reading *Fitha Negest* in monasteries and other religious institutions as well as attending others' hearings.

Following the victory of Adwa, Emperor Menelik II established a Council of Ministers on January 11, 1908 based on the Capitulation Treaty and this paved the way for many nations worldwide to set-up consular offices and for the leaders of many religious institutions and merchants to come to Ethiopia. Following the Capitulation treaty, the laws of Ethiopia, Italy, France and England used to be applicable until Ethiopia enacted its own laws and with this the legal profession was introduced into the country.

The manner of legal service provision had first been stipulated in the 1942 Administration of Justice Proc. No. 2/1942. As provided under Article 20(b) of section seven of this proclamation, a code of conduct for the supervision and licensing of lawyers appearing before the appellate court of the chief of justice (court of Afe-Negus) of the crown court and the high court had been issued by the approval of the Ministry of Justice.

The proclamation stipulated that the service of a lawyer shall no longer be in the traditional sense and that any lawyer wishing to practice as an advocate is required to have a license and that a separate legal instrument shall be pronounced to govern the administration and code of conduct of advocates. According to this proclamation, the duty to issue a regulation to govern the administration and code of conduct of advocates was entrusted upon the court leadership and the approval of the Ministry had also been stipulated as a pre-requisite. On the other hand, Article 61(f) of Order no. 1/1942 stipulated that the Ministry issues license to advocates by assessing their eligibility. However, the list of requirements whereon the Ministry bases its assessment was not outlined. To fill in such gaps, relevant regulations had to be issued that brought an end to the custom of verbal agreements between lawyers and clients and required a client-lawyer agreement to be concluded in writing. In addition, it was provided that unless the client's appearance is required by court order, the appearance of the lawyers shall be sufficient, and summons served to the lawyer in person or delivered at the lawyer's office shall be regarded as served to the client.

A rather detailed legal instrument on the licensing and supervision of advocates was issued by a regulation in 1944 with Reg. no. 49/36.This Regulation was issued in accordance with Article 20(b) of Proclamation no. 2/1942 wherein the concept of "advocate" was first defined. In this Regulation, an "advocate" was defined as a person having the permission to appear before the crown court and lower courts. This same Regulation introduced new concepts in relation to the legal profession such as the advocates' right to appear only on certain levels of courts based on

qualifications, the formation of a discipline committee to handle allegations of breaches of obligations by advocates, and the payment of fixed annual tax.

Regulation no. 166/1944, on its part, had introduced new procedures in relation to the legal practice. For example, article 3 of this regulation stipulates that a person applying to be given a lawyer's license has to establish to the Ministry of Justice or a person assigned by it that the applicant has the required legal education and knowledge and the personality to support the client in the judicial process. Although the level of education was not determined, the legal requirement for having legal education shows that the legal profession moved one step forward with respect to quality of the service to be provided. Furthermore, articles 4 and 5 of the Regulation provide that the Minster or a person assigned by the Minister can provide the necessary examination to gauge the level of knowledge and education of a person applying to become a lawyer or a person who is already practicing law.

On the other hand, when the Minister or a person assigned by the Minister is of the opinion that the applicant does not have the required level of knowledge and education or the required ethical values, he/she could suspend the license and have the matter handed over to a discipline committee. Therefore, this provision of the Regulation shows that even if a person might be granted a lawyers' license without having the required qualifications; this could be corrected as a result of a follow-up step. What distinguishes this Regulation from the previous ones is the establishment of a discipline committee presided over by the Minister of Justice and having five members.

In general, the legal practice has evolved from being a practice that anyone who believes to have the knowledge, as was the case before the coming into force of Proclamation 2/1942, can practice to one that requires a license from Ministry and a certain level of competence to practice law.

Following the coming into power of the *Dergue* Regime in 1974, , the country followed a socialist ideology and that did not encourage private ownership of property which highly impacted the development of the legal profession and no legal instruments were passed by this regime to regulate legal practice.

Following the regime change in 1991, the private sector witnessed some changes and new laws started to come out to support the various reform agenda of the government. The supreme law of the land, the FDRE Constitution under article 20(5) provides for the right of accused persons to be represented by a legal counsel of their choice and if the accused persons do not have sufficient means to pay for it and miscarriage of justice would result, they will be provided with legal representation at the state's expense. Therefore, it could safely be concluded that the legal profession has a constitutional support at this day and age.

2. EXISTING LEGAL FRAMEWORK FOR THE REGULATION OF LEGAL PRACTICE

2.1. Federal

The current legal framework for the regulation of legal practice at the federal level consists of the following key legislations: the Federal Courts' Advocates Licensing and Registration Proclamation No. 199/2000, the Federal Courts Advocates Code of Conduct Regulation No. 57/1999 and Council of Ministers Regulation No. 65/2000.

In the following sections, we will outline the key features of these laws:

1. The Federal Courts' Advocates Licensing and Registration Proclamation No. 199/2000

This law replaced an old law that the relevant institutions applied in the practice of regulating advocates (Legal Notice No. 166/ 1952) and was aimed at ushering a level of modernization of the practice. This is evident on the emphasis in the preamble of the law which sets forth the following consideration as bases for its enactment:

Regulatory Objectives:

- **Professionalism**

This focus on professionalism aims at improving the rampant reality of legal practice consisting of persons or practitioners who have not attained a certain level of education and experience. The law is clear in that advocacy as profession needs to be exercised by people who are trained and

experienced in law and fully aware of judicial proceedings. It further notes in the preamble that the law aspires to "upgrade" the criteria required for the practice.

- **Enhancement of Personality Traits**

The preamble requires advocates to be dictated by the spirit of loyalty, sincerity and genuinely to work with the judicial organs for the rule of law and prevalence of justice. These are the standards of behavior that advocates were required to demonstrate on the basis of the law.

- **The Need for Regulation**

The preamble emphasizes the need for regulating the practice of advocates 'exhaustively' through a licensing and registration system outlined in the law with the overarching goal of protecting the public interest.

Eighteen years have lapsed since the enactment of this law, and it will be appropriate to take stock of whether the regulation has achieved its objectives of developing professional advocates with the personal traits described above and regulated the practice holistically in such a way to bring about quality and accountability in the profession. One would be disappointed to find out that this is not the case as the profession is practice in a very elemental and primordial way.

Scope:

Geography: The scope of Proclamation No. 199/2000 is clear in terms of location as it applies only to advocates practicing in federal courts and quasi-judicial organs. In fact, as was the case for most of their legislative activities, almost all regions copied and pasted this proclamation, more or less to the letter, to come with the regional counterpart.

The regulation has also limited its application to a set of services and persons. In terms of services, it identified advocates services to broadly include the preparation of contracts, memorandum of association, documents of amendment or dissolution, of same, or documents to be adduced in court, litigation before courts on behalf of third parties, and includes rendering any

legal consultancy services for consideration or without consideration, or for direct or indirect future consideration[13].

The Persons: The application of the law is also limited to persons which it defined as

- Advocates
- Law clerk
- Advocate assistant

An advocate is simply defined as a person in an advocate's register and, coupled with the definition provided for advocates' services, one can get a clear idea of who the law is aiming at. It is important to note that persons who are actually rendering advocates services may not be treated as such if their names are not found in the advocate's register. The act of registration is so essential in the eyes of the law that the later provides for the keeping of an advocates' registry open for the public to see and describes the details of information about the advocates to be kept in such a registry[14]. In addition to advocates, the Registry is also expected to include information regarding law clerks, advocate assistants and other employees. Law firms are also required to enter their details in such registry. One would be disappointed to learn that there is no such registry to date in the office of the Attorney General which regulates the practice[15].

A law clerk is defined by the law as a person who assists an advocate in the drawing up of legal documents and rendering of legal advice. The law prohibits a person who has no legal education training or experience from being employed as a law clerk[16]. It is not clear what level of education or experience will be required or either of the two is sufficient to qualify as a law clerk. It is important to note that no similar requirements are imposed on an Advocate Assistant who is defined as a person assisting the Advocate under the latter's guidance. While the scope of application is clear as regards advocates; it appears to be imprecise as to who else is to be captured under its application. Given the possibility that an advocate who employs persons not

[13] Article 2/2 of the Federal Courts' Advocates Licensing and Registration Proclamation No. 199/2000
[14] Article 16 of the Federal Courts' Advocates Licensing and Registration Proclamation No. 199/2000
[15]The law defines "Register" to mean a record wherein advocates are registered and kept by the Ministry of Justice.
[16] Article 17/3 of the Federal Courts' Advocates Licensing and Registration Proclamation No. 199/2000

permitted to practice as a law clerk or advocate[17] assistant may end up with the suspension of his/her license, it is very critical to be very precise about the identity, qualification and other details about these persons.

Law Firms: the law envisages the establishment of law firms in the form of a non-business partnership/ organization whose liability is unlimited. The Ministry or an official in charge of registration is obliged in mandatory language to enter the name of the law firm in the registry and issue a license after checking the memorandum of association and ensuring that the formation of the firm is not in breach of the advocates' code of conduct and against the interest of its clients or third parties[18]. The law empowers the Ministry to issue in the form of a directive the particulars of the licensing of law firms. Eighteen years from its enactment, no such directive has been issued by the Ministry and no law firm is licensed or exists in Ethiopia to date. Any attempt to form a partnership and obtain a license in the past years have been effectively rebuffed by the Ministry as something illegal.

Licensing

A license is considered as essential to be able to provide advocates' services. The law provides for three levels of licensing and slightly different for each type of licenses as described in the table below:

No.	Requirements for Licenses for		
	Federal First Instance Courts	**All Federal Courts**	**Federal Court Special Advisory**
1			Not receiving any kind of reward from a section of a society
2	Diploma in law from a legally	Degree in law from a legally recognized educational	

[17]Persons excluded from employment in these positions include
(a) a person whose name is removed from the Register;
(b) a person suspended from practicing advocacy;
(c) a person dismissed from office due to disciplinary infringement;
(d) a person charged for and convicted in an offense of improper conduct; or
(e) a public servant.

[18] Article 18 of the Federal Courts' Advocates Licensing and Registration Proclamation No. 199/2000

	recognized educational institution, minimum of five years relevant experience;	institution with a minimum of five years relevant experience;
3	Degree in law with a minimum of two years relevant experience	
4	passed the advocacy entrance examination set for the license applied for with certain exceptions[19]	
5	Proof of professional indemnity insurance policy.	
6	Not convicted and sentenced in an offense showing an improper conduct;	
7	Suitable code of conduct for assisting the proper administration of justice	
8	No other permanent job	

The licensing process begins with filling out an application form prepared by the Attorney General and has to be supported with the following information:

(a) credentials;
(b) a letter from his former employer regarding the applicant's conduct or performance;
(c) evidence showing that the applicant has passed the entry examination set for the license he applies for as deemed necessary;
(d) evidence showing that the applicant has paid the required fee; and
(e) such other information required by the Ministry.

The application for the license has to be decided within 30 days. The law sets having another permanent job by an applicant at the time of application as an automatic disqualifying criterion. It may turn out to be a grey area to identify what amounts to a permanent job. Another grey area is what happens in a scenario whereby an applicant is unable to obtain a testimonial from his/her former employer regarding his/her conduct or performance for any possible reason. The last requirement for licensing leaves the applicant to the discretionary powers of the licensing authority as it basically empowers the licensing authority to demand any "other information". A license needs to be renewed every year one month prior to its expiry. Failure to timely renew has serious consequences including temporary suspension of the license and a fine not less than

[19] The exceptions are any person who has taught law in Ethiopian higher educational institutions at least as an assistant professor or has served, holding a degree in law, at least for five years as a judge or public prosecutor in a federal high court or above, or as a legal consultant and attorney in known government organs and public enterprises as long as the person applies within 1 year of termination of employment (Article 11/2 of the Federal Courts' Advocates Licensing and Registration Proclamation No. 199/2000).

2,000 birr and not exceeding 10,000 birr or imprisonment not less than 6 months and not exceeding 2 years[20].

Institutional Framework

The lead institution in charge of regulating attorneys is the office of the Attorney General (referred to as the "Ministry of Justice" in the law). It is empowered to register advocates, issue, renew, suspend or revoke licenses; and charge fees for its services. It has also the power to issue directives necessary for the proper implementation of the Proclamation.

The law provides various recommendatory and decision-making bodies working under the guidance and instruction of the office of the Attorney General. The following table describes these institutions together with their powers:

	Bodies	**Members**	**Accountability to**	**Powers & Responsibilities**
1	License Evaluation Committee	• **2 Reps from** the Ministry; • **2 Reps** of the Advocates' Association; **and** • 1 Rep the federal courts	The Attorney General	Recommendation as to the eligibility of an applicant for licensing
2	Advocates' Disciplinary Council	• **2 Reps from** the Ministry; • **2 Reps** of the Advocates' Association; **and** 1 Rep the federal courts	The Attorney General	Submits recommendation after conducting investigation and hearing
3	Advocacy Entrance Exam Setting and Competence Certifying Board	• 2 Reps the Ministry; • 1 Rep from Advocates' Association; • 1 Rep from the federal courts; • 1 Rep from the Faculties of Law; and • 2 members nominated by the Minister.	The Attorney General or his Representative	prepare and give advocacy entrance exams, mark exam papers, determine the pass-mark and publicize the result only after consultation and approval by the Minister or his rep.

[20] Article 31 of the Federal Courts' Advocates Licensing and Registration Proclamation No. 199/2000

In all the set ups indicated in the table, the shadow of the Minister/Attorney General looms large as he/she is empowered to nominate a chairman with a casting vote for all of the bodies[21] and he makes the ultimate final decision on work submitted by each of the bodies. The Advocacy Entrance Exam Setting and Competence Certifying Board appeared to be a little different from the other two; however, its final work can only be made known to the public only after the Minister or his delegate approves it and the Board is also required to consult closely with the delegate in its preparation of entrance exams. Appeal to the Federal High Court against the decision of the Minister, within 30 days, is possible only if the decision is said to have an error of law. The Court presiding on the appeal is only empowered to remand the case back to the Ministry in the event that it finds an error of law. The arrangement appears to aim at or end up making the Ministry all too powerful.

This is evident when one looks at the powers that the Ministry has that may include, among other things, suspending an advocate from practicing for a period of not more than five years or totally revoking his/her license and cause the removal of his/her name from the Register depending on gravity of the alleged offence[22.] Given the fact that the disciplinary committee is empowered to submit its recommendation to the Ministry within 6 months after the charge and with possible extension for additional three months[23], it is possible for an advocate to loose/his livelihood for as long as 9 months constituting the period of suspension[24].

It is important to close this section with a summary of key obligations expressly identified as such by the law as well as the violations considered so important by the law that they may end up in the suspension and/or revocation of an advocate's license. The following information summarizes them:

[21] Articles 22/3, 23/2, 25/4, and 27/2 of the Federal Courts' Advocates Licensing and Registration Proclamation No. 199/2000
[22] Article 24/3 of the Federal Courts' Advocates Licensing and Registration Proclamation No. 199/2000
[23] Article 24/8 of the Federal Courts' Advocates Licensing and Registration Proclamation No. 199/2000
[24] See section 9.9.3 of this study to see detailed discussion.

No.	Express Duties	Offences leading to Revocation of a license	Offences leading to suspension of a license
1	Compliance with Proclamation No. 199/2000, and Regulations and directives to be issued in accordance with the Proclamation and orders and decisions given thereof	Obtaining a license with fraud/deceit or by producing falsified document or information	Failure to renew a license without good cause; this may include delay (failing apply 1 month before expiry)
2	Provide a receipt in respect of any consideration an Advocate receives from his/her client	an offense showing his incompetence to continue practicing and found guilty thereof	Employment of persons not permitted to work as a law clerk or advocate assistant
3	Have an insurance policy to redress any civil injury or harm to be incurred by clients, due to his/her professional default	Practicing by any sort of deceitful activity or in a gross transgression of Advocates' Ethical Regulation	
4	Pay the fees required, in obtaining, renewing and replacing a license, by the Regulations to be issued in accordance with this Proclamation	Practicing advocacy while suspended	
		Gives or attempts to give money to a person with a view of securing a job for himself or another advocate, through intermediary	
		Additional activity which is obviously conflicting or inconsistent with his profession.	

Incomplete/Unfinished Regulatory Regime

As we conclude this section, it is appropriate to highlight that the enactment of the Proclamation, which deals in detail exclusively with the profession, was a positive development in Ethiopia's legal practice as it exhibits not only the attention given to the profession by the parliament but also the need to get the practice organized and set standards. The Proclamation was just the beginning and was to be supplemented by subsequent secondary and tertiary level legislations. Articles 32 and 33 of the Proclamation authorized the Council of Ministers and the Ministry of Justice to issue regulations and directives to implement the proclamation respectively.

We have summarized in the table below the specific rules promised in the Proclamations but, to the extent we are aware, have not been realized:

No.	Directives/Regulations Pertaining to	Issuing Authority	Relevant Provision of Proclamation No. 199/200
1	The issuance of special advocacy license, the type and quality of services to be rendered through the license, and code of conduct of the license holders (Directives)	The Ministry	Article 10/3
2	The amount of insurance to be entered into by the Advocate and other particulars (Regulations)	Council of Ministers	Article 12/1
3	Particulars as for the licensing of law firms and related matters (Directives)	The Ministry	Article 18/4
4	Advocates' Disciplinary Council Conduct Investigation of charges against an advocate (Directives)	The Ministry	Article 24/1
5	Advocates' Disciplinary Council own rules of procedure (Directives/by-laws)	The Ministry	Article 25/4
6	Advocacy Entrance Exam Setting and Competence Certifying Board own rules of procedure (Directives/by-laws)	The Ministry	Article 28

The Federal Courts Advocates Code of Conduct Regulation No. 57/1999

The Federal Courts Advocates Code of Conduct Regulation No. 57/1999 (the "Regulation") constitutes a key legislation providing a standard of conduct by advocates. Its enactment preceded the principal legislation which is the Proclamation discussed in the foregoing section.

Scope: The scope of the Regulation is clearly applies to persons having Federal Courts' advocacy license. In effect, the team of personnel working with an advocate such as the advocate assistant and legal clerk who were a subject of the Proclamation seem to be left of out the scope of application although one may say the rules in the Regulation necessarily apply by extension with people closely working for an advocate. Interestingly, the Regulation talks about imposing vicarious liability on the advocate for his non-lawyer employees so long as he gives the orders or fails to supervise them[25].

The Regulation contains 59 provisions dealing with the various aspects of the legal profession and expected standard of behavior from an advocate. In this section we will only highlight some of the key expectation that the law imposes and material to subsequent sections of this study.

Principle: The Regulation sets right at the start the principle that that all advocates need to be cognizant of their role to assist organs of the administration of justice in the effort to promote respect for the law and the attainment of justice. This is in tandem with the Proclamation's emphasis on giving primary importance to the context of the justice system in which at the advocate operates rather than his relation to clients. Nonetheless, the principle brings to focus clients in affirming that any advocate shall, in particular discharge his professional duty to his client, other lawyers and opposing party, the court, his profession, and the society in general honestly, faithfully and truthfully.

Contract for Legal Services: It is mandatory on the part of an advocate to sign a written contract for legal services before embarking on the work. The drafting of the contract in a clear and understandable way is the obligation of the advocate and any waiver of the advocate's

[25] Article 40 of the Regulation

obligation to be accountable for civil liability will not be enforceable and prohibited act. The advocate is required to ensure that

- the contract is proper and reasonable
- the terms are clearly explained to the Client; and
- the client gives his/her consent after consultation with another person[26].

The advocate is required to commit him/herself under the contract until the case ends. The Regulation specified limited list of grounds on the basis of which the Advocate can terminate the contract[27].

Key Obligations of an Advocate: The codes of conduct provide a number of obligations on an advocate the most important of which include the following:

- The duty to reject a case if it has no legal ground and, on the flip side, not to refuse a case on the moral character of the client, the serious and heinous nature of the crime committed or the belief that the client is guilty of the crime charged, or on the basis of the client's political, economic, social or moral standings
- Duty of confidentiality
- Duty to clear conflict of interest
- Duty to provide pro bono services (a minimum of 50 hours annually)
- Duty to take responsibility for others which the Regulation refers to lower advocates as well as non-lawyers
- Duty to request fair and reasonable fee that takes into account the factors prescribed by the law[28]
- Duty to advertise in brief, clear and correct way and provide advance notification to the Ministry
- Duty to lead an exemplary professional life and report unethical conduct by another advocate.

[26] Article 14/3 of the Regulation. It is not clear how this consultation is going to be reflected in the contract and to what extent the advocate will be responsible for it.
[27] Article 34 of the Regulation
[28]Article 42 of the Regulation

As we conclude this section, it is important to highlight that the Regulation is very detailed statement of expected behavior from an advocate in his/her relationship with a client, other advocates, courts and the community in general. The challenge faced in its implementation is to put in place a system of reliable monitoring mechanism that the code of conduct is implemented on the ground. An example will be the duty to provide a minimum pro bono hours annually. There is no really an effective system to ensure that this takes place on the ground and there is no system to ensure that contracts between advocates and clients reflect the required elements dictated by the law.

Both of the Proclamation and Regulation are discussed at length in terms of their relevance to the subsequent sections of this study. It is however important to devote a section here about stakeholders' view of the existing legal regime especially with a focus on the regulation/regulator of their profession[29].

Legal practitioners' view of the existing regulatory regime reveals problems that can be categorized as Administrative, Legal Framework and Others.

Under administrative problems, one can find the following highlighted as problems:

- Incompetence
- Inadequate staffing
- Absence of training
- Politically motivated decisions
- Lack of respect to the profession
- Loosely enforced selection criteria
- Poorly organized and in effective pro bono system
- Biased disciplinary system

[29] The study group conducted a Focus Group Discussion on December 8, 2018 involving over 25 practicing advocates, with substantial experience as judges, prosecutors, corporate legal counsels, etc. divided into two groups. The FGD framed two key questions which are (1) what are the key problems of legal practice and (2) what solutions can be provided to alleviate the problems? The minutes/report of the FGD meetings have been annexed to this report as an appendix.

One can note the following under legal framework related problems,

- Imprecise requirements for licensing
- Absence of licensing or detailed regulation to govern law firms
- Lack of regulation of fee setting
- Lack of legal obligation on information provision
- Absence of regulation of lawyers' professional association
- Merger of regulatory and semi judicial powers in one person (the Attorney General)
- Limited scope of legal services
- Limited territorial application of federal licenses
- Absence of national standards

Problems that are recognized as others mainly focus on the perception of the government towards the legal profession and the low esteem with which the profession is regarded. They are also partly inward looking:

- Lack of self-respect from the professional themselves
- The lack of effective institutional organization
- Taxation of lawyers and their treatment as any trader
- Lack of continued legal education and training to be sponsored by the regulator
- Perception of lawyers as threat to the political establishment

One can note by way of conclusion that the existing legal regime at a federal level has little trust and legitimacy from key stakeholders.

2.2. Regional States

In tandem with the initiatives and measures taken at the level of the Federal Government, based on the power given to them under the Constitution, regional states have also issued laws that govern the legal profession in accordance with the practical conditions in their respective regions. Some of these proclamations and regulations include the Revised Tigray Regional State Advocates Licensing and Administration Proclamation No. 262/2007, Southern Peoples, Nations and Nationalities Regional State Courts Advocates and Private Legal Clerks' Licensing and Administration Proclamation No. 164/2008, Afar Regional State Regulation No. 6/2003, Amhara

Regional State Advocates Licensing, Registration and Code of Conduct Proclamation No. 75/1994 and Amendment Proclamation No. 211/2006, Amhara Regional State Revised Advocates Licensing, Registration and Code of Conduct Regional Council Regulation No. 58/2000, Oromia Regional State Advocates and Legal Secretaries Licensing and Administration Proclamation No. 182/2005 and Amendment Proclamation No. 198/2007, and Benishangul Gumuz Regional State Advocates Proclamation No. 59/1998.

The laws enacted by regional states are very similar to the federal one. It is not the scope of this study to go into the details of the relevant legislations of regional states. However, to the extent that it becomes important to draw parallels with the federal laws, we will highlight certain features as applicable to the specific topic under discussion. The discussion under the heading of Mobility of Advocates will be particularly relevant.

2.3. International Standards for Legal Practice

This section is devoted to exploring international standards for regulation of the legal profession. In the absence of an international convention directly relevant to the subject matter, we rely on reference made to the provision of legal service in other conventions as well as cite examples as deemed appropriate by introducing principles. The delivery of justice by the judiciary requires the participation of lawyers and the reference made to fair trial shall be deemed to include the assistance provided by a lawyer. Instruments referred to herein are supposed to guide the contents of a law reform and they should be used as yardstick to determine whether a particular piece of legislation is up to the standard. The following discussion exposes the international standards for legal practice which will guide the reform underway and inform contents of the law to be drafted based on the recommendations.

Because of its territorial nature, legal practice is subject to regulation by domestic laws. So far, there is no international convention or treaty focusing on legal service or the profession. Internationally, we find voluntary associations which strive to bring together lawyers practicing in various jurisdictions so as to develop standards. In this section, we try to look at the standards developed by international organizations with a view to guiding the conduct of the profession.

Further, we make reference to international conventions which have bearing on the regulation of legal practice.

2.3.1. UN 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, the principles aim at directing Member States in their task of promoting and ensuring the proper role of lawyers. It is appropriate to take into account the principles in a reform effort because they are demonstration of international inclination with regard to the role of the lawyers. The preamble stresses import of promoting and ensuring the proper role of lawyers which is essential for the realization of human, political, cultural, civil and political rights of individuals. It further envisions that member state will embark on promoting and ensuring the proper role of lawyers and considering the principles within the framework of their national legislation and practice.[30] It consists of 29 principles which cover a wide range of issues and describes rights and duties of clients, the government and lawyers. The principles are summarized in the following topics:-

2.3.1.1. The Role of Governments

The principles embrace the responsibilities of governments to make the services of lawyers accessible, guarantee for lawyers functioning, their education and their association. Thus, governments are required to ensure effective and equal access to lawyers by all persons. Consequently, they have to design efficient procedures and responsive mechanisms for effective and equal access to lawyers 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.[31] Further, in criminal proceedings 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.[32]

[30] UN Basic Principles on the Role of Lawyers, Preamble.
[31] Principle 2
[32] Principle 5

Governments shall guarantee for the functioning of lawyers and they must 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 ethics.[33]

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.[34]

2.3.1.2. Lawyers

2.3.1.2.1. The Responsibilities of Lawyers

Lawyers have duties to their profession, clients and administration of justice. They must maintain the honor and dignity of their profession as essential agents of the administration of justice.[35] In their relationship with their clients, they shall advise and assist them before courts and other tribunals loyally respect and protect their interest and at all times act diligently in accordance with the law and recognized standards and ethics of the legal profession.[36]

2.3.1.2.2. Rights of Lawyers

Some principles are incorporated in the UN standard with a view to enable lawyers enjoy some rights and freedoms. They pertain to entry touch upon all aspects of the profession. Save when they are disqualified under the national law, the rights of lawyers to appear before a court or an administrative authority before whom the right to counsel is recognized should be guaranteed.[37] Under principle 18, it is provided that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. Further, lawyers should enjoy civil and

[33] Principle 16
[34] Principle 17
[35] Principle 12
[36] Principles 13 &14
[37] Principle 19

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.[38]

The government has to ensure that lawyers have access to information, files and documents so as to enable them provide effective legal assistance to their clients.[39] Similarly, governments must ensure confidentiality of all communications and consultations between lawyers and their clients within their professional relationship.[40] The principles recognize the freedom lawyers have in forming and joining self-governing and independent professional associations to represent their interests, promote their continuing education and training and protect their professional integrity.[41]

2.3.2. International Instruments

As mentioned above, there is no specific international treaty on the regulation of the legal profession. However, the implementation of numerous international instruments presupposes the existence of an independent legal profession in a jurisdiction. Many of the human rights instruments make indirect reference to the role of lawyers in the form of the right to a fair and public hearing while others introduce legal assistance and confidential communication with counsel as rights which must be guaranteed in a jurisdiction. The Universal Declaration of Human Rights incorporates principles which have bearing on legal practice and the regulation of the profession. For instance, 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.[42] One of the guarantees being the right to counsel, the realization of the right hinges on an independent legal profession. By the same token, African Charter on Human and Peoples' Rights recognizes the right to defense, including the right to be defended by counsel of his choice[43] which becomes meaningless if a jurisdiction does not have a pool of lawyers who are competent and independent.

[38] Principle 20
[39] Principle 21
[40] Principle 22
[41] Principle 24
[42] Article 11(1) of the Declaration.
[43] See article 7(c)

2.3.3. Continental Standards

The African Commission on Human and Peoples' Rights' "Principles and Guidelines on the Right to a Fair Trail and Legal Assistance in Africa, which contains explicit rights of individuals with regard to access to legal assistance as well as provisions committing governments to provide legal framework for an independent legal profession, enshrines and mirrors the principles discussed in the context of international standards in the foregoing section.

2.3.4. Core Values

National laws and regional instruments adopt values which reflect major objectives and principles of regulation for the legal profession. Values are standards of behavior which should be reflected in the regulatory framework and practice. Lawyers should be committed to the values adopted in a jurisdiction. Here we cannot list all the values not only because of the limitation of the study but lack of consensus on all of them. However, there are core values common in most jurisdictions. The core values are seen as inspiring how access to justice and the maintenance of the rule of law can be achieved.[44] Herein we will draw a lesson from the experience of European countries and select the three core values which are adopted by Council of Bars and Law Societies of Europe[45] which are:

- **Independence**

The many duties to which a lawyer is subject require his/her absolute independence, meaning that the lawyer has to be free from all influence, especially such as may arise from his/her personal interests or external pressure. In particular, it means independence from the government as well as independence from the client. Such independence is considered as necessary to trust in the process of justice as is the impartiality of the judge. A lawyer must therefore avoid any impairment of his/her independence and be careful not to compromise his/her professional standards in order to please his/her client, the court or third parties when handling legal matters be it non-contentious or contentious.

[44] Council of Bars and Law Societies of Europe , CCBE Position on Regulatory and Representative Functions of Bars

[45] Council of Bars and Law Societies of Europe, CCBE Position on Regulatory and Representative Functions of Bars

Even though concepts like "officer of the court"[46] or "organ of the administration of justice"[47] exist, this does not mean that the lawyer is more obliged to the institutions of government than to the client. Independence of the lawyer from the government is one important precondition for the client's trust in his or her lawyer. Independence is not a privilege for the lawyer, but a duty toward the client. It allows the lawyer to counter possible attempts of courts and the government to ask for an inadequate collegiality or false considerations: The duty to be independent gives the lawyer the freedom to stay obliged only to the law. The concept of independence also includes the duty to stay independent from the client's demands if these demands are not within the boundaries of the law. It is important that the lawyer is not perceived as the "mouthpiece" of the client.

- **Avoidance of Conflict of Interest**

Avoidance of conflict of interest means the lawyer is prohibited to take clients if representing them would violate the duty to avoid conflicts, and that – generally speaking – this duty extends to all lawyers of a firm. With a view to the duty of lawyers to serve only the interests of their clients, the legal profession has always maintained strict rules on the avoidance of conflicts of interest. These rules concern situations where a lawyer might be bound to serve the interests of more than one party in a matter where those interests are significantly different. In many jurisdictions, the client cannot permit the lawyer to represent in conflicting situations.

- **Professional Secrecy/Confidentiality**

If the right of the citizen to safeguard professional secrecy/confidentiality, i.e. the right of the citizen to be protected against any divulging of his/her communication with his/her lawyer, would be denied, people may be denied access to legal advice and to justice.

It should be noted that the list of core values is not exhaustive and national legislations come up with other values which impose obligations on lawyers in rendering services to their clients. The emphasis legal system may be diverse though the primary values are more or less the same. The core values are not just privileges, but duties which can actually limit the lawyer economically.

[46] Anglo-American legal tradition
[47] German legal tradition

3. REGULATORY CONCERNS AND PROBLEMS IN THE EXISTING LEGAL FRAMEWORK

This section is devoted to identifying problems in the existing legal framework for the regulation of the legal profession in Ethiopia and is a follow up of the discussion in section 2 above. The sufficiency of the law to regulate the profession has to be explored. Further, it must be assessed against international standards and best practices so as to identify gaps. The focus of this study will be on federal law even if we also take into account the regional context with a view to tapping local experience and achieving harmonization.

3.1. The Regulator

In light of the problems discussed in section 2 above, the first regulatory concern that any reform effort has to confront head on is the extent and modality of regulation of legal practice. Regulation of the legal profession entails determination of the organ which will be responsible for enforcing the rules governing the profession. In Ethiopia, the fact that the profession is regulated by the Attorney General Office raises question of independence of the profession. This is not only a theoretical consideration but has practical ramification affecting the rights of citizens who are represented by lawyers. The reform, therefore, should primarily address this policy concern. A reform effort encounters a spectrum of approaches and a decision has to be made to choose that which fits in the context of Ethiopia. Thus, in this section, we deal with the necessity and forms of regulation at length.

Some reforms aimed at introducing self-regulation of the legal profession so as to ensure independence of the profession. However, concern on consumer protection made commentators to promote the reverse course. So, reforming the regulation of the legal profession involves a policy decision to be made on whether lawyers should be left to regulate their profession by themselves or should the regulation be made independent. Proponents of the professionalism-independent public interest theory contend that direct regulation by government would allow the state to coerce lawyers using the threat of discipline. Thus, self-regulation is said to foster loyal lawyer service to clients, especially those clients who confront the state and also offers

advantages related to efficiency and social cohesion.[48] The primary purpose of regulating lawyers is the protection of a lawyer's independent professional judgment in service to client and court.[49] Self-regulation is believed to ensure that lawyers are independent.

One of the criticisms against self-regulation is that it has potentially the effect of a cartel: by controlling entry to the market and setting an agreed price above the competitive price, members of the profession earn economic rents.[50] It is submitted that in designing a regulatory system, Government must consider who is best placed to minimize regulatory burdens while delivering the perceived benefits of regulation. Economists argue that self-regulation will create higher regulatory barriers than is necessary to maintain quality in order to maximize the income of those practicing; even if this action is subconscious independence continues to be regarded as an essential feature of high quality regulation. It is, therefore, opined that legislative changes should fully break the link between the profession and regulators in order to enhance effectiveness and credibility of the regulatory system.[51]

Independent regulation ensures independence of the profession and consequently is desirable to ensure that regulatory burdens are proportionate, targeted, transparent and credible.[52] As a research report pinpointed "where a regulator is seen to be an arm of the professional body that represents those regulated, consumers are bound to have less confidence in the fairness of regulation than with a regulator seen as fully independent." [53] There are jurisdictions which departed from self-regulation and replaced it with co-regulation whereby the self-regulatory bodies are effectively subordinate to executive and/or legislative arms of the state. A survey of

[48] P Barbara Baarsma, Flóra Felsö and Kieja Janssen, Regulation of the legal profession and access to law An economic perspective, Amsterdam, May 2008 Commissioned by the International Association of Legal Expenses Insurance (RIAD) p. 4, available at http://www.seo.nl.

[49] John H. Matheson and Peter D. Favorite, Multidisciplinary Practice and the Future of the Legal Profession: Considering a Role for Independent Directors, 32Loy. U. Chi. L.J.577 (2001), p. 583.
available athttp://scholarship.law.umn.edu/faculty_articles/396.

[50] Frank H. Stephen and James H. Love, Regulation of the Legal Profession, University of Strathclyde, Glasgow, United Kingdom, p. 989

[51] A blueprint for reforming legal services regulation , Legal Service Board, P. 29

[52] Ibid, P. 30

[53] A blueprint for reforming legal services regulation , Legal Service Board, P. 30

the approaches in different countries revealed that diverse approaches are in place in different countries in designating the regulator as summarized in the following table.[54]

Predominant regulator of practice	**Number**	**Percentage**
Court	42	19%
National Bar	114	52%
Local Bar	17	8%
Government	14	6%
Independent and delegated regulatory authority	24	11%
Mixed or shared responsibility	8	4%
Total	**219**	

In the majority of states, it is a national bar responsible for regulation of the legal profession. In any case, it is established that 94% of the states surveyed do not empower their governments to regulate the profession and this is the trend pursued with a view to ensuring independence of the profession. It is highly recommended that regulation of the legal profession in Ethiopia should follow the trend so as to ensure independence of the profession.

In addition to the predominant form that is adopted by countries, it is also worthy to explore the merits and demerits of each option available. In the following table we summarized the advantages and disadvantages of the regulatory approaches.

[54] International Bar Association, Directory of Regulators of the Legal Profession (2016), p. 14

Question	Options	Pros	Cons
a. Which body shall set the general framework regulation for the profession?	I. Government	Duties of lawyers, even those that might also give privileges, actually limit personal and economic freedom of the individual lawyer. There needs to be a strong democratic legitimation of those rules. The strongest legitimation is if a democratically elected parliament passes a statute.	Specific knowledge of contents of rules does not lie within the legislature, but within the profession itself.
	I. Body outside the government	That body might be closer to the profession.	If rule-setting is delegated to bodies outside the legislature, there might be a danger of incoherence between statutes and rules by this body outside the government.
b. If the government shall set the principles, by which branch of the government should they be set?	i. Legislature	Democratic legitimation; general rules (principles) should outlast ongoing policy-changes. So, the character of general rules requires the legislator to set them.	Possible lack of specific knowledge.
	ii. Judiciary	In common law legal cultures courts have the power to set rules regarding court procedures. In that context it seems adequate for courts also to regulate the professions who have an important role in court proceedings.	In most jurisdictions, the judiciary does not set rules, but applies laws. It might be foreign to the Ethiopian legal culture if the judiciary set professional rules for a

			profession which should be independent not only from the executive, but also from the judiciary.
	iii. Executive branch	Possible specialist knowledge in a ministry	Checks and balances: It is the legislature that sets general rules. The executive branch shall not be able to easily touch and change general framework of the legislature. Decrees of the executive do not have the same democratic legitimation like statutes by parliament.
Which body shall issue code of conduct or recommendations and guidelines for professional behavior?	i. Voluntary bar association	The legitimation of such an association's positions through voluntary membership might be the strongest argument for delegating administration of the profession to those associations.	While associations through their bottom-up legitimation derived from voluntary membership can strongly speak for the profession when it comes to its interest, they do not reach to non-members, when it comes to the enforcement of rules to non-members. In most jurisdictions, the concept of regulation of the legal profession in the public interest would not make

			it sufficient, if only members of a voluntary association would fall under this regulation.
	i. Independent mandatory bar	The main reasons for mandatory bars to be responsible for the public law regulatory functions are as follows: - Mandatory bars serve the public interest by supervising all lawyers' compliance with rules applicable to the profession and – if necessary – by exercising disciplinary authority. - Mandatory membership subjects every member of the profession to the professional rules. - Mandatory membership allows every member, in turn, to participate in the forming of the will of the mandatory bar, granted that the bars have a transparent and democratic structure. - Mandatory membership furthermore can prevent direct supervision of lawyers by the government. - Also, a mandatory bar governed by public law gives democratic legitimation to the regulation of the profession, because decisions and	There might be a conflict between the regulatory and the representative functions of the mandatory bar. Also, it cannot be ruled out that mandatory bars might act in a self-serving manner if there is no system of review or supervision of the mandatory bar's regulatory actions. It seems, though, that internationally the vast majority of changes which took place in the past 10-15 years were triggered not because self-regulation was deemed wrong as a matter of principle, but because in certain jurisdictions there was a perception that it was not executed fully in the public interest. Therefore, it was

		actions of the mandatory bar can be linked to the legislature as the direct representative of all citizens. - One of the main reasons for mandatory bars is the direct knowledge of the needs of members and clients. This ensures good and efficient decision-making. - Plus, self-regulation is more cost-effective that government regulation. - Also, self-regulators are financed by membership fees and not by the taxpayers' money. The cost of this bureaucracy is not passed to the general public.	probably mainly a matter of weaknesses in the implementation of good regulation rather than general conceptual doubts with regards to self-regulation.
	ii. Independent body	Independence from interests of the profession and the government; dedicated only to the public interest; Professionalism trough specialization; lay involvement which secures public interest.	Lack of familiarity with specifics of legal profession; lack of insight into daily life of profession; setting up special bodies is costly; a new body between the government and the profession makes communication more difficult. Even if this system works in

			established democracies with a tradition of bodies independent from government, it might not be suitable for a society in which there is no government with learned trust in independent (civil society) organizations.

Lessons can be taken from the experience of countries with the rich experience they have in this regard. We have selected few jurisdictions with relevance to our system particularly taking into account the federal nature of the country.

i. Separate organizations with different functions - The Canadian and German example

In Canada, the regional regulator law societies and the national Federation of Law Societies of Canada stress that they serve the public interest. They exercise self-restraint regarding representation of the interest of the profession. A statement on the Federation's website reads: One of the key strengths of Canada's legal system is the clear distinction between the function of law societies and that of voluntary associations of members of the profession. The function of law societies is to regulate the legal profession in the public interest. The mandate of the Federation is also to serve the public interest. It is the function of voluntary associations of members of the profession such as the Canadian Bar Association, to speak for and represent the interests of their members."[55] Canada thus separates strictly between self-regulators governed by public law and private associations through a "dual system". "Self-governing status [in Canada] is now recognized as a privilege; one that brings with it significant professional benefits. To justify its self-governing status, a profession must demonstrate how the self-interest inherent in

[55] https://flsc.ca/about-us/what-is-the-federation-of-law-societies-of-canada/ (last accessed on November 18, 2018)

self-regulation is outweighed by the benefits the public drives from it."[56] The Canadian system in its clarity seems to work very well.

Germany has statutory public self-regulators and voluntary associations, as well. The more than 250 local bar associations with the German Bar Association as their umbrella on the one hand and the 28 regional mandatory bars with the German Federal Bar on the other hand are not as clearly separated from each other as in Canada, because the regulator bars have certain representative functions, too. In Germany, it is generally accepted that self-regulators can exercise representative functions to an extent that there is no danger of a conflict of interest between safeguarding public interest and the economic interest of the profession. The means to prevent conflicts of interest,[57] at least on a federal level, is to have separate departments within the organization with separate functions. To be noted here are the Ombudsman[58] and the rule-making assembly[59]. This system, which is not as strictly separated as the Canadian model, works quite well and has not been challenged by the legislature or by courts lately. An important ruling of the German Federal Constitutional Court from 2017 stressed the commitment of mandatory organizations governed by public law to regulation while accepting a representative function as well.[60]

ii. Various legal professions under one umbrella – The UK example

The regulatory system in England & Wales has changed quite recently. A 2004 report to the British government by Sir David Clementi ("Review of the Regulatory Framework for Legal Services in England and Wales"[61]) made suggestions to modernize the regulatory framework for legal services. The British government had felt that the then system regulating not only lawyers

[56] Pearson, J. (2013). Canada's Legal Profession: Self-regulating in the public interest?. *The Canadian Bar Review*, *92*, 555-594, page 562

[57] Die anwaltliche Selbstverwaltung. Thesen der deutschen Rechtsanwaltskammern, BRAK-Mitteilungen 3/2008, page 92: http://www.kammerrecht.de/media/aktuelles/Selbstverwaltung.pdf (last accessed: November 18, 2018)

[58] Schlichtungsstelle der Rechtsanwaltschaft

[59] Satzungsversammlung

[60] This decision concerned mandatory membership in chambers of commerce, organized similar to the mandatory bars of the legal profession: Bundesverfassungsgericht, July 12, 2017: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/07/rs20170712_1bvr222212.html (last accessed: November 17, 2018)

[61] http://www.avocatsparis.org/Presence_Internationale/Droit_homme/PDF/Rapport_Clementi.pdf (last accessed: November 19, 2018)

but other legal service providers, too, needed a reform.[62] The report suggested that the regulatory system was inconsistent and too complex; consumer interests were not sufficiently regarded; especially the complaint system, which was regarded as a most important tool to satisfy public interest, was deemed insufficient.[63] Following the report a new regulatory system was introduced, which – after further changes – today looks like follows: The Legal Services Board (LSB), created by a legislative act in 2007, is the independent body which oversees the regulation of legal professionals[64]. The LSB is accountable to the parliament through the Lord Chancellor, who is part of the government. The Chair of the board is appointed by the Lord Chancellor and must be a lay member. The LSB adopts regulatory objectives.[65] Those are principles which guide each approved regulator for a profession. It is also responsible for the Office for Legal Complaints (Legal Ombudsman); a Legal Services Consumer Panel is the advisory body for the LSB.

With regard to solicitors, The Law Society of England and Wales is the approved regulator; it delegated the regulatory functions to the Solicitors Regulation Authority (SRA) – an independent division within The Law Society. The Law society as a whole represents the interest of solicitors as well.[66][67] The SRA sets principles and a code of conduct for those regulated by it. Being registered with the SRA and at the same time becoming a member of the Law Society are preconditions for practicing as a solicitor, so membership in both bodies is quasi-mandatory. The relationship between the Law Society and the SRA has been a challenge for both.[68] As a

[62] This had already been suggested in a report of the Lord Chancellor's Department in 1989, suggesting an ombudsman who could investigate how the professional bodies handled consumer complaints, Lord Chancellor's Department (1989), The Work and Organization of the Legal Profession, as cited in Maute, J. (1989). Bar Associations, Self-Regulation and Consumer Protection: Wither Thou Goest? *Journal of the Professional Lawyer*, page 55, www.americanbar.org/content/dam/aba/administrative/professional_responsibility/pubs_migrated/maute.pdf (last accessed: November 23, 2018)

[63] The report dealt with more issues, which are not relevant here.

[64] solicitors, barristers, chartered legal executives, licensed conveyancers, patent attorneys, trade mark attorneys, cost lawyers, notaries and chartered accountants.

[65] https://www.legalservicesboard.org.uk/about_us/Regulatory_Objectives.pdf (last accessed: November 20, 2018)

[66] For Barristers in England and Wales the Bar Council is the representative and the Bar Standards Board is the regulatory body.

[67] A good visualization of the complex representative and regulatory landscape in England and Wales can be found here: https://www.legalservicesboard.org.uk/can_we_help/approved_regulators/pdf/Legal_Services_Regulation_Map_May_2018.pdf (last accessed: November 20, 2018)

[68] https://www.legalfutures.co.uk/latest-news/legal-services-board-slaps-law-society-with-first-ever-public-censure= (last accessed: November 20, 2018)

consequence, the SRA has been advocating for more organizational independence from the Law Society; it is feared that this might further add to the cost the legal profession is already burdened with after the installation of this system.[69]

iii. Taking representative functions away from the regulator - The Danish example

The Danish Bar and Law Society had traditionally been an organization with mandatory membership, acting as regulator in the public interest and at the same time being the representative body of the profession. Through a major reform of the legal framework in 2008 regulatory functions were strengthened. Representative functions were taken from the Danish Bar and Law Society in order to justify mandatory membership and independence from the government. Mandatory membership was seen as not justifiable if the Bar and Law Society exercised functions beyond strict regulatory tasks. Representative functions were only regarded as acceptable as they did "not amount to representing financial, political or marketing issues".[70] As a consequence, the Association of Danish Law Firms was established in 2008 as a voluntary representative association. Today, the Danish system resembles the Canadian and the German model. A major difference is that the voluntary Association of Danish Law Firms is not an association of individual lawyers, but of law firms. Such a concept might not work in the context of our country as law firms do not exist and will take long time to see mature law firms.

iv. Other examples

Of course, there are various other models. They include the Law Society of Ireland, which has managed to unite educational, regulatory, and representative roles[71] in spite of recent changes of regulation with which a Legal Services Regulatory Authority (LSRA) was created. While the LSRA has taken over some tasks from the Law Society, the statute introducing these changes requires Law Society and LSRA to communicate thoroughly.[72] It seems that in the outside perception, the Law Society of Ireland has not changed much and remained the strong body of the profession. In Norway, on the other hand, the Norwegian Bar is a voluntary association with

[69] The enormous budget of more than EUR 90 millions was already noted above under B.I.3.1.ii.
[70] www.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUid%3D37C8FF3D-A1A9-436F-AF59-56005D89EF46&usg=AOvVaw0iyxjyCBaUWGl6kk_bt8Xp (last accessed: November 20, 2018)
[71] The Irish barristers' regulatory body is the Bar Council.
[72] http://www.irishstatutebook.ie/eli/2015/act/65/enacted/en/print.html (last accessed: November 20, 2018)

delegated regulatory powers. 90 % of the lawyers are members of this association, which represents and regulates. Norwegian law grants regulatory and supervisory authority to the Norwegian Bar Association also toward non-members.[73] Currently most bars worldwide still exercise regulatory and representative functions with varying degrees.

3.2. Professional Associations

Obviously, lawyers as members of a profession, are entitled to form an association exercising their freedom of association which refers to the ability of lawyers to exercise their right to freedom of association through organizations established with the aim of educating, informing and bringing lawyers closer together. A Bar association/law society is a professional body of lawyers. Some bar associations are responsible for the regulation of the legal profession in their jurisdiction while others are professional organizations dedicated to serving their members; in many cases, they are both. If organized, lawyers can engage more easily in collective action in the face of challenges to the basic tenets of their profession or to the rule of law.[74]

In fact, in countries where this freedom is guaranteed, lawyers can form an association for the purpose of promoting the profession and shared values of the professionals. However, considering the role of lawyers in the administration of justice, it is not enough that they have an association that they can form exercising their rights as citizens; it must also be independent. 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.[75] The other issue is whether it should be statutory or an ordinary association of individuals subject to the bylaws they agreed upon. Jurists contend that voluntary bars are entirely inadequate to the needs of the lawyer from either the standpoint of self-interest or from the standpoint of public service.

[73] https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/National_Laws_on_the_Bars/EN_Norway_Regulations-for-advocates.pdf (last accessed: November 20, 2018)

[74] The Independence of the Legal Profession Threats to the bastion of a free and democratic society A report by the IBA's Presidential Task Force on the Independence of the Legal Profession, International Bar Association, (2016),p. 14

[75] The Independence of the Legal Profession Threats to the bastion of a free and democratic society A report by the IBA's Presidential Task Force on the Independence of the Legal Profession, International Bar Association, (2016),p. 8

Historically, the experience of other jurisdictions voluntary bar associations are characterized by low membership rate, membership instability and meager revenue.[76]

Though it is a membership-based association, mandatory membership is not only a component for its effectiveness but also is one of the consequences of enhanced individual freedoms and a genuine democratic necessity.[77]

While traditionally seen as a prerequisite for delegating executive public power to bars and for bars to act in a capacity as public authority, in various jurisdictions mandatory bar membership has been challenged by members and third parties repeatedly. Concerns to mandatory membership were raised on various grounds. Most importantly, it was held that mandatory membership is a violation of the right to freely associate, which also contains the corollary right not to associate. Factual grounds for members challenging the concept of mandatory membership were mainly compulsory fees, and policy statements of bars which members rejected.
The German Federal Constitutional Court and the German Federal Administrative Court have issued numerous rulings about mandatory membership in chambers of commerce. In Germany, chambers of commerce are formed according to similar rules as bars of regulated professions.

The courts held that the fundamental freedom of association right granted by the German constitution[78] in fact does grant a right not to become a member of an association. This fundamental right applies to basically any form of association of individuals who share a common goal to be pursued by associating. Those common goals can range from sports to the arts to political goals.

The right to associate, though, according to German law is limited to private, voluntary associations. The freedom of association does not extend to public law bodies which the government creates and to which it delegates its own tasks. The idea of a freedom of association right was indeed developed as a basic right against the government's interference with private

[76] Peter A. Martin, A Reassessment of Mandatory State Bar Membership in Light of Levine v. Heffernan, 73 Marq. L. Rev. 144 (1989). Available at: http://scholarship.law.marquette.edu/mulr/vol73/iss1/6, P. 146-148
[77] Bâtonnier Jean Bâtonnier Jean-Marie, Gide Loyrette Nouel Association d'avocats , www.gide.com
[78] Section 9 Para 1 *Grundgesetz*

associations. Freedom of association is regarded as a basic right which complements freedom of speech and freedom of assembly.

Even with the freedom of association not touched, the mandatory membership in organizations like self-regulatory bars does encroach upon the right to general personal freedom granted by the German constitution.[79] According to German law this encroachment is justified, because the intended purpose of mandatory membership is legitimate: This purpose is mainly the supervision of a profession which as independent body in the administration of justice[80] has the task of contributing to the rule of law. The German Federal Constitutional Court characterizes mandatory bar membership as follows: "A statutory duty to be incorporated in a body governed by public law [has nothing to do with the freedom of the individual to associate, but] is based on a decision of the legislator that certain public tasks [of the government] can be performed by private actors with collective participation." [81] The German Federal Constitutional Court conceded in another decision, though, that an individual has the right, not to be obliged to be a member of an "unnecessary" membership body.[82] The German Federal Constitutional Court says [in a case dealing with the membership in a chamber of commerce] that mandatory membership is justified if the mandatory body takes over and accomplishes tasks that the society has an increased interest in. The Court further states that it has to be tasks which cannot be accomplished solely by private associations, and which are not tasks only the executive can perform.

The German Federal Constitutional Court stated in another case concerning self-regulation that the legislator of the German Constitution accepted the fact that there are bodies of indirect, delegated executive power. The German Federal Constitutional Court itself took for granted that those bodies existed in the form of self-regulatory entities. Their existence is unproblematic when they exercised legitimate administrative functions.

[79] Section 2 Para 1 *Grundgesetz*
[80] in German law, the lawyer is described as *Organ der Rechtspflege*, which is faintly similar to the concept of the anglo-american *officer of the court*. *Organ der Rechtspflege*, though, stresses that the administration of justice is more than the court system, because lawyers grant access to justice also outside the courts.
[81] German Federal Constitutional Court, July 29, 1959, - 1 BvR 394/58 -
[82] German Federal Constitutional Court, December 18, 1974, - 1 BvR 430/65 -, - 1 BvR 259/66 -

It lies in the legislator's discretion to decide if tasks shall be taken over by the government itself or whether they should be delegated to other bodies governed by public law. Advantage of self-regulatory bodies are effective involvement of persons concerned and the activation of expertise from outside the administration.[83] According to the German Federal Constitutional Court, the purpose of the legislator granting the power to adopt codes of conduct to groups within society is

- to activate groups in society,
- allow them to do what they can assess and determine best themselves because of their expertise,
- to thus reduce the distance between the legislator and the ones the rules apply to.
- Also, self-regulators might be able to react faster than the legislator if changes in the law become necessary.[84]

Making membership mandatory is suitable to reach the aim of subjecting every lawyer to the supervision of the bar. Mandatory membership also stands the necessity test German constitutional law requires. If the legislator decides to delegate supervisory power, everyone regulated by those rules has to be part of the entity which bears the supervisory power. Also, active participation in creating and adopting professional rules is a core element of bars. In order for these rules to have sufficient democratic legitimacy, representation in the regulatory body is necessary. This can only be reached by mandatory membership, which secures individual freedom of those subjected under the professional rules. The German Federal Constitutional Court stated in a case concerning mandatory membership in a chamber of commerce: "… mandatory membership provides the opportunity to participate and contribute in the decision-making process of the government with the possibility not to get involved actively. At the same time mandatory membership has the function to safeguard freedom and grant legitimacy, because it avoids direct government administration even where public interest demands strict statutory rules by trusting that those concerned will cooperate and participate."[85] What the

[83] German Federal Constitutional Court, December 05, 2002 - 2 BvL 5/98 - paragraph 168
[84] See German Federal Constitutional Court, May 09, 1972 – 1 BvR 518/62, 308/64 - paragraph 118
[85] German Federal Constitutional Court, December 07, 2001 - 1 BvR 1806/98 - paragraph 50

German Federal Constitutional Court says about rule-making, is true for the administration of rules and of supervision of members, too.

A concept of voluntary submission under the authority of a self-regulatory body, which could be seen as a less severe means compared to mandatory membership, would not work, because voluntary membership would not give the necessary legitimacy.

Also, mandatory membership creates equality of arms. The German Federal Constitutional Court stated in a ruling again concerning mandatory membership in a chamber of commerce, "financially stronger members could push themselves in the foreground and force [the chamber of commerce] to consider their special interest and their opinions by threatening to quit." Chambers of commerce would lose their insight into the whole of an industry, if their membership doesn't include everyone they have to represent and administer. This would endanger trust into the chamber of commerce, because their comprehensive expertise and objectivity would not be secured institutionally, when it comes to knowing the interests of everyone in the industry.[86]

The courts in Germany also had to deal with defining the limits of activities of mandatory membership bars. In short, justification of mandatory membership and of the existence of mandatory organizations like bars ends where those bodies go beyond governmental functions, especially when they use membership fees in order to act as participants in a functioning market, and when they claim positions in areas outside of the scope of their tasks. Reference points to define the red line are the tasks the mandatory bars are assigned to fulfill by legislative acts. That is why clear statutes are most important.

Concrete examples can be taken from recent case law. The Düsseldorf Administrative Court decided that maintaining a foundation with general charitable goals serving the public interest without more than indirect effects to the economic well-being of members goes too far beyond the statutory assigned tasks, and is thus unlawful.[87] The Hamburg Administrative Court decided

[86] German Federal Constitutional Court, December 19, 1962 - 1 BvR 541/57 - paragraph 30
[87] Düsseldorf Administrative Court, May 11, 2016 - 20 K 3417/15 - paragraph 130-134

that participation in a local political debate about the privatization of electric power supply through statements, joining a political campaign group, and newspaper advertisements is unlawful, when a chamber of commerce acts like any other private player in this debate rather than restraining itself to giving expert advice.[88] A similar ruling was issued by a local administrative Court with regards to a chamber of commerce participating in a heated political debate about a major train station project in Southern Germany.[89]

In summing up, the German courts ruled that every member of a mandatory organization has a right of her/his organization to restrict itself to the statutory boundaries.[90] Such a concept might also serve the purpose to show to the Ethiopian government that a mandatory bar would not be an entity of political activism and partisanship beyond matters of access to justice and rule of law.

ii. Other Jurisdictions

The European Court of Human Rights ruled in a Romanian case. The court decided that the freedom not to associate granted by Article 11 of the European Convention on Human Rights does not apply to a public-law institution like the Union of Romanian Lawyers, which is governed by the law and pursues aims serving the public good.[91] It seems that the Court regarded it as a matter of course that being part of such a body is mandatory.

In Hungary, the Constitutional Court ruled: "The distinctive feature of the legal profession is that as an intellectual free profession it is a private professional activity, which, for reasons to provide constitutional guarantees, as a private professional activity is particularly separated from public authority within the operation of State authorities. Constitutional guarantees and constitutional principle of legal certainty necessitate and justify to grant institutional respect, institutional protection and institutional counterbalance for the tasks to provide legal protection, legal representation as a private professional activity vis-à-vis the institutionalised State authority. The

[88] Hamburg Administrative Court, November 25, 2015 - 17 K 4043/14 -
[89] Sigmaringen Administrative Court, October 12, 2011, - 1 K 3870/10 -
[90] German Federal Administrative Court, June 23, 2010 - BVerwG 8 C 20/09 - Paragraph 21
[91] European Court of Human Rights, Bota vs. Romania, October 12, 2004 - Nr. 24057/03 -, https://www.echr.coe.int/Documents/CLIN_2004_10_68_ENG_815395.pdf (last accessed: November 23, 2018)

bar association as a public body institutionally guarantees to the public seeking legal advice, the professional competence of, the *lege artis* provision of legal protection and legal representation by its members and furthermore, institutionally guarantees the independence in performing these tasks as a private professional activity. Therefore, independence of legal profession is guaranteed and given point to by the bar association as a public body."[92]

In Levine v. Supreme Court of Wisconsin, the US District Court for the Western District of Wisconsin ruled that mandatory membership in the State Bar of Wisconsin violates First Amendment rights not to associate and not to speak, while the interest of the government to uphold mandatory membership was not sufficiently compelling to outweigh this infringement on the bar member's rights. Thus, the court declared mandatory membership for unlawful.[93] The court stated that no facts had been submitted "tending to show that in the absence of mandatory membership, the Bar's goals could not be achieved." Before, courts had held that the mere obligation to pay dues does not reach the threshold of a First Amendment rights violation, especially because being obliged to pay fees to a mandatory association does not mean that a member is associated with opinions of that organization.[94] Like in the German case law mentioned before, courts in the US held that this is true when mandatory bars exercise the function of state agencies to regulate the profession. In Levine v. Supreme Court of Wisconsin, it seems that the court did not regard the state bar as regulator in a strict sense, because in Wisconsin the supreme court itself is the regulator of ethics and legal education.

In the USA, (state) bars traditionally had a strong role in regulating the profession, regardless if membership was voluntary or mandatory. The noteworthy feature of US bars is that they were organized from the bottom up, created by the lawyers themselves. Recently, since the 1990s, a top-down approach with state courts starting to appoint boards to regulate the profession began to prevail. In the "fractionalized system of lawyer regulation"[95] it seems that questions of

[92]Hungarian Constitutional Court, Decision 22/1994, - IV. 16. -, cited according to an email by Péter Köves of December 6, 2018.

[93] 679 F. Supp. 1478 (W.D. Wis. 1988) February 19, 1988 (https://law.justia.com/cases/federal/district-courts/FSupp/679/1478/1528963/, last accessed: November 22, 2018)

[94] For a good account on the history of mandatory bars in the USA, see Martin, P. (1989). A Reassessment of Mandatory Stat Bar Membership in Light of Levine v. Heffernan. *Marquette Law Review*, 73, 144-180

[95] Maute, J. (1989). Bar Associations, Self-Regulation and Consumer Protection: Wither Thou Goest? *Journal of the Professional Lawyer*, page

mandatory vs. voluntary membership are not in the foreground of policy debates about better regulation. In a rather pragmatic approach, keeping the diverse system, in "voluntary bar states the courts have created stand-alone disciplinary agencies. In unified bar states[96] the courts have either delegated disciplinary duties to an agency within the state bar association or created a separate disciplinary agency."[97]

Mandatory membership seems unproblematic in jurisdictions where the bar is – legally – not regarded as an association, but where, as for example the Dutch law states very clearly:

"The Bar of the Netherlands […] shall be composed of all members of the Bar registered in the Netherlands and shall be a public body […]. All members of the [regional] Bar registered with the same court shall form the Bar of the district concerned."[98] This continental European model does not really see the bar as a mandatory membership organization, but rather as a public law body which one becomes incorporated in when registering as a lawyer. Membership does not require an act of free will, but is a statutory consequence of registration as a lawyer.[99]

But, this is not always the case as there are countries like the USA and Switzerland where membership is not mandatory. Those countries which are sliding into deregulation are abandoning compulsory membership on the ground that it violates freedom of association. It is, therefore, evident that mandatory membership is a controversial issue as the exercise of freedom of association is to be left to individuals to decide. Some argue that mandatory membership is not an obstacle to freedom of association so long as it does not hinder formation of another association and lawyers freely joining them.[100] The European Court of Human Rights in Strasbourg (ECHR) in the case Bota vs Romania (12 October, 2004) ruled that "according to

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84,www.americanbar.org/content/dam/aba/administrative/professional_responsibility/pubs_migrated/maute.pdf (last accessed: November 23, 2018)

[96] i.e. states in which bar membership is mandatory

[97] Maute, J. (1989). Bar Associations, Self-Regulation and Consumer Protection: Wither Thou Goest? *Journal of the Professional Lawyer*, page 58,www.americanbar.org/content/dam/aba/administrative/professional_responsibility/pubs_migrated/maute.pdf (last accessed: November 23, 2018)

[98] see European Court of Justice, February 19, 2002, - C-309/99 - paragraph 5, http://curia.europa.eu/juris/showPdf.jsf?text=&docid=46722&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=4870635 (last accessed: November 22, 2018)

[99] This is true for jurisdictions in which the practice of law is a reserved activity.

[100] Bâtonnier Jean-Marie Burguburu Marie, The "Raison d'être" of Bar Associations and Law Societies

constant jurisprudence, Societies of independent professionals are public law institutions regulated by the law and pursuing general interest goals and as such do not fall within the scope of article 11of the Convention concerning freedom association."[101] In the USA, compulsory membership was challenged for its constitutionality. In *Lathrop v. Donohue*, the United States Supreme Court held in a plurality opinion, that Wisconsin's mandatory bar membership requirement did not violate the plaintiff's first amendment right not to associate with the state bar.[102] Such statutory associations involve public interest and they are established under public law which imposes that lawyers should be admitted to the bar to practice in the jurisdiction.

In Ethiopia, there are voluntary professional associations which are weak and fragmented and the majority of lawyers being members of none of the associations. In such fractured professional community, all what has been discussed as the benefit of organization becomes meaningless. If a paradigm shift is to be brought about for the benefit of all stakeholders, statutory association seems to be the solution. Yet, with the Federal System in mind how the association should be established is a question which must be addressed. In this regard, we may draw lessons from the experience other jurisdictions with similar state structure. Germany offers a good example for a federal structure. In Germany, the German Federal Bar (BRAK) is the umbrella organization of the 27 regional Bars and the Bar at the Federal Supreme Court. Every lawyer is by law member of a regional Bar. The BRAK is the coordinating body for the regional bars. It manages the rule-making assembly, which adopts a code of conduct, it runs a national lawyers' register, supplies every lawyer with a secure email account, and serves as the voice of the bars on a national level. Internationally, the German Federal Bar represents the legal profession, often together or in mutual consultation with the voluntary German Bar Association. The German Federal Bar also has to promote and support continuing legal education.

[101] Bâtonnier Jean-Marie Burguburu Marie, The "Raison d'être" of Bar Associations and Law Societies

[102] Peter A. Martin,A Reassessment of Mandatory State Bar Membership in Light of Levine v. Heffernan, 73 Marq. L. Rev. 144 (1989). Available at: http://scholarship.law.marquette.edu/mulr/vol73/iss1/6, P. 145

3.3. Admission

3.3.1. Registration, Certification or Licensing

Countries ensure that legal practice is reserved to those who are qualified to render the service. The approach is not the same everywhere, however. In the majority of states license is required to practice, some legal systems settle for certification.[103] In addition to the fact that few countries are employing certification by which private alternatives to state licensing is opted, it is criticized on the ground that it may not address social interests affected by law practice, such as service to the poor, the general community or the interests of justice.[104] Obviously, educational qualification is required and the skill needed which is to be fulfilled by the number of years of legal practice required. One of the policy considerations to be reflected throughout the law should be consumer protection or protecting the general public. However, there are other factors which should be taken into account such as access to justice which will be hampered if the admission requirements are stringent. The question worth raising is whether society is better off with leniency in the admission criteria offering wider choices or is the skill more vital?

The main justification for occupational licensing is to protect the public from unqualified practitioners. Otherwise, low quality practitioners would increase the supply, decrease prices and quality, and reduce incentives to invest in quality.[105] Hence, licensing is a screening mechanism which will reduce the adverse impact of information asymmetry between lawyers and their clients though this explanation is challenged by some commentators as unconvincing.[106] It is maintained that lawyer licensing would seem to hurt the very people who most need protection; the poor and disadvantaged who cannot pay the highly trained lawyers the system requires.[107] However, states with certification do not seem to have experienced massive entry of new lawyers

[103] Legal practitioners are required to have a professional license in almost all European states and the exceptions are Denmark, Finland, The Netherlands, and Sweden, where a system of certification is used instead. Visit https://www.carloalberto.org/assets/working-papers/no.284.pdf

[104] Larry E. Ribstein, Lawyers as Lawmakers: A Theory of Lawyer Licensing, 69 Mo. L. Rev. (2004) Available at: http://scholarship.law.missouri.edu/mlr/vol69/iss2/1

[105] Attention should be drawn to the fact that states with certification do not seem to have experienced massive entry of new lawyers or to have less qualified legal professionals. Mario Pagliero1 and Edward Timmons, Occupational Regulation in the European Legal Market, p. 17

[106] Larry E. Ribstein, Lawyers as Lawmakers: A Theory of Lawyer Licensing, 69 Mo. L. Rev. (2004), Available at: http://scholarship.law.missouri.edu/mlr/vol69/iss2/1

[107] Larry E. Ribstein, Lawyers as Lawmakers: A Theory of Lawyer Licensing, 69 Mo. L. Rev. (2004), p. 327, Available at: http://scholarship.law.missouri.edu/mlr/vol69/iss2/1

or to have less qualified legal professionals. Obviously, in Ethiopia license is required to practice and that seems to remain so in the future.

The license is obviously a permission to render legal service though that does not seem to mean the same for everyone. Distinction is made based on the tasks to be assumed by some group of lawyers even if it is viewed as a license for general practice. For example, historically in England, Ireland, Northern Ireland, and Wales, providers of legal services are divided into two distinct professions with their own professional bodies and self-regulatory functions: solicitors and barristers. Until 1990 in the UK only barristers (advocates) could appear before the higher courts and they could only take instructions from a solicitor and not directly from a client.[108] Further, in some legal systems the license is needed only in relation to specific activities namely, representation before a court as otherwise it is dispensed.[109]

The question whether foreigners can practice in Ethiopia can be a question though currently the law takes a stance that only Ethiopian citizens are allowed to obtain license to practice law. Globally, it is one of the most protected services and the protection comes mainly from regulatory barriers related to qualification recognition, residency conditions, area of practice, etc.[110] It is evident that legal services generally come under the most restricted services across the world and under the GATS, most countries made limited commitments in legal services.[111]

3.3.2. Eligibility

International Bar Association sets as a standard that every person having the necessary qualifications in law shall be entitled to become a lawyer and to continue in practice without discrimination.[112] The right is not absolute, and its exercise is contingent upon the fulfillment of fitness criteria set by the jurisdiction. Though it is in the interest of the legal system to determine eligibility, there should not be unnecessary hurdle for entry which is in the interest of consumers in addition to the respect to the constitutional rights of citizens to choose their trade. The criteria the law sets forth for getting the license is another factor for diversity in approach. The

[108] Frank H. Stephen and James H. Love, Regulation of the Legal Profession, University of Strathclyde, Glasgow, United Kingdom, p. 1006
[109]The Kenyan experience can be a case in point.
[110] http://www.india-eu-migration.eu/media/CARIM-India-2013-31.pdf
[111] http://www.india-eu-migration.eu/media/CARIM-India-2013-31.pdf
[112]IBA Standards for the Independence of the Legal Profession (Adopted 1990), Clause 1.

requirements that an applicant for license should fulfill may include admission to the bar, educational standards, performing successfully in a bar exam, serving in an apprenticeship, and clearing moral character and background checks. Most legal systems demand that would-be lawyers meet a combination of most of those requirements so as to secure license.

Even in countries like Finland, where the legal services market is rather unregulated, and where everybody can offer legal services, the right to bear a professional title is regulated. In most jurisdictions, either a title or certain activities are restricted. Prerequisite for being able to practice law is some kind of registration, certification or licensing, sometimes a combination of more than one. There is also different types of licenses which could be extensive, from the exclusive right to give legal advice outside of courts to representation in courts like in Germany, or it could be more or less restricted to either of those activities like in England and Wales and many Commonwealth countries, where a split profession exists (solicitors and barristers).

Conditions for entry to the profession (from a traditional perspective) or access as a provider to the legal services market (competition law perspective) are one of the main features to define a regulated profession. Justification for entry barriers are traditionally administration of justice reasons. While in the past admission procedures were used to limit the number of lawyers in order to ensure that an oversupply does not lead to price competition and lower quality, today it is widely accepted that it is the quality of a candidate which is the decisive criterion. Registration thus is rather a technicality; it is the question of eligibility that deserves most attention. There are economic studies demonstrating that restricted access to the profession ("regulated social optimum") ensures quality. Minimum quality standards – from an economic perspective – actually enhance welfare.[113]

A question which should be answered here is if and under which condition temporary services on the one hand and the actual establishment of a law firm should be allowed, also, if and under

[113] Haucap, Justus & Rasch, Alexander & Weibel, Christian (Düsseldorfer institute for Competition Economics) (2017), *Aspekte der Deregulierung bei den Freien Berufen*, pages 11-13

which conditions a foreign lawyer should be able to give legal assistance in the law of his or her home jurisdiction, in international law or in Ethiopian law.[114]

The following models are sketched here in a pure form to illustrate the approaches to determine eligibility which can be used in combination.

a. Outcome-based admission or "socialization" requirements

i. No regulation as to how a candidate requires her / his knowledge. The main requirement for a candidate is passing an exam, in some cases even without practical training. A model like this can be found in certain US states and in England and Wales, where an academic law degree is not required as prerequisite to admission.[115] One of the ideas behind this model is social mobility, since the authority taking the admissions exam is neutral with regard to where and when a candidate has acquired their knowledge. Outcome-based educational models internationally seem to be a modern way of defining educational goals,[116] especially because they allow to compare knowledge and skills.[117] A drawback could be that focusing just on a (final) exam might reduce involvement especially during practical training periods in which skills can be acquired that cannot be easily be tested in an exam.

ii. Professional socialization: The path to the profession is described with requirement regarding contents and duration of theoretical and practical legal education, and regulates how to reach this goal. This is true in most jurisdictions. This concept of legal education

[114] For international examples see the IBA *Global Regulation and Trade in Legal Services Report 2014*, https://www.ibanet.org/Document/Default.aspx?DocumentUid=1D3D3E81-472A-40E5-9D9D-68EB5F71A702 (last accessed: December 31, 2018); European Centre for Liberal Professions (2014), *The State of Liberal Professions Concerning their Functions and Relevance to European Civil Society*, page 61-63

[115] There is even a route to qualification without a law degree at all, see https://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/qualifying-as-a-solicitor/ (last accessed: November 22, 2018).

[116] See UNESCO (2012). *Education and skills for inclusive and sustainable development beyond 2015*.http://www.un.org/millenniumgoals/pdf/Think%20Pieces/4_education.pdf (last accessed: November 23, 2018)

[117] See CCBE (2007), *Recommendations on Training Outcomes for European Lawyers*.https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/TRAINING/TR_Guides_Recommendations/EN_TR_20071123_CCBE_Recommentations_on_Training_Outcomes_for_European_Lawyers.pdf (last accessed: November 23, 2018)

aims to assisting a future lawyer in her / his development to have a more or less fully capable member of the profession upon admission. An inherent danger of this model is that "unfit" candidates can be informally pushed out.

b. Duration of academic training, university degree

Across the jurisdictions that require law school education, different levels of education are needed for either practical training or admission to the profession (LL.B., LL.M., J.D., state exam[118]). A discussion, if those standards should be changed, should be reserved to a later discussion.

c. Bar (association) involvement in contents of initial education

i. Universities/law schools

It is probably mainly due to the traditions of the academic education system how much involvement of the government or professions is possible in academic education. In countries where academic freedom and freedom of science is valued highly, there is few possibilities for the legislator or the legal profession to play a role in defining curricula. The IBA has published Policy Guidelines for Training and Education of the Legal Profession that give good examples of bar and law society involvement in the various stages of legal education.[119]

ii. Accreditation system

There are examples, though, of the legal profession having a great say in defining curricula and even frame conditions for law schools. The American Bar Association, even though being a private, voluntary association, has been recognized by the US government as the accreditation

[118] The German first state exam (*1. Staatsexamen*, now: *1. Prüfung*) was traditionally designed to be an entry exam to the practical training; the second state exam (*2. Staatsexamen*) originally was an entry exam to the post-education stage. These exams have effectively evolved to be final exams to finish the respective stage of education.

[119] *IBA Policy Guidelines for Training and Education of the Legal Profession, Part I* (2011), (https://www.ibanet.org/Document/Default.aspx?DocumentUid=5A7375DC-7D1B-465C-A91E-19E47D2E7D45, last accessed: December 30, 2018)

agency for programs leading to the J.D. degree.[120] Graduates from ABA-approved law schools generally have an easier access to bar exams all over the USA and to admission to the profession. After criticism of making it too costly to meet ABA accreditation criteria and thus of barring students access to law schools in the 1990s, the ABA has changed accreditation rules.[121] Over ongoing criticism about continuing high fees of law schools the ABA recently proved how important high quality standards are by sanctioning for-profit law schools.[122] The debate about a good balance between high quality academic legal education and access to education for those who cannot afford above average tuition still seems to go on.[123]

d. Training for any legal profession or just lawyer training

i. Especially in Germany, the concept of *Volljurist* is part of the legal education credo. Every future legal practitioner (lawyer, judge, prosecutor, legally trained civil servant in public administration) shares 4-5 years of academic legal education in university[124], followed by 2 years of practical training.[125] In this government-funded practical training, every future legal professional gets training in a civil court, a prosecutor's office, in public administration, and with a lawyer. There is also an optional stage in which many candidates intern abroad or with their future employer. Legal education outcome is defined by statute to be the "qualification to hold the office of judge"[126], which is a career profession in Germany, unlike in many other jurisdictions. This

[120] https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2016_accreditation_brochure_final.authcheckdam.pdf (last accessed: November 23, 2018). The ABA has accredited law schools since 1921: https://www.nytimes.com/1995/06/28/us/justic-dept-forces-changes-in-law-school-accreditation.html (last accessed: November 23, 2018)

[121] https://www.nytimes.com/1995/06/28/us/justic-dept-forces-changes-in-law-school-accreditation.html (last accessed: November 23, 2018); https://www.washingtonpost.com/archive/ politics/1995/06/28/aba-settles-antitrust-case-over-certifying-law-schools/91496e17-3da3-4640-bf50-5b76db84e01d/?noredirect=on&utm_term=.9d222e65325b (last accessed: November 23, 2018)

[122] https://www.insidehighered.com/news/2017/04/06/aba-cracks-down-low-performing-law-schools-wake-criticism-feds (last accessed: November 23, 2018)

[123] https://www.nytimes.com/2011/12/18/business/for-law-schools-a-price-to-play-the-abas-way.html (last accessed: November 23, 2018)

[124] In Germany, the vast majority of law students attend law faculties at one of the 42 public universities. (Private) Law schools do not play a role in Germany, with the exception of one private law university in Hamburg (*Bucerius Law School*).

[125] *Referendariat*. Internationally, different terms exist for the practical stage of initial legal education, for example vocational training, apprenticeship, stage, preparatory service, .

[126] Befähigung zum Richteramt, Section 5 German Judiciary Act (Deutsches Richtergesetz)

system obviously follows the ideal of a professional socialization, trying to help legal professionals to speak the same language. On the downside, this is government-run practical training system is viewed as a system in which there is not enough emphasis on the independence of the lawyer profession, and critics say the focus on the qualification to hold the office of judge ignores the fact that around three quarters of those in the legal education program become lawyers in private practice.[127] In reality, though, there has been more windows for involvement of the bars in the theoretical training accompanying the practical stages during the past years.

ii. Training just to become a lawyer

The predominant training regime is a training in which the bar is responsible for the practical stage, defining and administering contents of practical education. Systems vary from just requiring an apprenticeship[128] with a lawyer to a more closely guided training. The big advantage is that the practical stage is very specific. On the other hand, trainees do not get the broader view of all practical legal professions.

e. Practical training

i. Responsibility for practical training with ministry of Justice (federal or state)

Where legal training is comprehensive like in the German *Volljurist* system, it might be a consequence to have the government as regulator, organizer, and funder of the practical training.

ii. Responsibility with profession (regulatory body)

If the training is a lawyer's preparatory training, it might make more sense for the profession to organize nature and extent of the training. In order to comply with competition law, the same

[127] Kilger, H. (2006). Juristenausbildung 2006 – nur Qualität sichert den Anwaltsberuf. Warum die Anwaltschaft eine Spartenausbildung braucht. *Anwaltsblatt,* (1), 1-4. https://anwaltsblatt.anwaltverein.de/de/anwaltsblatt/print-archiv?year=2006&file=files/anwaltsblatt.de/Archiv/2006/01-06.pdf (last accessed: November 22, 2018)

[128] Some jurisdictions use different terms for this like vocational training period, practical training, preparatory training, practical stage. Those terms can be used synonymously.

rules as in regulating the profession itself should apply especially concerning legitimation of standards of access.

In Ethiopia, in order to obtain a license for legal practice, one must have the necessary credentials to show that one has finalized the necessary course work in LLB and has passed the entry examination that has been set for the license to practice law. The prospective advocate should also bring letter from his/her former employee that shows his/her conduct or performance. [129] Regarding experience, the applicant needs to have a certain period of professional experience, as a judge, prosecutor or legal education for 3 – 5 years, depending on the level of the court to which the advocate has applied to practice is required. Another most important point with regard to admission is that the person applying should not make a materially false statement in connection with the application.[130]

Ethiopia, being a country with a federal system, gives regional states that power to promulgate laws that deal with the licensing and registration of advocates that practice before regional courts on regional matters[131]. As such, regional governments have enacted laws that deal with the licensing and registration of advocates that practice in their jurisdiction. The regions also have varying criteria that have to be complied with by the prospective advocate in order to obtain the license to practice law. Some of the regional states stipulate higher standards for those who would like to obtain the license to practice law in their region. The regional state of Oromia, in addition to the criteria stipulated under the Federal law providing for the licensing and registration of advocates practicing before the federal courts, stipulates that the prospective advocate has to present documents that show a permanent residence and place of business[132]. In addition, a clearance and evidence of release from the prospective advocate's previous employers has to be presented in order to obtain a license to practice law in Oromia[133]. The State

[129] Art. 4(2), Proclamation No. 199/2000 A Proclamation to Provide for The Licensing and Registration of Advocates Practicing Before Federal Courts, Federal Negarit Gazeta Of the Federal Democratic Republic of Ethiopia, 6th Year No. 27 Addis Ababa – 9th March, 2000 (herein after referred to as Proclamation No. 199/2000)
[130] ABA Model Rules of Professional Conduct 2018
[131] The reading of Art. 52(1), Art. 51 and Art. 55(3-5) of the FDRE Constitution clearly shows us that the power to enact laws related to the administration and regulation of the legal practice has been left to the regional states.
[132] Art. 6(2(f) of Proclamation No. 182/2013 Proclamation Licensing and Administration of Advocates and Paralegals of Oromia National Regional State, Megeleta Oromia, 21st Year, No. 7, Finfinne, July 14, 2013 (herein after referred to as Proclamation No. 182/2013 Oromia)
[133] Art. 6(2(g) of Proclamation No. 182/Oromia

of Tigray further clarifies what the federal proclamation states as "Conduct". In Tigray a person who has been charged with and have been imprisoned for more than three years for the crime of Corruption or other crimes will not be allowed to obtain a license to practice law. In addition, the prospective advocate has to present evidence that he/she has not been charged with disciplinary measures in the organization he/she was previously employed in.[134] In the Southern Nations Nationalities and Peoples regional state, similar to the state of Oromia and Tigray, it is required for the prospective advocate to show the existence of a permanent residence and place of work[135].

It is advisable to define eligibility criteria only on grounds of quality. Any restrictions to accessing the profession that go beyond the standards set in the rules determining qualification might meet competition law concerns. On a policy level, a profession that appears to have an interest in restricting access to their group for reasons of protecting those already in while arguing this is only motivated by upholding quality of service will face difficulties when arguing with public interest arguments in other cases.

3.3.3. Regulator of admission

Considering the diversity in approach, it is proper to raise the query as to who should regulate admission. In many cases, the national legal professional association (or bar) is autonomous and sets the requirements. In yet other cases, a mixed approach is adopted by which the responsibility for setting the entry requirements is shared between professional associations and another institution.[136]As to which organ is competent to determine the requirements for admission is not amenable to a straightforward answer. The approaches in the most countries are summarized in the following table.[137]

[134]አንቀፅ 6(2(ሐእናመ) ፣አዋጅቁጥር 262/2007 ዓ.ም የትግራይ ብሄራዊ ክልላዊ መንግስት የጥብቅና ፍቃድ አሰጣጥና የጠበቃ አስተዳደር የተሻሻለ አዋጅ፣ ነጋሪት ጋዜጣ ትግራይ፣ 22ኛ ዓመት ቁ. 12 መቐለ 2007 ዓ.ም

[135] Art. 6(2) of Proclamation No.164.2016 A Proclamation to Provide for Licensing and Administration of Advocates and Paralegals practicing at Southern Nations, Nationalities and Peoples' Regional State Courts, Debub Negarit Gazeta of the Southern Nations, Nationalities and Peoples Regional State, 22nd Year No 4, Hawassa July 14/2016

[136] Mario Pagliero1 and Edward Timmons, Occupational Regulation in the European Legal Market, p. 7

[137] International Bar Association, Directory of Regulators of the Legal Profession (2016), p. 13

Predominant regulator of admission	Number	Percentage
Court	27	12%
National Bar	71	32%
Local Bar	22	10%
Government	16	7%
Independent and delegated regulatory authority	58	26%
Mixed or shared responsibility	29	13%
Total	223	

In the majority of states, it is a national bar which regulates admission followed by independent and delegated regulatory authority which, together cover about 58% of the 223 countries included in the study.

3.3.4. Entity

Another policy issue pertains to a matter of who is to be regulated: only individual practitioners, or also the law firms in which they work? Traditionally, regulation (including licensing, codes of conduct, and discipline) has been aimed at individual practitioners and we have seen above that the tendency is towards regulation of entities rather than individual practitioners. When, firms are allowed as a mode of delivering legal service, lawyers are not free in their choice of organizational form. In many jurisdictions there are restrictions on the organizational forms which can be adopted by providers of legal services. Traditionally, these restrictions appear to have been motivated by a desire to keep at arm's length commercial or profit considerations on the part of lawyers.[138]

[138] Frank H. Stephen and James H. Love, Regulation of the Legal Profession, University of Strathclyde, Glasgow, United Kingdom, P. 1006

Some commentators argued that professional partnership accompanied by unlimited liability is a solution to the moral hazard problem posed by the asymmetry between client and professional. The willingness of one professional to risk his or her wealth by entering into such a partnership with another professional signals to clients the trustworthiness of members of the partnership and provides a guarantee that there will be mutual monitoring among partners.[139] On the other hand, limited liability partnership is recommended for professional services such as legal practices.
It should be noted that one of the inherent core values of the profession never really added to the canon of "official" core values is the promise to the public that the lawyer who gives legal advice bears full liability for this advice. The asymmetry of knowledge between which makes it difficult for non-lawyers to understand the value of the expert advice they receive and the system of regulation which is based on quality needs systemic safeguards for the consumer of legal advice for cases in which the quality is not delivered. On the other hand, a more complex economic life does not allow this ideology to be true without limit. The risk of malpractice must be insurable with proportional expense. Otherwise legal services will become too expensive and thus inaccessible. These considerations should guide the contents of the law, as well as a view to examples of jurisdictions internationally, where limited liability companies and even stock exchange-listed companies were allowed apart from the more traditional partnership companies.

The question which legal form of company shall be permitted must be answered from the perspective of the Ethiopian company law. It might make sense to start by creating a (limited liability) partnership created according to models in other jurisdictions. The draft Commercial Code of Ethiopia envisages such form so that it can be used by professionals who want to form an entity.[140] Entity regulation of law firms is now found in many of these jurisdictions in different forms including Sole proprietorship, partnership, limited liability partnership, professional corporation and multidisciplinary practice.[141] While Ethiopia is yet to deviate from the age-old solo practice in favor of establishment of law firms, other legal systems offer a variety of business structures recognized both in the legal framework for regulation of the profession as well as in their commercial codes.

[139] Frank H. Stephen and James H. Love, Regulation of the Legal Profession, University of Strathclyde, Glasgow, United Kingdom, P. 992
[140] Draft Commercial Code, Article 275
[141] Noel Semple Legal Services Regulation in Canada: Plus Ça Change?, University of Windsor Scholarship at Windsor, Law Publications Faculty of Law, Spring 2017

As service providers, it is undeniable that lawyers can benefit from economies of scale and division of labor by coming together and operating as a business firm. This allows lawyers to share the administrative burdens and resources, expand their reach into different locations and areas of expertise, and handle complex legal issues. The social capital that lawyers bring in to form a firm such as skill, expertise, and connection creates an increasingly specialized one-stop shop for entity clients with a focus on business law and transactional work.This further confirms law firms being an answer to the societal request and market demand. While one-stop shop of legal service is highly impossible to achieve with a sole practicing lawyers and they can only specialize on specific fields, it will be hard to give a solid on time answer to clients. The growth of law firms also contributes to the growth of the profession itself. Firms trained inexperienced lawyers with an excess of labor—associates—and… promote them or help them to be placed elsewhere. Law firms worldwide recruit graduates from law schools in large numbers and under the firm's shield, each partner mentors and supervises several associates.

3.3.5. The service

What is considered to be "the practice of law" is not always clear, but it generally includes representing others before courts and administrative agencies and providing legal advice or legal drafting services to others. A minimum definition of a lawyer's service could be "independent analysis of the law and independent individual advice and representation (outside and within courts)". Representation means that the lawyer – unlike when only advising – actually takes over the problem solving, usually by acting on behalf of the client vis-à-vis third parties. This should include any representation outside courts, even outside tribunals. A broad definition of representation serves the client, because the lawyer is bound to professional ethics for all her/his work. Furthermore, the degree of protection a client needs when facing an administrative tribunal can be as high as when facing a court. One cannot know *ex ante* if the protection needed is generally lower at a tribunal.

Another reason why it might seem reasonable for a statute to focus on the lawyer rather than on services is that from a legal services perspective it might be necessary to include in the same regulation all legal service providers, even those who only provide for somewhat limited services

like notaries,[142] tax advisors, maybe paralegals.[143] It should be noted, though, that the quality of lawyers as a profession might be endangered when all actors in the legal services market are regulated similarly, even those who do not stand for the same high-level education and high quality of services.

One of the distinctions that can be drawn between countries is the structure and organization of the legal profession. In some countries the service is unitary while in others it is fragmented. For instance, in the USA, the legal profession is a unitary one while in European Civil Law counties the functions are divided into different categories. Hence, the classes are those who may represent clients in court (e.g., advocate in France and Rechtsanwalt in Germany), those who advise on and document the transfer of real and personal property (e.g., notaries in France, Italy, and Spain) and those who counsel clients on business transactions (e.g., the former avouees and conseil juridique in France.)[144]

The principal rationale for excluding lay individuals and organizations from practicing law is that consumers of legal services need to be protected from the possible incompetence and dishonesty of lay legal service providers.[145] With advancement in technology and needs of society, the boundary of legal service and the mode it is delivered is expanding. For instance in some jurisdictions recognition is given an alternative business structure (ABS) that is a broad term that includes any form of traditional law firm business structure, as well as alternative means of delivering legal services such as

- non-lawyer or non-paralegal investment or ownership of law firms, including equity financing;

[142] It might be worth being mentioned that a tradition in parts of Germany could be considered for the Ethiopian context: While in most jurisdictions (and in most of Germany) public notaries are full-time public offices, in former Prussia lawyers are part-time public notaries in addition to their lawyer profession. As *Anwaltsnotare* they are members of the lawyer's bar and of the notary's bar. One advantage of this dual profession is the mutual exchange of experience. Also, in not too developed areas, a person who is lawyer and notary public could have two sources of income.

[143] In Washington State (USA), a new legal profession was created by the State Supreme Court: The Limited Licenced Legal Technician (LLLT) provides restricted legal services to make legal assistance more affordable to the public. Other states are considering to adopt this model for a somewhat professionalized paralegal profession. LLLTs are regulated by the State Bar.

[144] Maya Goldstein Bolocan, Professional Legal Ethics: A Comparative Perspective, Central European and Eurasian Law Initiative, Concept Paper Series July 8th, 2002, p. 2

[145] Quintin Johnstone, ,"Bar Associations: Policies and Performances" (1996).Faculty Scholarship Series.Paper 1905. http://digitalcommons.law.yale.edu/fss_papers/1905, P. 218

- firms offering legal services together with other professionals offering other types of services; and
- firms offering an expanded range of products and services, such as do-it-your-self automated legal forms, as well as more advanced applications of technology and business processes.[146]

It is believed to facilitate greater flexibility in the delivery of legal services, foster innovation in the area and improve access to legal services for consumers. A reform should also foresee future developments so that the law would serve for a long period of time. In this regard, multi-disciplinary practice is described as the "most important issue facing the legal profession today." Some maintain that clients benefit from economies of scale where a professional firm included lawyers, accountants, surveyors and so on, so-called 'one stop shopping'. Yet, the rule in many jurisdictions prohibits lawyers from partnerships and fee-sharing with non-lawyers in most situations.[147]

3.3.6. Ethics and Disciplinary Authority

- **Code of conduct**

Legal profession, like other professions, requires a certain level of ethics and etiquette that would form which may be provided under the law or the general code of conduct developed by Bar Associations or Law Societies. Any act by the advocate in violation of the professional rules, standards and codes of conduct will be considered misconduct and is punishable. Generally, misconduct is unethical and illegal conduct by an advocate in contradiction with the established rules of professional conduct developed by relevant institution or the law. In different jurisdictions, professional misconduct is clearly provided and is sanctioned. Lawyers' codes of conduct respect basically similar core values in most jurisdictions such as independence of professional judgment, confidentiality of client communications, loyalty, and the avoidance of conflicts of interest. They impose obligations on lawyers and hence are restrictions on the freedom to exercise the profession. In general, they might also restrict freedom of competition.

[146]Alternative Business Structures and the Legal Profession in Ontario: A Discussion Paper, The Law Society of Upper Canada, p. 9

[147]John H. Matheson and Peter D. Favorite, Multidisciplinary Practice and the Future of the Legal Profession: Considering a Role for Independent Directors, 32Loy. U. Chi. L.J.577, (2001), P. 578. available athttp://scholarship.law.umn.edu/faculty_articles/396.
Frank H. Stephen and James H. Love, Regulation of the Legal Profession, University of Strathclyde, Glasgow, United Kingdom, P. 1005

The only legitimate purpose is to further the administration of law and to grant access to justice by upholding quality of legal services. Rights like the right to confidentiality do not serve a purpose to benefit the lawyers, but they are duties that reflect client's rights to access to justice.

The restrictive character of these obligations requires not only a justification in substance, but also a democratic legitimacy. As mentioned before, it is advisable to either choose a system of statutory principles filled in by a code of conduct which the profession gives itself, or to have at least a concrete, rather detailed authorization in an enabling statute. In any case, it should be possible to trace back each restriction for public interest purposes to the democratically legitimized legislature, even if the details of a code of conduct are debated and decided on by representatives of the profession. It might be worth noticing that a modern code of conduct should not work with too general norms, but with rules that have a high degree of clarity, especially when sanctions are connected to the violation of this rule. In the end, every administrative decision of the regulator should be backed up by an authorization in the code of conduct, which in turn should be justified by a norm in a statute. The statute, of course, should have its legitimation in the constitution. So it should be able to trace back every decision which affects a member of a bar by a chain of legitimation.

The source of code of professional conduct is an area of diversity among states. For instance, unlike the U.S.A where lawyers are regulated principally by the courts through state bar associations, lawyers in Europe have historically been subject to more control and regulation by the state.[148]The UN Basic principles recognize that the rules emanate from organs of the legal profession or legislation.[149]Currently, the code of conduct for lawyers practicing before federal courts is incorporated in Federal Court Advocates' Code of Conduct Council of Ministers Regulations No. 57/1999. The general principle is that

the responsibility of a lawyer is primarily to assist the organs of the administration of justice in the effort to promote respect for the law and the attainment of justice. Lawyers owe professional duties to his client, other lawyers and opposing party, the court, his profession, and the society in

[148]Maya Goldstein Bolocan, Professional Legal Ethics: A Comparative Perspective, Central European and Eurasian Law Initiative, Concept Paper Series July 8th, 2002, p.7

[149]Principle26reads: Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, by legislation, in accordance with national law and custom and recognized international standards and norms.

general honestly, faithfully and truthfully.[150] The specifics build on this general principle and we have selected and briefly discussed some of the ethical rules which are the cornerstones of the regulations.

- **Duty of Confidentiality**

Article 10 of the Code of Conduct states the duty of confidentiality that exists between Client and the advocate, while article 11 of the same set out exceptional conditions upon which the advocate may disclose such confidential information obtained in the course of providing his professional service. However, unlike that of Article 321 of the Swiss Criminal Code, the Code of Conduct is silent as to what consists of confidential information. The professional secrecy obligation of the legal profession in Switzerland set out that confidential information covers all information that an attorney receives from his client or which he will come to learn in the course of his activity as an attorney. Swiss law provides for a strong protection of confidentiality, in part, because of the very high value placed on the constitutional right to privacy (Federal Constitution of the Swiss Confederation of 18 April 199, RS 101, Art. 13)

In almost all legal systems (Switzerland, Nigeria, India etc.) including in the Ethiopian legal system, this duty of confidentiality survives even after the client-advocate relationship is terminated on any ground. Pursuant to Article 10(3) of the Code of Conduct the obligation of professional confidentiality of an advocate may not cease because of termination of the contract with the Client.

The duty of confidentiality is not absolute; it is subject to an exception. According to Article 10 of the Code of Conduct, an advocate may, when he/she reasonably believes appropriate, reveal to the extent necessary, the information he/she obtained in the course of his/her professional duties, in the following circumstances:

A) When the information he /she obtained from the client is necessary for the task he is represented;
B) To establish a claim or defense on behalf of the advocate in a controversy between him/her and the client;

[150]Article 3 of the Regulation

C) When a controversy arises concerning his/her power of representation or

D) To perform his obligations as expressly provided otherwise by law.

These standards are also stated in almost all state laws we have reviewed. In addition to this, however other jurisdictions also allow disclosure of confidential information only to the extent necessary in the following scenarios:

- If it is common knowledge
- With respect to the relationship between client and advocate, when: the client consents after he is adequately informed concerning the use or disclosure:
- With respect to the interests of third persons, when the advocate acts with actual or apparent authority
- To prevent the client from committing a criminal act that the advocate believes is likely to result in imminent death or substantial bodily harm
- Authorized disclosure, an advocate is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, advocate may disclose information by admitting a fact that cannot properly be disputed, or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

With regards to the duty of confidentiality, the Ethiopian law shows much similarities to the international experience. The duty to confidentiality tries to balance the interest between the client and that of justice.

- **Conflict of Interest**

Article 10 of the Code of Conduct states that, any advocate may not enter into a contract to render professional service when he knows that there exists conflict of interests between the client and himself, or between his relatives and his client, or between his partners and his client, or between his clients. When the existence of conflict of interests has been discovered after the service has already begun, the advocate shall explain the matter to his client and terminate the service. According to Canadian law, conflict of interest is presumed to exist when there is a substantial risk that an advocate's loyalty to or representation of a client would be materially and

adversely affected by the advocate's own interest or the advocate's duties to another client, a former client, or a third person.

An advocate shall, at the time of the retainer, disclose to the client all the circumstances of his relations with the parties, and any interest in or connection with the controversy which might influence the client in the selection of the advocate. Except with the consent of his client after full disclosure, an advocate shall not accept a retainer if the exercise of his professional judgment on behalf of his client will be or may reasonably be affected by his own financial, business, property, or personal interest.

An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the advocate should withdraw from the representation. And where an advocate is required to decline employment or to withdraw from employment under any of these rules, no partner, or associate, or any other advocate affiliated with him or his firm, may accept or continue such employment.

The general rule is that an advocate ordinarily may not act as advocate against a person he represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not taken as a conflict of interest. Even more, a possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the advocate's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

On the other hand, the advocate's own interests should not be permitted to have adverse effect on representation of a client. If the probity of an advocate's own conduct in a transaction is in serious question, it may be difficult or impossible for him to give a client detached advice. Furthermore, in litigation also a number of rules of conducts prohibit representation of opposing parties in litigation. Simultaneous representation of parties, whose interests in litigation may conflict, such as co-plaintiffs or co-defendants.

In Ethiopia, the conflict of Interests that have been dealt with in the law are of two types. The first is a conflict of interest that exists for the advocate between the client and the advocate himself/herself, his/her relatives, partners, or between clients[151]. In this case the advocate may not accept the engagement for the service due to the existence of the conflict. If the advocate finds out that there is a conflict of interest after the engagement for the legal service, then the advocate has the duty to disclose to the client of the existence of a conflict of interest and terminate the contract. The second type of Conflict of Interest is one that exists with a client and a former client[152]. The advocate has to get the consent of a former client with whom there would be a conflict of interest with, in writing.

3.3.7. Diligent and Competent Representation

In light of Ethiopian law, any advocate is expected to show high level of professional competence as well as skill and the advocate shall employ his/her legal knowledge and work experience to protect the rights and interests of his/her client and to follow up his/her client's case diligently and take all the necessary measures carefully and timely so as to obtain a quick and just decision[153]. Ethiopian law does not clearly state what a competent advocate actually means.

On the contrary, when one looks at Canada, defines this term "Competent Advocate" as follows[154]:

> *Competent advocate means an advocate who has and applies relevant knowledge skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the advocate's engagement as a legal professional. The attributes include the following:*
>
> *a) Knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the advocate practices;*

[151] Art. 12 of the Code of Conduct
[152] Art. 13 of the Code of Conduct
[153] Art. 8 Council of Ministers Regulation to Provide for the Federal Courts Advocates' Code of Conduct, Council of Ministers Regulation No. 57/1999, Federal Negarit Gazeta Of the Federal Democratic Republic of Ethiopia, 6th Year No. 1 Addis Ababa – 9th March, 1999, (herein after referred to as The Code of Conduct)
[154] Art. 3. 1 of the Model Code of Professional Conduct, Federation of Law Societies of Canada, https://flsc.ca/wp-content/uploads/2018/03/Model-Code-as-amended-March-2017-Final.pdf last accessed on 1 September 2018

b) *Investigating facts, identifying issues, ascertaining client objectives, considering possible options and developing and advising the client on appropriate courses of action;*

c) *Implementing, as each matter requires, the chosen course of action through the application of appropriate skills, including:*

   I) *Legal research;*

   II) *Analysis;*

   III) *Application of the law to the relevant facts;*

   IV) *Writing and drafting;*

   V) *Negotiation;*

   VI) *Alternative dispute resolution;*

   VII) *Advocacy and*

   VIII) *Problem solving;*

d) *Communicating at all relevant stages of a matter in a timely and effective manner;*

e) *Performing all functions conscientiously, diligently and in a timely and effective manner;*

f) *Applying intellectual capacity, judgment and deliberation to all functions;*

g) *Complying in letter and spirit with all rules pertaining to the appropriate professional conduct of advocates;*

h) *Recognizing limitations in one's ability to handle a matter or some aspect of it and taking steps accordingly to ensure the client is appropriately served.*

i) *Managing one's practice effectively;*

j) *Pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and*

k) *Otherwise adapting to changing professional requirements, standards, techniques and practices.*

An advocate must perform all legal services undertaken on a client's behalf to the standard of a competent advocate.

Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.[155] The advocate should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to him, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. An advocate should act with commitment and dedication to the interests of the client and with zeal in advocacy on the client's behalf. However, he is not bound to press for every advantage that might be realized for a client, as he has also professional discretion in determining the means by which a matter should be pursued.[156]

According to the Code of Conduct[157], an advocate, for the purpose of protecting the rights of his/her client, shall bring his/her legal knowledge and work experience together and shall provide the service that fits both his/her knowledge and work experience. He shall be well prepared for the litigation; and unless the client asked him in writing not to present any defenses availed to him, the advocate shall present all the defenses at the right time.[158]

If the advocate believes that he/she cannot competently handle the case brought to him/her, he/she shall inform the same to the client and return the case. An advocate should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk or expense to the client. However, advocate may accept representation where the required (requisite) level of competence can be achieved by reasonable preparation.[159]

There are different ways that are used to ensure the competency of advocates in the conduct of the services they provide. The first and most important mechanism is the entry requirements to obtain the license to practice law in the country[160]. The requirements of credentials and examination[161] are stipulated to make sure that only qualified persons will become advocates. The license given to advocates practicing before the Federal First Instance Court as opposed to Federal Courts of all levels are also different. An advocate wishing to practice in front of the Federal First Instance Court needs to have either a diploma in law and five years of relevant

[155] OHIO Rules of Professional Conduct and Rules, P. 11
[156] Abdi Jibril and Zenebe Adelahun, Legal Profession and Ethics Teaching Material, Justice and Legal System Research Institute, 2009 (herein after referred to as Teaching Material)
[157] Code of Conduct, Supra Note 44
[158] አብደላ አሊ፣ ስለኢትዮጵያ የፌዴራል ፍርድ ቤቶች ጠበቆች የሥነምግባር ደንብ አንዳንድ ነጥቦች፣ 1993፣ (ያልታተመ)፣ ገፅ 7
[159] Teaching Material, Supra note 21
[160] Interview with Fikadu Demisse, Supra note 12
[161] Art. 4(2(a &c) of Proclamation No. 199/2000

experience in the field of law or a degree in law and two years of relevant experience in the field of law[162]. When it comes to the license to practice law in front of the Federal Courts of all levels, the law puts a higher threshold as the prospective advocate has to have a degree in law as well as a minimum of five years of relevant experience in the field of law[163]. In addition, the law has put up good conduct as a requirement both in terms of compliance with the laws of the country by making sure that the prospective advocate has not been convicted and sentenced of an offense that shows an improper conduct as well as having good conduct in general[164].

The office in charge of the administration and regulation of the legal practice (previously the Ministry of Justice and currently known as the Office of the Attorney General) also organizes various trainings and seminars on the conduct of advocates from time to time[165]. However, these trainings are not organized regularly.

In cases where advocates have breached the rules stipulated under the code of conduct or those set under Proclamation No. 199/2000, disciplinary measures will be taken on that advocate on the basis of the law after the case being carefully entertained by the disciplinary committee[166]. The disciplinary procedure as well as measures taken will be dealt with in latter chapters. The point worth noting in this section is that the disciplinary system could also be used as a tool to require advocates to comply with minimal competency standards.

As we conclude this section, we would like to pose possible questions for policy considerations:

1) how can the regulatory regime applying to legal practice be used to ensure that practicing lawyers have the required competence at any given point in their career? In this regard, should mandatory minimum hours of training and certification be required before annual renewals of advocates' licenses?

2) what should be the role of the various institutions in the legal system to assist the education of lawyers to be competent legal practitioners? Should academic courses align with practical

[162] Art. 8(1) of Proclamation No. 199/2000
[163] Art. 9(1) of Proclamation No. 199/2000
[164] Art. 8(2&4) and Art. 9(2&4) of Proclamation No. 199/2000
[165] Interview with Fikadu Demisse, Supra Note 12
[166] ibid

needs? What roles should the bar association and the legal training institutions play to achieve the balance between theoretical knowledge and practical needs?

3.3.8. Disciplinary authority

Moreover, the question as to which organ is responsible for enforcing the code of professional ethics is not amenable to easy solution**.** The disciplinary authority will be the organ in charge of policing of advocates through taking disciplinary action in cases of misconduct. The disciplinary authority is usually the licensing body that gives a license to advocates. An advocate admitted to practice in a certain jurisdiction will be under the jurisdiction of the disciplinary authority. There are various approaches as to which organ is to be tasked with the job as summarized in the following table.[167]

Predominant disciplinary authority	**Number**	**Percentage**
Court	27	12%
National Bar	100	46%
Local Bar	16	7%
Government	13	6%
Independent and delegated regulatory authority	51	24%
Mixed or shared responsibility	9	4%
Total	219	

Distinction is made between those acts which violate ethical rules of the profession and those which though outside the client-lawyer relationship could adversely affect the profession. In the USA, rules authorize discipline for a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, or for conduct that involves "dishonesty, fraud, deceit or misrepresentation," or is "prejudicial to the administration of justice for the public protection rationale assumes that those who break rules in non-professional settings are also likely to do so

[167] International Bar Association, Directory of Regulators of the Legal Profession (2016), p. 14

in professional settings.[168]Violations of rules outside of the exercise of the profession should generally not fall into the jurisdiction of the disciplinary authority. Only in exceptional circumstances shall they trigger disciplinary actions, for example when these acts in that present case can negatively affect respect and trust of a client in the work of the lawyer.[169]

Who has the duty to report advocate's misconduct is an important point in this regard. Individuals, organs and institutions can play in the process such as through reporting of the advocates' misconduct to the disciplinary authority. The disciplinary process starts with a complaint from stakeholders such as clients, advocates, and judges. The reporting of disciplinary misconduct is very crucial for the system. Disciplinary authorities will rely on the reporting from disciplinary grievances of clients, advocates and judges. There should be the possibility to appeal a decision outside the profession. The appeal instance can only be independent courts, not government agencies.[170]

3.3.9. Procedure

The procedure of disciplining attorney misconduct will start from the lodging of a complaint. The reporting/complaint may come from different stakeholders. In some jurisdictions, such as the US, the reporting comes from aggrieved clients, advocates, and judges. Under the rules of the Bar Council of India, a complaint against an advocate shall be in the form of petition duly signed and verified as required under the Civil Procedure Code. Then the complaint will be registered and be referred to Disciplinary Committee. The registrar has to send a notice to the attorney/advocate to show a cause and make a statement of defense, documents and affidavits in support of such defense. The date, hour and place of inquiry will be fixed by the Chairman of the Disciplinary Committee. The Indian Advocacy Act and Bar Council of India Rules allow an appeal from an advocate aggrieved by the order of the Committee. Such appeal shall be made to the Bar Council. The proceeding shall be held in camera.

In Ethiopia, disciplinary cases against an advocate are brought forth from clients, from other advocates and any other person. The case is brought to the Office of the Attorney General, to the office empowered to issue the license of advocates to practice law . This office will check that

[168] Perspectives on Lawyers |Regulation, Fordham Law Review, Vol. 80, Issue 6, P. 1269
[169] See Section 113 para 2 Federal Lawyers' Act (*Bundesrechtsanwaltsordnung)*
[170] It should be clear that for the prosecution of possible criminal offences lawyers are alleged to have committed in the exercise of their profession, regular courts should be competent authority.

the proper formalities of the case are fulfilled and will transfer the case to the Advocates' Disciplinary Council. This Council has the power to investigate charges brought on an advocate in connection with the violation of the provisions of either Proclamation No. 199/2000 or the Advocates Code of Conduct. The Council will check if the charge is of merit, and if it finds it as such it shall issue a summons for the advocate to appear with a reply to the charge within 30 days of receiving the charge. The Council will proceed with the case in a way similar to a court of law in which the both sides of the case will be heard, evidence will be presented and if need be witnesses heard . After hearing the case, the Disciplinary Council has the duty to come up with a decision within six months and submit their recommendations to the Attorney General. After the decision of the Attorney General, an aggrieved party has the right to take the case to the Federal High Court in appeal.

The Disciplinary Council is composed of five persons. There shall be two representatives from the Office of the Attorney General, two representatives from associations that represent advocates and one representative of the Federal Courts. This is believed to bring about impartiality in the Council in the disciplinary decisions that it will render and also to ensure the right to due process of law for the advocate is ensured. However, the power of the Council is to hear the case and give recommendations to the Attorney General who at the end of the day will make the final decision. The impartiality of the final decision in this circumstance is doubtful. The disciplinary measures that can be taken by the Disciplinary Council include a written warning, suspension, imposition of a fine, revocation of the license to practice law .

There are a few problems that have been witnessed with the works of the Disciplinary Council. The first major problem is that the cases are not disposed of in a prompt manner. The case has to be disposed of in a six months period. If the Council cannot reach a decision within the six months it may request, in writing, for an additional three months. But nothing in the law provides as to what will happen if the Disciplinary Council fails to render a decision within those nine months. In practice there are cases in which the Disciplinary Council has taken more than two years . The main reasons for this length of time are related to the works of the members of the Disciplinary Council. The members of the Council are not full-time employees. They are advocates, judges and are in the Office of the Attorney General. They have other duties that require their attention in addition to the works of the Council. Therefore, the quorum of the

meeting is not always fulfilled easily. In addition to this, there is much case load. Due to this, even some of the decisions of the Council may not up to the standards. In most cases, the Federal High Court cancels the decision of the Attorney General for error of law.

The second major problem in the decisions made stems from the inadequacy of the law in stipulating the disciplinary measures applicable. The law provides punishments that will be imposed if the committee finds the charge is proper and supported by evidence. Notwithstanding, the law does not provide which punishment will be imposed for a certain offense. That is left to the discretion of the committee members. Advocates, therefore, complain that the punishment imposed is arbitrary. The maximum punishment in the form of fine is 10,000 Ethiopian Birr. Many argue that this amount is minimal especially if the amount in dispute is a larger amount.

As we leave this section, we would like to pose questions for policy considerations:

1) Does the current disciplinary system live up to the standards of due process and meet its objectives? Does it require an overhaul in terms of its objectives, and implementation mechanism?

2) What preventive set of substantive and procedural legal rules can be imbedded in the law regulating legal practice to make the disciplinary system robust?

3.3.10. Disciplinary measures

Disciplinary sanctions can range from a mere reprimand to exclusion from the legal profession. As a general rule, it should be said that sanctions of course have to be proportionate. A graduated system which includes the possibility of administrative sanctions by the regulatory entity should be considered. Rules most provide for safeguards that enable and ensure due process in disciplinary matters, may they take place within the mandatory bar or in courts.

3.3.11. Client-Advocate Relationship

The starting point for engaging an advocate is to enter into a contract which in many jurisdictions referred to as Letter of Engagement. Contract of advocacy is regulated by the general law of contract and law of agency. Both an advocate and his/her client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the

advocate's professional obligations. Within those limits, a client also has a right to consult with the advocate about the means to be used in pursuing those objectives. At the same time, an advocate is not required to pursue objectives or employ means simply because a client wishes to be done. Even if he acted within his scope of power, the advocate is responsible for violation of the codes of conduct, if he carried out the misdeeds against his/her client. The objectives or scope of services provided by an advocate may be limited by agreement with the client or by the terms under which the advocate's services are made available to the client. An agreement concerning the scope of representation must accord with the rules of professional conduct and other laws. Thus, the client may not be asked to agree to a representation so limited in scope as to violate codes of conduct or to surrender the right to terminate the advocate's services or the right to settle litigation that the advocate might wish to continue.[171]

Many countries advocate code of conduct rules incorporate a special rule with respect to withdrawal of an advocate from representation. They state that an advocate must not withdraw from representation of a client except for good cause and on reasonable notice to the client. Although the client has the right to terminate the advocate-client relationship at will, an advocate does not enjoy the same freedom of action. Having undertaken the representation of a client, the advocate should complete the task as ably as possible unless there is justifiable cause for terminating the relationship. It is inappropriate for an advocate to withdraw on capricious or arbitrary grounds, without having good cause. [172]

There are many good causes that may oblige the advocate to terminate his contract. For instance, where there has been a serious loss of confidence between the advocate and the client; where after reasonable notice, the client fails to provide a retainer or funds on account of disbursements or fees. In such cases an advocate may withdraw unless serious prejudice to the client would result. However, if an advocate is handling a criminal case, he cannot terminate the contract even upon the occurrence of the above good causes, unless the interval between the withdrawal and the trial of the case is sufficient to enable the client to obtain another advocate and to allow such other advocate adequate time for preparation.[173]

[171] ibid
[172] Federation of Law Societies of Canada, commentary 3.7-1
[173] ibid

The advocate-client relationship is usually terminated when a law firm is dissolved, or an advocate leaves a firm to practice elsewhere. In such cases, most clients prefer to retain the services of the advocate whom they regarded as being in charge of their business before the change. The Canadian Law in this regard grants the decision to the client. The advocates who are no longer retained by that client should act in accordance with the principles set out in the rule, and, in particular, should try to minimize expense and avoid prejudice to the client. The client's interests are paramount and, accordingly, the decision whether the advocate will continue to represent a given client must be made by the client in the absence of undue influence or harassment by either the advocate of the firm. That may require either or both the departing advocate and the law firm to notify clients in writing that the advocate is leaving and advise the client of the options available; to have the departing advocate continue to act, have the law firm continue to act, or retain a new advocate.[174]

In Ethiopia, the Code of Conduct, however, does not cover the above issues. The law regulates how contracts between the client and the advocate are to be concluded[175]. In this regard, a contract between an Advocate and a client should be made clearly and in a written form. Each aspect of the relationship between the advocate and the client has to be stated in the contract. This includes the names and addresses of the parties the type of service to be rendered as well as the scope of representation, the amount, mode and time of payment of the fee has to also be clearly stated in the contract[176]. The Code of Conduct also sets out conditions upon which an advocate may not enter into a contract with the client[177]. Pursuant to this article any advocate may not enter into a contract with the client unless the contract is proper and reasonable in view of the time and situations; the advocate clearly explains to the client the terms and type of the contract; and the client should conform to the agreement in written form. This article mainly regulates the contract that probably may be made by the client and the advocate, in relation to a business other than the client-advocate relationship. As law firms, per se, do not exist in Ethiopia, the foregoing discussion about termination when an advocate leaves a firm does not apply.

[174] ibid
[175] Art. 6 of the Code of Conduct
[176] Art. 6(1) of the Code of Conduct
[177] Art 14 of the Code of Conduct

The relationship between an advocate and a client should be anchored in a properly drafted contract for the provision of legal services reflecting the expectations stated in the relevant legal rules regulating the sector. The Bar association or government regulatory institutions can play a positive role in recommending a model that all advocates can customize and help for a refined standard to emerge out of repeated practice.

Notwithstanding the Code of Conduct stipulates major elements that have to be a part of the contract concluded between the advocate and the client, it is not always implemented as such.

In order to protect clients from undue influence and injustice they could suffer if the contract of advocacy is not up to the standards set by the Code of Conduct, there should be a strengthened enforcement by the regulatory authorities to see to it that the standards for a contract of advocacy are indeed implemented.

Courts should properly regulate the contract of advocacy presented by the advocate. They should also check that the advocate has a renewed license to practice law.[178]In addition to the courts, the Documents Authentication and Registration Agency should also check the validity of the contract of advocacy. They should also cross check the contract of advocacy with the license of the advocate to make sure the advocate indeed has the power to take such cases to the court of law as the representative of the client[179].

3.3.12. Status, Rights and obligations of lawyers

- **Status**

The legal status of advocates has been called into question in the past and there are still lingering reflections of the two ways of looking at their status. This has been a point of discussion in the international legal practice as to whether or not the legal practice is a commercial activity or not. Some legal scholars and professionals strongly hold that the legal profession is not a business. These proponents state that the practice of the legal profession is not a business. An advocate's duty is believed to be provision of service to the public not to make profit by using the legal

[178] Interview with Fikadu Demissie, Supra Note 12
[179] Interview with Liya Tekle, Legal Studies, Drafting and Dissemination Directorate, Attorney, Interview on 25 September 2018

profession as a moneymaking venture[180]. On the other hand, others argue that an advocate makes a livelihood on the activities he/she engages in as a legal professional. That advocate is expected to earn money through fees and pay taxes as well as salary to employees, if any. We will briefly articulate the two positions in the light of the context of Ethiopia.

The view that it is a profession is based on the interpretation that lawyers are not mentioned as traders in the list of traders in Article 5 of the Commercial Code of Ethiopia. This further supplemented by Article 18/2 of Federal Courts Licensing and Regulation Proclamation No. 199/2000 which, talking about law firms that are permitted to be established by advocates, requires that they should be "a non-business organization, the liability of which is unlimited". Theoretically, this view elevates the practice of advocacy to a level of role playing toward the prevalence of justice together with other players in the legal system such as the judiciary, the police and prosecution.

Scholars stress that the legal practice is a profession and not a trade. The profession – or, as it could be called more appropriately liberal profession – concept stems from the historic Roman "artes liberals".[181] Today liberal professions are seen as intellectual[182] professions

- requiring specific high entry qualification,
- exercised in the interest of a client[183] and at the same time in the interest of the public
- with some kind of fee system limiting pure profit maximization
- exercised independently on a high authority and responsibility
- building on trust of the client because of the intellectual asymmetry between the professional and the client

- and usually being self-regulated at least to some degree in order to ensure independence from strict government control.[184]

[180] http://www.lawyersclubindia.com/articles/Advocacy-Is-It-A-Profession-Or-A-Business--1050.asp, last accessed on August 23 2018 at 3:30PM

[181] The term was used to describe activities reserved as a privilege to free citizens and the nobility, unlike the manual work of unfree slaves.

[182] or – in some jurisdictions: – technical

[183] , patient or customer

- **Rights**

One would be disappointed to find in any of the key legislations dealing with legal practice explicit statements relating to the rights of an advocate. The holding of an advocate's license entitles an advocate to represent clients and, in an exchange, a right to demand payment arising from his/her services.

Once in the profession, the advocate has the right to a due process hearing prior to the termination of his/her license. This is further supplemented in the case of Ethiopia by the right to review by ordinary courts in the event of error of law.

The rights of lawyers, in as much as they are discussed in the context of the role of lawyers, have been discussed in connection with the UN Basic Principles on the Role of Lawyers in the foregoing sections of this study.

- **Obligations**

Unlike rights, the obligations of lawyers have been very well articulated in the key legislations. This is particularly addressed in much greater details in the Federal Courts Advocates Code of Conduct Regulation No. 57/2000

Article 30 of the Federal Courts' Advocates Licensing and Registration Proclamation No. 199/2000 sets forth in summary fashion the key obligations as

a. compliance with the Proclamation and Regulation cited above and directives to be issued by the relevant institution which in this case is the Attorney General;

b. providing receipt for any fees that an advocate receives;

c. obtain professional indemnity insurance in accordance with directives to be issued by the Attorney General; and

d. pay fees relating to issuance and renewal of licenses.

[184] For an excellent historic, legal, and sociological overview of the liberal profession concept see European Centre for Liberal Professions (2014), *The State of Liberal Professions Concerning their Functions and Relevance to European Civil Society*.

These generic duties have been discussed elsewhere in this study in respect of the specific duty imposed and the extent of its application.

3.3.13. Mobility of Advocates

The mobility of advocates refers to the ability of legal practitioners who have been trained and practicing in one jurisdiction to be able to practice in another jurisdiction in the same country[185]. Once we look at few jurisdictions in the following sections, we will focus on Ethiopia's current context.

In Switzerland, the mobility of advocates from one canton to another on the Swiss federation is governed by the Federal Act on the Freedom of Movement of Advocates[186]. The law guarantees the freedom of movement for advocates. Any advocate that has been registered in a canton's register of advocates is allowed to represent clients before the judicial authorities located anywhere in the Swiss Federation[187]. Advocates do not need any additional authorization to undertake legal services[188]. This act states that it is in the power of each canton to determine the requirements for obtaining the license to practice law in that canton[189].

In 2002, the Federation of Law Societies of Canada agreed to facilitate the temporary and permanent mobility of advocates located in the Canadian jurisdictions[190]. This agreement, however, requires reciprocity amongst the jurisdictions. Therefore, it is only advocates, that are members of the signatories that have already implemented reciprocal provisions in their own jurisdiction, that will be able to take advantage of the National Mobility Agreement[191]. This agreement does not accrue greater rights to provide legal services to a member of another jurisdiction as compared to the rights given to an advocate in his/her own jurisdiction[192]. Similarly, the restrictions or limits placed on the advocates' right to practice will not be relieved unless it applies to all members under the jurisdiction of the governing body[193]. The National

[185] Joseph Boudurn Daudu, Mobility of the Legal Professional- Qualifications and Practice in Multi Jurisdictions, 19th Commonwealth Nations Law Conference, Glasgow, Scotland
[186] Lawyers' Act, FAFML of 23 June 2000 (as of 30 July 2002)
[187] ibid
[188] Id, Art. 4
[189] Id, Art. 3
[190] National Mobility Agreement, Federation of Law Societies of Canada, August 16, 2002
[191] ibid
[192] Id, Art. 4(a)
[193] Id, Art. 4(b)

Mobility Agreement rests on the belief that an advocate entitled to practice law in one jurisdiction is eligible to transfer and practice in another jurisdiction as well[194].

It might be worth noting that in Germany, too, full mobility throughout state borders was reached only in 2007. Until the year 2000, a lawyer was only able to represent clients at the court he or she was admitted to. It was not before 2007 when the registration with a local court was abandoned in favor of a registration with the regional bar,[195] which does not include considerable restrictions of mobility anymore.

In Ethiopia, an advocate can obtain the license to practice law from the state in which he/she wants to practice in. The Federal government issues license for advocates who will practice in the federal courts[196]. Similarly, regional governments have the power to issue licensing examinations, licenses and renew licenses for advocates who practice law in their respective regions[197]. The regions focus on advocates who are practicing law in the courts of the regional state that are entertaining cases of a regional nature[198]. As the practical experience of Ethiopia shows, it is very difficult for advocates to practice in multiple states. The courts of the federal government and the regional states often refuse to allow a case to be handled by advocates from another state. The one major exception in this regard is the practice of permitting advocates of the regional state whose case has been appealed to a federal court to continue to represent their client in the federal courts. Such an advocate, though not licensed federally, will have the power to handle the case until the very end of securing a decision at the Cassation Bench of the Federal Supreme Court. Some in the legal community argue that any limitation of such a nature contradicts the Right of Access to Justice as stated in Art. 37 of the FDRE Constitution which, as part of the fundamental rights and freedoms stipulated under the Constitution, by virtue of Art. 13(2) of the FDRE Constitution. To supplement the argument, they also cite Art. 14(3(d) of the International Covenant on Civil and Political Rights which states that individuals have the right

[194] Background Information Inter-Jurisdictional Mobility of Lawyers in Canada, Federation of Law Societies of Canada National Mobility Agreements, The Law Society of Upper Canada

[195] The old Para 18 Federal Lawyer's Act stating that a lawyer has to be admitted at a local court was repealed in 2007: www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl107s0358.pdf (last accessed: November 25, 2018

[196] Preamble, Proclamation No. 199/2000

[197] Preamble, Regulation No.58/2008 The Amhara National Regional State the Revised Advocacy Licensing, Registration and Controlling the Code of Conduct of the Advocates Implementation, Council of Regional Government Regulation,13th Year No 10, 11th, March 2008

[198] ibid

to be represented by an advocate of their own choosing. The current constrained practice will result in additional costs to be incurred by the client while at the same time forcing a client to disclose its confidential information to another advocate.

The FDRE Constitution has vested a right for regional states to determine their respective working languages by law[199]. As such, each regional state has stipulated its own working language in its constitution. Amharic language is the official language of Amhara regional state[200], The Benshangul- Gumuz Regional state[201], The Gambella regional state[202] and the Southern Nations, Nationalities and Peoples Regional State[203]. In the regional state of Oromia, the official working language is Oromiffa and is written in that Latin alphabets[204]. The regional state of Tigray uses Tigregna as the working language of the state[205]. In the regional state of Afar, the working language of the region is Afarigna[206]. The Somali regional state uses Somali language as a working language of the state[207]. The regional state of Harari uses Harari and Oromo language as its working languages[208]. The working language of the state will be used in the administration of justice in that particular state. Therefore, in order to actively aid in the administration of justice in the region, advocates must be able to communicate in the working language of the given state.

Especially if the case at hand is a case which falls under the jurisdiction of the federal courts but by delegation is being entertained by regional courts, there should be no prohibition to practice in that jurisdiction as the advocates licensed by the Federal Government have been licensed in order to handle cases of federal nature[209]. As the practice currently stands, federal advocates that can communicate with the working language of the state they would like to practice in for a single

[199] Art. 5(3) of the FDRE Constitution

[200]አንቀፅ 5(2) በኢትዮጲያ ፌደራላዊ ዲሞክራሲያዊ ሪፑብሊክ የአማራ ብሄራዊ ክልል ምክር ቤት ዝክረ ህግ፣ 7ኛ ዓመት ቁጥር 2፣ ጥምቅት 26፣ 1994 ዓ.ም፣ ባህር ዳር

[201]አንቀፅ 6(1)፣ የተሻሻለው የ1995 ዓ.ም የቤኒሻንጉል ጉሙዝ ክልላዊ መንግስት ህገ-መንግስት፣ ህዳር 23 ቀን 1995 ዓ.ም፣ አሶሳ

[202]አንቀፅ 6(1)፣ የተሻሻለው የ1995 ዓ.ም የጋምቤላ ሕዝቦች ብሔራዊ ክልላዊ መንግስት ሕገ-መንግስት፣ ታህሳስ 9፣ 1995፣ ጋምቤላ

[203] Ar. 5(2), The Revised Constitution, 2001, of the Southern Nations, Nationalities and Peoples Regional State Proclamation No. 35/2001, 12th November, 2001

[204] Art. 5 of Proclamation No. 1/1995 Constitution of the Regional State of Oromia, Megeleta Oromia, 21st August 1995, Finfine

[205] Art. 5 of Proclamation No. 45/1995, Constitution of the National Regional State of Tigray, 19 June 1995, Mekelle

[206]አንቀፅ 5፣ የ1995 ዓ.ም የተሻሻለው የአፋር ክልል ህገ መንግስት ማፅደቂያ አዋጅ፣ 1994 ዓ.ም፣ ሠመራ

[207]አንቀፅ 6፣ የተሻሻለው የ1994 ዓ.ም የሶማሌ ክልል ህገ-መንግስት፣ 1994 ዓ.ም፣ ጅጅጋ

[208]አንቀፅ 6፣ የሐረሪ ህዝብ ክልል ህገ መንግስት ማሻሻያ አዋጅ፣ መስከረም 30 ቀን 1997 ዓ.ም፣ ሐረር

[209] Interview with Fikadu Demissie, Supra Note 12

case would obtain another license in that region in order to try the case there. There is no law prohibiting obtaining an additional license to practice law[210].

As we close the foregoing section, we would like to flag a number of issues that may require policy review and further consultations and directions:

1. Given that Ethiopia is a federal state with regions having full autonomy to regulate legal practice in their respective jurisdictions, what can be done at the federal level to ensure that legal practice across the nation maintains similar professional standards?
2. Given that Ethiopia has come a long way forward since the enactment of the basic laws governing legal practice, would the government consider opening the legal service market or entry into legal practice for foreigners? Or remove other restrictions impacting entry in various ways?
3. What should be the legally defined roles of various institutions constituting the Ethiopian legal system in regulating legal practice? In particular, what should be the role of bar associations in managing entry into legal practice?
4. Should there be or what policies and rules could be in place to allow competent legal practitioners to practice in all courts across the nation, in particular, to overcome the language barriers that may posed by the requirement that regional courts conduct their proceedings in their own language?

3.3.14. Continuous legal education (CLE)

Because of dynamic nature of law and its vastness, legal systems not only require lawyers to have the necessary qualification for admission, but also demand that they should take refreshing courses every year. Therefore, continuing professional development for lawyers or continuous legal education (CLE) program is an aspect of the regulation of lawyers by which lawyers are supposed to take approved course of certain credit hours annually. Thus, it merits attention, especially in light of rising concerns regarding quality of legal professionals in the country. Several jurisdictions across the world have instituted mandatory CLE requirements.[211] For

[210] ibid

[211] Ameen Jauhar, Kritika Vohra and Sumathi Chandrashekeran, Submission on the Regulation of the Legal Profession in India, Vihdi Center for Legal Policy 2016, P. 14-16

instance, Section 43 a Para 6 of the German Federal Lawyer's Code says: "A Rechtsanwalt has a duty to engage in continuing professional development." Continuing professional development here can be used synonymously with CLE. The legislator, when adopting this statute in the 1990s, decided that this requirement does not need a more concrete language, because every lawyer knows which kind of and how much CLE would be adequate for him or her.

CLE may take different forms which includes specialist lawyer certification programs, mentoring programs so that young lawyers can seek the help of experienced practitioners in establishing their practices. In addition to specifics about the program, the responsible organ for CLE differs from one jurisdiction to another. Both private and public entities are involved such as the regulatory organ, bar associations/law societies, bar council, commercial companies, universities, etc. even though much of the mandatory CLE instruction is given by or under the auspices of bar associations.[212]

A matter which to be separated from CLE is the question of specialization. While the traditional model regards the lawyer as a comprehensive advisor, a generalist who can by law practice any field of law, and while a number of jurisdictions do not allow formal specializations in order to not endanger the notion of the generalist lawyer, in many jurisdictions there has been de-facto specialization due to the risen complexity of the world and thus the legal system. Some jurisdictions do allow lawyers, beyond simple advertising with their specialization, to obtain formally accredited specializations. Germany, Switzerland and – recently – South Korea adopted provisions for a specialization. This is granted by the bar after providing evidence for substantial practical experience and theoretical training. Once the specialist accreditation is obtained, the lawyer has to undergo additional CLE. As important as specialization is to serve clients best, the implementation of a possible system of specialist accreditation remains a long term-goal in Ethiopia and not something to be adopted today, with a legal profession which is still quite small in numbers[213].

[212] Quintin Johnstone, "Bar Associations: Policies and Performances" (1996). Faculty Scholarship Series, Paper 1905. http://digitalcommons.law.yale.edu/fss_papers/1905P. 208

[213] According to the Attorney General, currently there are 4,325 lawyers licensed and working in the federal justice system (Capital Newspaper, issue 13/1/2019).

3.3.15. Pro bono service

Many jurisdictions impose the duty on lawyers to provide free legal services for the poor. The Constitution of Ethiopia affirms the rights of citizens to bring a justiciable matter to and obtain a decision or a judgment by, a court of law or any other competent authority. Article 25 further entrenches this by asserting that all persons are equal before the law and are entitled without discrimination to the equal protection of the law and, in this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality or other origin, colour, sex, language, religion, political or other opinion, property, birth, or other status. Ethiopia's acceptance of relevant international instruments where the right to legal aid is recognized makes it mandatory for advocates to provide pro bono services.

The Federal Courts Advocates Code of Conduct Regulation No. 57/1999 imposes on advocates an obligation to render a minimum of 50 hours free legal service in a year. The beneficiaries of the pro bono services include "persons who cannot afford to pay" and "persons to whom court request legal services". The grim reality on the ground in this respect is that advocates are not currently playing their role systematically and the duty of pro bono services is not implemented in practice on the basis of settled and reliable system and process.

Currently, the issue is whether this service should be mandatory or voluntary which is a corollary of the status of lawyers. If legal service is to be labeled as a commercial activity and lawyers are to be categorized as traders, there is no reason why they can be compelled to render free service. The other question is whether the service to be rendered by lawyers should be limited to legal service in form of principally representation before courts or shall it include other public services. Public service can be considered as pro bono service and it can be considered so if it is rendered to legal aid organizations, law reform programs, non-profit and Court-annexed legal service programs.[214]

[214]John Steele, Outline of the Law Governing Lawyers Selection of Rules, www.johnsteelaw.com

3.3.16. Lawyers' fees

The major professional responsibility advocates have is ensuring that everyone in the society has access to the independent service of advocates who are competent and have integrity that will work to make sure justice is served[215]. Several countries have rules of professional conduct of advocates that determine the amount that is payable to advocates. However, many of these rules do not stipulate a specific amount that is to be paid. These rules simply state that the payment shall be adequate to the work conducted by the advocate and not excessive to such work[216]. The rules also stipulate the things that need to be considered by the advocate in determining the value of his service. These include[217]

- The time and labor required, the novelty and difficulty of the question involved and the skills necessary to conduct the case properly.
- The amount involved or sophistication of the subject matter
- The results obtained
- The fees authorized by statue or regulation
- Special circumstances (such as the loss of other clients or retainers, the work resulting in the advocate's inability to accept other employment)

There are four major types of advocates' fees[218]:

1. Hourly Rate Fee - this is the most common arrangement of an advocate's fee. In this form of payment, an advocate will charge the client for each hour that the advocate works on the case until it is resolved. In most cases, the hourly rate is different among advocates on the basis of their location, experience and operating expense[219]. In Canada, there are no laws that specify the amount of fees for services rendered by advocates. The fees are

[215] ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1, https://www.americanbar.org/content/dam/aba/migrated/2011_build/professional_responsibility/mod_code_prof_resp.authcheckdam.pdf, last accessed on August 23 2018 at 3:25PM

[216] Rule 48(1), Nigerian Rules of Professional Conduct for Legal Practitioners of 2007, see also Section 3.6-1 of the Rules of Professional Conduct adopted by Convocation June 22, 2000, effective November 1, 2000, Canada

[217] Rules of Professional Conduct, Rule 3.6-1 Commentary Rules of Professional Conduct adopted by Convocation June 22, 2000, effective November 1, 2000, Canada

[218] How and How Much do Lawyers charge, https://www.lawyers.com/legal-info/research/how-and-how-much-do-lawyers-charge.html. last accessed on 4 September 2018

[219] ibid

negotiable between the parties[220]. However, the law society of Ontario, a society that is responsible for the self-regulation of Advocates and Paralegals in Ontario, Canada puts the hourly rates of paralegals and advocates in the range between 69 USD and 266 USD[221]. In India there is no effective law enacted to regulate advocates' fees[222]. Similar to Canada, the hourly fee is very popular with advocates in India. As per a survey conducted in 2017, the hourly rate payment of advocates ranges from 123 USD for associates in Indian Law Firms to 406 USD for partners in foreign law firms working in India[223].

2. Flat Fee- A flat fee is usually agreed upon when the legal matter is well-defined and simple. This is charged when the matter at hand is a simple, routine work for which a specific price can be determined upon[224].
3. Retainer Fees- these fees serve as advance payments on the hours that an advocate will put in to handle the case, cover some of the work and some of the expenses related to the situation. The retainer sometimes will also cover disbursements, which are expenses such as photocopy charges, court filing fees and other related costs.[225]
4. Contingency Fees- in these form of advocate fees, the advocate will take no payment from the client before and, but will get a percentage of any settlement awarded to the client. These payment arrangements are typical in: automobile accident lawsuits, medical malpractice claims, other personal injury cases, and debt collection cases[226].

Ethiopia, currently, has similar advocates' fees. There is no law that strictly provides for the mode and amount of payment of advocate fees. The Code of Conduct, however, provides that the fee shall be reasonable. It also provides that the legal fees payable to the advocate are not

[220] Rules of Costs and Fees for Lawyers- A comparison of German Law and the Law of the Province of Ontario/ Canada, Eric P. Polten, Christine Weiser and David Klunspies, p.12 https://poltenassociates.com/Resource-Links/Legal-Fees-English/pdf last accessed on 1 September 2018

[221] www.lsuc.on.ca/withaspx?id=2147484278 last accessed on 1 September 2018

[222] Supreme Court Favors Law to Regulate Hefty Fees Charged by Lawyers, https://www.hindustantimes.com/india-news/sc-favors-law-to-regulate-hefty-fees-charged-by-lawyers/story-n1OdH52JcfVi5IPdwxvI.html last accessed on 5 September 2018

[223] Hourly Billing is Not Dead but With Rates of RS 32,000/hour Clients Increasingly Want More for Less, https://www.legallyindia.com/ last accessed on 4 September 2018

[224] How and How Much do Lawyers Charge, supra note 32

[225] How do Lawyers and Paralegals Calculate Their Fees, https://www.legalline.ca/legal-answers/how-lawyers-calculate-their-fees/ last accessed on 10 September 2018

[226] ibid

to be shared with a person who is not an advocate unless the following factors make it necessary to share the fee[227]:

1. The skill required to perform the service properly, the novelty and difficulty of the case
2. The likelihood that the particular agreement with a client will preclude the advocate from dealing with other clients' cases;
3. The fee customarily charged for similar legal services;
4. The amount the claim involved, and the results obtained;
5. The length of the professional relationship with the client;
6. The experience, reputation and ability of the advocate; and
7. Similar other factors.

Advocates in Ethiopia charge hourly fees, retainer fees, flat fees as well as contingency fees. There is no standard amount set for the particular advocate services and the fees are negotiable. The Federal Supreme Court Cassation Bench has given a binding interpretation on the extent of the negotiability of the advocate's fee[228]. In the decision the judges of the cassation bench held that judges indeed have the power to amend the agreement made by an advocate and the client regarding the amount of fees to be paid. The client-advocate relationship is governed under the title hiring of intellectual work. The decision of the cassation bench is that although parties have the right to determine any amount of their choosing as a payment, the type of relationship between the parties is of utmost importance. If the judges believe that if the amount stated goes against the required ethics of the intellectual work, they can decrease the amount of the fee[229].

The amount of fee to be paid to an advocate and the terms of payment advocate must be made in an agreement.[230] This agreement is legally binding and should be signed by both parties or their representatives. The agreement should clearly indicate the total amount of money to be made, the mode of payment, the time of payment as well as the method of payment. The result that is expected to be obtained from the case need also be stated in the fee agreement.[231]Lawyers' fee is

[227] Art. 4, of the Code of Conduct
[228]አመልካች፡- አስቴር አርአያ መልስ ሰጪ አቶ ግርማ ወዳጆ፣ የመ/ቁ 17191, የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት፣, የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ውሳኔዎች፣ ቅፅ 1፣ ሐምሌ 19፣ 1997
[229] ibid
[230] Art. 43 of the Code of Conduct
[231] ibid

a controversial issue both in practice and literatures. Judges freely reduce the agreed amount of fee in the determination of costs and expenses which is objected by lawyers on the basis of freedom of contract. Regulation of legal fees across jurisdictions has taken vastly different approaches and the intervention can be in the form of fee cap and listing of factors that could be utilized to determine reasonableness of legal fees.[232] The law should address the wide range of choices in fee arrangements including hourly billing, fixed fees, and contingent fees.

3.3.17. Advertising

Lawyer advertising and solicitation are among the most controversial issues of professional legal ethics. Traditionally, laws restrict advertisement of legal services because of the fact that they are not categorized as trade activities. The dilemma is succinctly presented as:

> *While on the one hand advertising is a tool necessary to provide information to the public on the legal services available, therefore enhancing access to justice, on the other hand, it sometimes involves practices which give rise to mistrust and discredit the legal profession.*[233]

A primary justification for continuing the historic ban on lawyer advertising is the alleged adverse effect advertising has on professionalism. Supporters of the ban claim advertising brings about commercialization that undermines a lawyer's sense of dignity and self-worth,and erodes the public's trust in the legal profession. Proponents of the ban claim advertising by lawyers is inherently misleading and has the undesirable effect of stirring up litigation.[234]

One witnesses that jurisdictions are inclined to relax laws restricting advertisement of legal services and the trend is to allow lawyers to advertise, subject to varying degrees of regulation. Most European civil law countries, traditionally reluctant to permit such practice, are also

[232]Ameen Jauhar, Kritika Vohra and Sumathi Chandrashekeran, Submission on the Regulation of the Legal Profession in India, Vihdi Center for Legal Policy 2016p. 18

[233] Maya Goldstein Bolocan, Professional Legal Ethics: A Comparative Perspective, Central European and Eurasian Law Initiative, Concept Paper Series July 8th, 2002, p. 11

[234] Maya Goldstein Bolocan, Professional Legal Ethics: A Comparative Perspective, Central European and Eurasian Law Initiative, Concept Paper Series July 8th, 2002, P.22

following this trend.[235] In some states, commercial speech, of which advertising is a facet, has been exalted to the status of a fundamental right for all citizens. Further, society benefits from advertisement in such a way that now the question has become why legal systems do not permit advertisement rather than why they should permit. The reasons for the shift include dynamism which brought about new forms of legal services fast emerging, and advertising could also be key in addressing the information asymmetry that already exists between lawyers and prospective clients. It is also maintained that a ban on advertising serves as an additional barrier rendering entry or meritorious lawyers into the legal profession prohibitively difficult.[236] Countries in the process of adopting or reviewing ethical and professional standards on lawyer advertising have different options, ranging from the restrictive standards existing in countries like Italy for instance, to the much more liberal ones existing in the United States. What has become evident is that a total prohibition of lawyer advertising "would be incompatible not only with access to justice principles, and with the concept of fair competition in a free market economy, but would also be incompatible with the right of freedom of expression."[237]

Ethiopia seems to adapt the balanced approach in allowing advocates to advertise their services[238] at the same time requiring them to provide 30 days advance notification and limiting the contents of their advertisement to a few essentials.

3.3.18. Professional Liability and Indemnity Insurance

In most countries, the law of professional malpractice provides clients with a monetary remedy in the event they suffer harm from incompetent legal representation. In some countries, courts have immunized entire areas of practice from malpractice liability. In England, for example, barristers and solicitors may be held legally accountable for negligent advice outside of court, but are not answerable for conduct that occurs in court. French lawyers, on the other hand, are liable according to statutory law for negligence. German clients also are able to recover damages for breach of professional duties. In the United States, the law of legal malpractice clarifies the

[235] Maya Goldstein Bolocan, Professional Legal Ethics: A Comparative Perspective, Central European and Eurasian Law Initiative, Concept Paper Series July 8th, 2002, p. 2

[236] Ameen Jauhar, Kritika Vohra and Sumathi Chandrashekeran, Submission on the Regulation of the Legal Profession in India, Vihdi Center for Legal Policy 2016, P. 14-16

[237] Maya Goldstein Bolocan, Professional Legal Ethics: A Comparative Perspective, Central European and Eurasian Law Initiative, Concept Paper Series July 8th, 2002, P.22

[238] Article 52 of Regulation No. 57/1999

contours of professional duty and offers clients a monetary remedy when breach of such a duty causes clients harm. Liability insurance is not mandatory in all jurisdictions. Some require that lawyers be insured while others impose obligation on lawyers to inform their clients if they lack insurance.[239]

Needless to say, a mechanism should be put in place to make sure that any financial loss that may be incurred by the advocate's client on account of the advocate's negligence or incapacity be met accordingly.

A major mechanism designed for this purpose is a Professional Indemnity Insurance.A Professional Indemnity Insurance is a mechanism that covers risk or liabilities arising from the breach in the delivery of the advocate's services to third parties, who are typically the advocate's clients. This insurance therefore serves to protect the advocate's business, against claims for financial loss, or bodily/personal injury or property damage that arise from the action, error or omission in the performance of the legal service covered by the policy[240]. Professional Indemnity Insurance is important because even the legal costs associated with defending the claims that may be brought could be significant.

Professional liability Insurance covers the actions, advice, mistakes, and/or omissions of the professional themselves. This policy comes into play if a client files a lawsuit alleging that the professional's advice has led them to misfortune[241]. Many countries do not stipulate a duty to have a professional indemnity insurance as an obligation. However, countries like Italy have made professional indemnity insurance an obligation[242].

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[239]Liability insurance is available in the United States to indemnify lawyers from negligence in representing clients. Only one jurisdiction, Oregon, requires that its lawyers be insured. Several others require lawyers to inform clients if they lack insurance. Jurisdictions also require malpractice insurance for lawyers who form professional corporations. In Europe, for instance, compulsory insurance covers the Paris Bar, and also is required for lawyers in Germany, the Netherlands, Poland, and Romania. See Maya Goldstein Bolocan, Professional Legal Ethics: A Comparative Perspective, Central European and Eurasian Law Initiative, Concept Paper Series July 8th, 2002, p. 27-28

[240]Professional indemnity Insurance explained,https://www.cgu.com.au/blog/professional-indemnity-insurance-explained last accessed on 13 September 2018

[241]10 Facts You Need to Know About Professional Liability Insurancehttps://www.linksinsurance.com/blog/10-facts-you-need-to-know-about-professional-liability-insurance last accessed on 14 September 2018

[242]Mandatory PI insurance for lawyers - minimum requirements approved, DLA Piper, https://www.dlapiper.com/en/italy/insights/publications/2016/10/mandatory-pi-insurance-for-lawyers/ last accessed on 14 September 2018

In Ethiopia, an advocate has been required to enter into professional indemnity insurance[243]. The entrance into professional indemnity insurance is stipulated as a requirement in order to obtain a Federal First Instance Court Advocacy License and a Federal Courts Advocacy License[244]. However, the proclamation clearly states that professional indemnity insurance will only be applicable when the Council of Ministers issues a regulation that determines the amount of insurance to be entered into and other particulars[245]. The proclamation was promulgated 18 years ago, notwithstanding, the Council of Ministers has not issued a regulation on the professional indemnity insurance of advocates.

The law has clearly defined the professional responsibilities of advocates and the consequences to be incurred if such responsibilities are breached. In addition, the professional Indemnity insurance puts forward a guarantee to ensure the competency and competent service to be provided by the advocate. However, since the Council of Ministers has failed to enact the regulation that deals with the professional indemnity insurance, it has denied clients of that guarantee.

One can conclude in connection with this section that the gap is more of an implementation rather than gap in the law itself.

4. Reforming Regulation of Legal Practice

4.1. Reform and Regulatory objectives

The foregoing discussion reveals that the law in force needs fundamental reform to meet international standards and address the gaps in it. It is obvious that a law reform requires identifying problems in the existing laws and shift in values. This leads to determination of the policy focus of the law which will direct contents of the law and its interpretation. Thus, it is necessary to look into the policy considerations of other jurisdictions in designing their regulatory framework so as to draw a lesson for the legal framework under revision. This is one

[243] Art. 12 of Proclamation No. 199/2000
[244] Art. 8(5) and Art. 9(5) of Proclamation No. 199/2000
[245] Art. 12 of Proclamation No. 199/2000

of the points to be considered when we compare laws of different countries since reform of an existing system aims at different objectives. It is maintained that the two most important considerations are public safety and public policy objectives, the latter being unique to a jurisdiction. Others present the reason for regulation as public interest and the public interest at stake is safeguarding legal security which embraces access to law, the fair and orderly conduct of legal proceedings and an efficient judicial process.[246] On the other hand, others perceive the justification for regulation from the perspective of the market and draw attention to certain imperfections in the market for legal services which call for external oversight. Market imperfections include what economists variously describe as information asymmetry and barriers, free riders, and externalities directing the focus of regulation to public protection.[247] Generally, it seems to be accepted that irrespective of the terminology employed, regulation mainly aims at protecting the public.

As has been explored above, in Ethiopia, reform is overdue as it has been a call from lawyers and bar associations have been demanding for reform which has not been resolved, yet. In other countries, reforms have been carried out in order to rectify flaw of the regulatory framework in force or to redirect its focus. As has been pointed out in the other sections, the shortcomings exposed in the existing legal framework and the loopholes justify improvements. The reason why reform is necessary indicates its direction and focus. Usually a reform is set in motion with the goal to be achieved defined in advance. For instance, in early 1990s, Australia reformed its law which was driven by economic considerations targeted harmonization and co-regulation.[248] It is imperative that the reform should begin with defining its policy focus by which it is to be guided and selecting the approach to be employed to realize it.

A myriad of questions arise when a reform agenda is set and a position should be taken with a view to lending content to the draft. We can look at some of the policy issues to shed light on the subject matter under consideration. Regarding the subject of regulation, for instance, the trend

[246] Barbara Baarsma,, Flóra Felsö and Kieja Janssen, Regulation of the legal profession and access to law An economic perspective, Amsterdam, May 2008 Commissioned by the International Association of Legal Expenses Insurance (RIAD), p. 3 available at http://www.seo.nl

[247] Canada Deborah L. Rhode and Alice Woolley, Comparative Perspectives on Lawyer Regulation: An Agenda for Reform in the United States 2012 Fordham Law Review, Volume 80, Issue 6,p. 2762

[248] http://www.austlii.edu.au/au/journals/NSWBarAssocNews/2015/48.pdf

nowadays is a shift in emphasis towards regulation of the economic unit and away from regulation of individual lawyers and it is maintained that future regulation should have an even greater focus on the entity and less on the individual.[249]But, regulatory focus is not just about whether or not firms are to be regulated, but also about when regulation is to be applied. The regulation can be in the traditional reactive manner, imposing punishment on a firm or requiring remedial action from a firm only if a complaint or audit reveals a problem or it can be proactive or "compliance-based" approaches that are applied to all firms regardless of whether there is any sign of problems.[250]

Various approaches have been employed to determine contents of the law. A risk based model of regulation targets regulation of risks which are categorized in three areas namely, the public interest, the consumer interest in quality of service and the consumer interest in the protection of client money.[251] It can also be principle-based which define the goals are typically drafted at a broad level of generality, with the intention that there should be overarching requirements that can be applied flexibly. Principles can also influence both the culture within the regulator and within firms, by defining how each should behave (e.g., with integrity, with due skill and care, proportionately, in the best interests of clients) and the expected outcomes of such behavior.[252] Briefly, the lesson we take from other reforms in the legal framework of the legal profession is that both the emphasis and approach should be worked out before contents are determined. Form the above illustrations it can be gathered that there are matters which should be addressed from the outset so that the reform can be justified and channeled towards solving the problems identified.

4.2. Regulation of the legal practice

It should not be assumed that regulation of the legal practice is indispensable. To regulate or not to regulate is a choice to be made in some jurisdiction where regulation is not taken for granted. Some jurists criticize regulation on the ground that licensing of lawyers, like professional licensing generally, accomplishes little other than keeping the price of legal services and lawyers'

[249] A Blue Print for reforming Legal Service Regulation, Legal Service Board, 2013, Page 46
[250] Noel Semple Legal Services Regulation in Canada: Plus Ça Change?, University of Windsor Scholarship at Windsor, Law Publications Faculty of Law, Spring 2017
[251] A blueprint for reforming legal services regulation , Legal Services Board, p. 14-15
[252] Steve Mark, p. 9

fees high by restricting entry into the profession.[253] Further, in both academic and policy discussion, there has been a gradual shift against regulation. Markets for legal services, for instance, have been the subject of varying degrees of deregulation in USA, Europe and elsewhere. In several jurisdictions, there have been proposals by government to remove the general exemption of professions from anti-trust or restrictive practices legislation.[254] It should be underscored that there is no uniformity in regulation or its extent and some countries even adopted the non-regulated system.

Even in jurisdiction where legal practice is regulated, one observes diversity of emphasis and approaches. Whether it should be self-regulatory or which entity is responsible for regulation are usually the questions that legal systems strive to answer without doubting that it is not a calling to be left alone. The question is further complicated if the state structure divides powers between the center and the units. In a federal system like that of Ethiopia, the legal profession is subject to regulation at two levels: state and federal. But, there are countries in which a single regulation is in place even if power is apportioned between the federation and the units. For instance, in the USA, national licensing does not exist and legal profession is regulated at the state level with a separate regulatory scheme in each state.[255] Conversely, in Germany, the legal profession is regulated by the Federal Lawyers' Act (BRAO), a federal law enacted by the German legislator, which provides a framework for the profession's self-regulation. Literatures identified challenges to the system by which multiple regulatory frameworks are in place within a country. Accordingly, it is submitted that the increasingly interstate nature of legal services, the growth of nationwide professional firms, and the provision of legal information over the Internet call into question traditional rules requiring a state license for the practice of law.[256] With this background, a choice should be made in Ethiopia whether a single or parallel regulation should be in place for the regulation of legal practice.

[253] Larry E. Ribstein, Lawyers as Lawmakers: A Theory of Lawyer Licensing, 69 Mo. L. Rev. (2004), p. 303, Available at: http://scholarship.law.missouri.edu/mlr/vol69/iss2/1

[254]Frank H. Stephen and James H. Love, Regulation of the Legal Profession, University of Strathclyde, Glasgow, United Kingdom, p. 992

[255]Maya Goldstein Bolocan, Professional Legal Ethics: A Comparative Perspective, Central European and Eurasian Law Initiative, Concept Paper Series July 8th, 2002, p. 2-3, See also Annex

[256] Larry E. Ribstein, Lawyers as Lawmakers: A Theory of Lawyer Licensing, 69 Mo. L. Rev. (2004) Available at: http://scholarship.law.missouri.edu/mlr/vol69/iss2/1

In the context of regulations in multiple jurisdictions, harmonization can be an option. FDRE Constitution promises to establish one economic community and the free movement of lawyers from one region to another, shall, as a matter of principle, be a component for the realization of this promise. Harmonization of regional laws regulating can be accomplished if the reform takes into account free movement of lawyers so long as some requirements (such as speaking the working language of the court and knowledge of the local law). Obviously, this leads to jurisdictions applying their own respective laws and a question arises as to which law is applicable. For instance, there will be ethical rules in each state and lawyers will be subject to several such rules if they practice in more than one state. The European Union model points to a solution which can be a model for Ethiopia in case multiple regulations are to be instituted. The lawyers' directives recognize free movement of lawyers who are EU nationals and they will be subject to double deontology[257] and, thus, "a lawyer practicing under his/her home Member State professional title remains subject to the rules of professional conduct of his/her home State only to the extent that these do not conflict expressly or impliedly with the rules of professional conduct of the host State. In case of conflict between rules of conduct, host State rules override home State rules."[258]

Though the law in force does not reflect the policy direction clearly, it can be gathered from its contents that Federal Courts Advocates' Licensing and Registration Proclamation recognizes advocacy as a profession and recognizes that lawyers work in cooperation with the judicial organs for the rule of law and prevalence of justice. It states the need for regulation of advocates practicing before federal courts[259] and that remains to be the case. Any advocate shall have the responsibility to assist the organs of the administration of justice in the effort to promote respect for the law and the attainment of justice.[260] The law expects lawyer to be officers in the administration of justice promoting rule of law and justice. But, the policy direction should address the matters which arose subsequent to the coming into force of the law and address the questions raised above.

[257]The EU Directives specifically applicable to lawyers, i.e. Directive 77/249 on provision of Services and Directive 98/5 on establishment (the Lawyers' Directives), Articles 4 and 6; Guidelines for Bars & Law Societies on Free Movement of Lawyers within the European Union, Council of Bars and Law Societies of Europe , , 8

[258]CCBE position Evaluation of the Lawyers' Directives , Council of Bars and Law Societies of Europe,P.2-3

[259] Federal Courts Advocates' Licensing and Registration Proclamation No. 199/2000, preamble

[260] Article 3 'Federal Court Advocates' Code of Conduct Council of Ministers Regulations No. 57/1999."

4.3. Federal and State Regulation

In jurisdictions with a federal state structure, where each constituent state government and the federal government have judicial bodies, there follows a question of regulating advocates appearing before these courts. In federal systems, practicing licenses are usually issued by local governments. For example, in India, the state bar councils admit lawyers, and in Nigeria, local branches of the Bar issue practicing certificates. Meanwhile, in the US, admission falls to the judicial arm of government of each state. In these cases, lawyers are required to be licensed in each state they wish to appear before courts. Each state devises its own regulatory framework, with its own requirements and procedures for admission, regulation and disciplining of lawyers. The same holds true for appearing before federal judicial bodies, where a separate regulation framework would be in place to regulate advocates appearing before federal courts. It may also be the case that a federal court would accept lawyers admitted to into state bars to appear before them.

The question as to what the relationship between these parallel systems will be should be addressed. For this purpose, it is proper to look into the experience of other jurisdictions with a view to understanding the various ways of forging the interface between these two systems in a state. We will examine the experience of Canada and Germany which do have a federal arrangement. In Canada, there are mandatory self-regulatory bodies (law societies) on a provincial[261] level. The law societies are established by provincial law. As mentioned before, the Federation of Law Societies of Canada (Federation) is the coordinating body for the 14 law societies. It is an informal umbrella organization,[262] not established by federal statute, but agreed upon by the provincial law societies. The individual lawyer is not a member of the Federation, but of one of the autonomous provincial law societies. While there is a high degree of independence on a provincial level, the Federation develops national standards of regulation such as a code of conduct or discipline standards,and encourages the independent law societies to adopt them. Standards developed by the Federation are not mandatory, though. Only few tasks are delegated by the provincial law societies to the Federation, such as the accreditation of

[261]and territorial

[262] Rhode, D., Woolley, A. (2012). Comparative Perspectives on Lawyer Regulation: An Agenda for Reform in the United States and Canada, *Fordham Law Review*, 80, 2761-2790, page 2773

foreign trained lawyers, publishing laws and court decisions, or setting standards for law schools. An important coordinating task internally is to facilitate mobility of lawyer between provinces.[263] Considerable progress has been made in that respect since the turn of the millennium.[264] Core of (self-) regulation remains with the provincial law societies, though.[265] The Federation also serves as the voice of the provincial law societies on a national and international level on issues relating to the administration of justice and the rule of law.[266] Because of the self-restraint to public interest issues, the Federation and the voluntary Canadian Bar Association seek coordination when acting as voice of the profession.

There seem to be two main advantages of this system: One is that it fits into the political system of Canada, which is very much a federal system. Regardless of the question if the federal legislator could set national rules and install a national regulator, it makes sense to not violate traditions for the sake of potential improvements on mobility and harmonization. Secondly, respect for regional traditions can be reflected more easily if there are rules created on a regional level, and if the federal umbrella only gives guidance through model rules. Harmonization, especially in a profession which increasingly works on an international level, is more difficult. Negative effects of a growing heterogeneity of the profession and economic differences between regions cannot easily be solved. The bottom-up decision process is slow.

The regulation system in Germany reflects the federal system like Canada. There are considerable differences, though. there are 28 regional bars[267] which are created by federal statute, and they serve as the primary (self-) regulator or better: administrator.[268] Every lawyer is a mandatory member of a regional bar. The German Federal Bar, umbrella organization for the 28 regional bars, was created by federal statute, and – unlike the Federation of Law Societies of Canada – is a public law body with tasks assigned not by the will of the legal profession, but by the federal legislator. Besides serving as a coordinating body for the regional bars, the German Federal Bar manages the rule-making assembly, which adopts a code of conduct, runs a national

[263] See working group draft paper, chapter 3.9..
[264] Pearson, J. (2013). Canada's Legal Profession: Self-regulating in the public interest?. *The Canadian Bar Review*, *92*, 555-594, page 558
[265] For a rather critical assessment of this see Rhode, D., Woolley, A. (2012). Comparative Perspectives on Lawyer Regulation: An Agenda for Reform in the United States and Canada, *Fordham Law Review*, 80, 2761-2790
[266] https://flsc.ca/about-us/what-is-the-federation-of-law-societies-of-canada/ (last accessed: November 20, 2018)
[267] 27 bars along the lines of states or traditional judicial circuits, and one bar at the German Federal High Court of Justice
[268] Regional bars in Germany do not set rules. They apply rules.

lawyers' register, has the responsibility to supply every lawyer in Germany with a secure email account as part of a digital communication system for the legal profession and the courts, and to be the voice of the bars on a national level. Internationally, the German Federal Bar represents the legal profession, often together or in mutual consultation with the German Bar Association. The German Federal Bar also has to promote and support continuing legal education. Important parts of the self-regulatory system such as the Ombudsman and the rule-making assembly are departments of the German Federal Bar. So, while the German system is quite similar to the Canadian as regard to the responsibility on a regional and national level, the main difference is that in Germany, with the German Federal Bar being more than an umbrella, a regulatory legal relationship exists not only between the lawyer and the regional bar, but also between the lawyer and the German Federal Bar with the German Federal Bar having been assigned more regulatory tasks in the past few years. Also, unlike the system in England and Wales with a somewhat unsatisfying cohabitation of a regulatory and a representative body within the organizational framework of the Law Society of England and Wales, at least in the perception of the profession and the public the separation of the regulator "branches" and the collaboration between the German Federal Bar and the German Bar Association seems to work quite well.

Like in the Canadian example, regional bars are closer to the profession than a national body could be. In a case dealing with the balance of power between the national and the regional level within chambers of commerce, the German Federal Constitutional Court stated that it is plausible that even in a globalized economy motivation and stimulus for policy makers to act can and should come from a local or regional level."[269] It is thus important to have a regional structure which is stronger than mere agencies of a federal body would be. But, the power of the German Federal Bar to adopt rules through the elected rule-making assembly makes harmonization easier, especially in a country in which substantial regional differences do not play an important role anymore. Also, implementing international rules, which happens especially in the EU context, is a lot smoother than would be, if the regional bars were to give themselves 28 different codes of conducts.

[269] "… plausible Einschätzung, dass auch in einer […] globalisierten Wirtschaftspolitik Handlungsimpulse von der lokalen oder regionalen Ebene kommen können und sollen.", German Federal Constitutional Court, July 12, 2017, - 1 BvR 2222/12 -, - 1 BvR 1106/13 -, paragraph 103https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/07/rs20170712_1bvr222212.html (last accessed: November 22, 2018)

While there might still be issues concerning regulation of the legal profession in Germany, like an unsatisfactory reflection of the fact that a growing number of law firms gets more professional management structures while regulation is still not entity-based, or how to better regulate specialization, the structure and functions of the federal bar system in Germany seems to work quite well after changes in the past years. One issue which has been resolved by intra-regional cooperation, is that some regional bars in sparsely populated regions consist of too few members to provide all the regulatory services needed.

With the structure of the Federal Democratic Republic of Ethiopia as a federation, and with a legal culture that is rooted strongly in the states, it seems as if it would be natural to have some kind of federal structure of regulation of the legal profession, especially since the majority of lawyers who do litigation actually work in local and regional courts. The legal profession should, however, be a national profession. It is not advisable to have a split profession with lawyers admitted only to federal courts on the one hand and regionally licensed lawyers on the other hand. The profession should not be segregated.[270] The functions a national regulatory body might have depend on the legal possibilities in the Ethiopian system. For policy and governance reasons, core functions that cannot be provided well on a regional level should be assigned to the national body, which can offer regulation services more cost-effectively. A code of conduct and CLE rules for example, should be set on a national level as "minimum standards". Also, good governance should not be undervalued, since when mandatory bars are set up, it is most important that they are trusted in society. In the end, it is a policy decision and a matter of what works best in a certain context.

[270]Also, it was mentioned in workshops that the fact that there are two licenses can lead to the situation in which one license is revoked for disciplinary reasons, while the lawyer still holds the other license. This is an unsatisfactory situation from a regulatory perspective.

5. SUMMARY OF RECOMMENDATIONS

1. The practice of the legal profession has come a long way and evolved into its current form after a series of laws that have tried to modernize the legal system in general and professionalize the practice of advocates.

2. The pace of evolution of the existing system has been slow and not on par with the requirements of the growth and development of the country in all social, economic and political spheres. We noted in earlier section that since the enactment of the key laws constituting the existing regime for regulating legal practice, the law has remained stagnant. Not only the law, institutionally, as well, the regulator in charge has not been performing its legally prescribed roles.

3. As we look forward into the future, we find the following key issues to form the core of the reform agenda in modernizing legal practice:

a. Maintaining National Standards of Legal Practice

b. The System of Regulation of Advocates

(i) the Model of Regulation

(ii) the Scope of Regulation

c. Quality Standards of Entry into Legal Practice

d. The Right to Organize in the Form of a Law Firm

e. Updating Legal Practice-New Ideas

(i) Non-lawyers

(ii) Foreign lawyers: policy questions

(iii) scope of legal services

(iv) Compulsory Audits

(v) Communication

(vi) Trust Accounts VS Indemnity Insurance

(vii) Accreditation of Law Schools

4. In the following section we are going to state our recommendation as what should be the aim and direction and general contents of the reform agenda in respect to each of the issues:

1. Maintaining National Standards of Legal Practice

The federalism introduced in 1991 in Ethiopia has affected legal practice in creating different regulatory authorities applying different criteria for legal practice in their region to the extent most practitioners qualified at the federal level may not be able to represent clients operating and having difficulty in regions where they operate.

The federal structure should be reflected in a national law regulating the profession. At the present moment, as indicated in the foregoing sections of this study, there are two regulatory systems governing regions. The first is that of the federal government. The Attorney General (formerly the ministry of justice) licenses and controls the conduct of lawyers who practice in Addis Ababa and Dire Dawa cities and in regional courts which exercise federal jurisdiction. On the other hand, regions license and control the conduct of lawyers who practice in their territory except appearances in regional courts exercising federal jurisdiction. The question is whether the status qua is constitutional or whether is there is a different constitutional allocation of powers.

It is submitted that the federal government should formulate regulatory standards governing lawyers and their conduct in Ethiopia. This is principally for three reasons. First relates to the need to create a single economic community where there is free flow of goods, services, capital and people. Lawyers provide legal services. The current practice has the effect of segregating

and dividing up the market for legal services. It restricts the movement of lawyers and legal services. According to article 51 of the constitution, the federal government has the power to regulate interstate commerce.

Second, access to justice is one of the fundamental rights embodied in the constitution. Access to justice includes the issue of accessibility of legal services. The current practice allows differentiated scope of access to justice as different regions might have different regulatory systems governing lawyers.

Third, many of our laws are uniform despite the fact that they are interpreted and applied by different regional courts. These include commercial code, criminal code and labour code. Many of the provisions of these codes fall within the jurisdiction of regional courts. Of course, some of their decisions will be reviewed by the cassation division of the federal supreme court. But this will not be enough to ensure uniform application of laws. Free movement of lawyers contributes to uniform application of laws.

For the above three reasons it is submitted here that the federal government should enact uniform law for the licensing and control of the practice of law in Ethiopia. Two qualifications might be added here. First, regions should be allowed to introduce limited purpose professionals which do not fulfill the requirements for the practice of law according to the federal law. 'limited purpose' means provision of legal services in woreda and social courts and drafting of specific types of legal documents. Second, regional courts and administrative tribunals function in a medium decided by regional laws.

In short, minimum standards should be set by federal law. A new system should make sure that there is no dual licensing system with licenses granted independently of each other except those that are applicable exclusively in regional contexts and identified by the regions as such.

We recommend that it should be a reform agenda for the government to work towards standardization of requirements for legal practice across the nation. This has to be done in close consultation and buy-in from regions to stay complaint with the constitutional rights of regions to regulate legal practice in their respective region.

2. The System of Regulation of Advocates

The current system of regulation has basic flaws as discussed in the foregoing sections both in terms of the normative and institutional bases of regulation.

(i) the Model of Regulation

Against the background of the various forms of regulation, the overarching aim of the model of regulation should be the protection of public interest and ensuring access to justice. The flip side of this overarching aim is the need to maintain independence of the profession of legal practice. These aims are supplemental of each other.

In order to achieve both aims, the current model of regulation needs to be dismantled. The dominant position of the Attorney General needs to be replaced. A system of co-regulation is to be introduced with a statute laying down basic principles for the profession. A mandatory bar will adopt rules of conduct detailing and completing these principles (self-regulation under statutory framework). The mandatory bar will be a body of the profession to regulate and administer licensing, quality assurance, and a disciplinary system. Supervisory and appellate powers by government and / or the courts should be restricted to legal supervision. On the other hand, whatever system of self-regulation is in place, it should properly cater of representation of public interest. There should be room for representation of bodies from outside the profession where this seems necessary The representation needs to be undertaken in a way that will not compromise the independence of the profession. The members of these bodies will be distinguished personalities, as opposed to the institutions themselves, with experience in the legislative, judiciary and other sectors of the legal profession.

While the right to associate is not touched by a new regulation, it shall be mentioned that private lawyers' associations will have an important role in the future system, providing services and representing the interests of the profession.

(ii) the Scope of Regulation

The scope of regulation needs to widen to include all professional around legal practice. These practitioners need to be defined in more precise terms. The role and expectation from law firms as regulatory target and compliance requirements must be clearly spelled out. The regulation

must ensure that disciplinary offences and measure have to be clearly defined. The existing of ad-hoc nature of the disciplinary system, the unprofessional and irregular way that is conducted and the lack of predictability in the system need to be overhauled and replace with a more predictable and transparent system perceived as fair both by the public and the profession. A disciplinary system is to be created within the profession. Supervisory and appellate powers should lie outside of the bar by way of limited judicial review. Due process is to be ensured.

3. Quality Standards of Entry into Legal Practice

Quality of the legal professional joining legal practice is an essential element to the health and robustness of the legal system. There must be a link between the training of lawyers as students and their evolution into full-fledged practitioners.

The current system in terms of requirements to enter the legal profession need to be examined and minimal standards reset to improve the quality.

It is not enough that the profession admits only those who are eligible at a particular time but also that the system must ensure lawyers remain qualified. For this purpose a system of ensuring that lawyers go through continuous legal education be put in place with predefined standard and curriculum and an institution to implement it.

4. The Right to Organize and Operate in the Form of a Law Firm

As pointed out in the text of the study, the right of lawyers to operate as a partnership, long recognized as a possibility by law, must now turn to reality. Ethiopia is one of the few jurisdictions in the world whereby lawyers are prevented from organizing as law firms. This has an adverse impact in terms of lack of specialization of lawyers, sustainability of legal practice and perception of investors investing into the country.

It is recommended that a new law shall take into account the latest practice in terms of establishment, operation, regulation and taxation of law firms and introduce the norms and institutions necessary to create law firms and help them mature into dependable institutions. Any effort in this regard needs to dovetail with the ongoing effort to reform the Commercial Code of Ethiopia and should aim at complementarity of parallel reform efforts.

5. Updating Legal Practice-New Ideas

Looking at development in other jurisdictions and international trends, it should be a reform agenda to introduce concepts that are not governed in any way under existing legal regime or required a change of policy:

(i) Non-lawyers with lawyers

Many jurisdictions now allow a law firm to consist of partners who are not lawyers but professionals in other disciplines such as engineers, accountants, auditors, etc. This is particularly essential regarding big infrastructural or power projects or other mega government undertakings and creates the opportunity to provide quality services for clients. This model might also be attractive for medium sized firms with consumer clients. A new regulation should contain safeguards so that core values like confidentiality are not compromised.

(ii) Foreign lawyers: policy questions

Current policies do not allow foreigners to practice in Ethiopia. The wisdom of this policy needs to be examined in light of its advantages and disadvantages. Given Ethiopia's current development needs, the absence of recognized law firms, the lack of depth and specialization, it might be appropriate to allow foreigner to practice here. The advantages line in promoting quality and spill overs to local lawyers and meeting pressing needs. The disadvantages could be monopoly of the big international law firms and marginalization of local law firms or lawyers. The extreme application of the prohibitive policy extends to baring Ethiopians who have changed their citizenship even if trained in Ethiopian legal institutions.

We recommend that this needs to be examined and a new law needs to take a balanced and realistic position that would ultimately promote the public interest.

(iii) scope of legal services

The current understanding of legal services that a licensed advocate can do are reflected in the definition given to advocate services as discussed in earlier sections. It is appropriate to look into this traditional definition and consider, even if at a limited extent, whether the future law firms

should widen their scope of services and engage in services such as acting as a notary in limited instances, corporate secretariat with statutory powers to verify documents, etc.

(iv) Compulsory Audits

With more independence, legal professionals need to be subject to regular auditing practices. This is particularly true to law firms.

(v) Communication

The new law shall have provisions enabling the mandatory bar to promote and regulate electronic communication compatible with the Electronic Signature Proclamation No. 1072/2018. A proactive attitude of the legal profession serves public interest and the individual lawyer: Technology can make legal services more efficient. Furthermore, commercial clients demand digital communication to an increasing degree. Also, the legal profession needs to be prepared when courts get infrastructure for e-filing systems. In many jurisdictions, including in African countries, the legal tech industry is on the rise with non-lawyer providers wanting to access the market using means of digitalization to promise low-price access to justice. It is crucial not to compromise quality, so it is the legal profession which should own legal tech. Last, but not least, a digital infrastructure in law offices would allow access to online Continuing Legal Education, and also to statutes, regulations and court decisions more easily. Developments in this field are rapid. As soon as the technical infrastructure for nationwide mobile communication and fast wireless network coverage is installed everywhere, there will be opportunities the profession should approach proactively. So timely preparation seems crucial here.

(vi) Trust Accounts VS Indemnity Insurance

The concept of trust accounts employed in other jurisdiction combined with indemnity insurance will have to be examined in terms of enhancing and introducing predictability and accountability in client-advocate relationships.

(viii) Accreditation of Law Schools

An independent legal profession with strong institutions can be a part of the system of accreditation of law schools by linking the practice with the theory and in systematically addressing the supply end of the legal profession. We recommend for this to be explored and reflected in the new legal regime to be set up as a result of the implementation of the reform agenda.