

# Freedom of Association under Ethiopian Laws: A Case in Professionals' Association

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**Abstract:** This article endeavors to shed light to the freedom of association in general and professionals' association in particular by providing a thorough descriptive overview of sources of the freedom of association both at national and international level. In addition, the article further attempted to establish strong link between freedom of association and the right to form and join professional association. It also devotes to amplify the far reaching significance of professional association to attain full-fledged freedom of association at the end of the day. In a sense, it illustrates the means-end relationship between the right to form and join professional association and the freedom of association. And once again, the article also tries to highlight the peculiar features of professional association in light with labor or trade union. This article also explores the roles, responsibilities and contributions of professional associations and unions- as typical group organizations- toward achieving the ultimate realization of fundamental right to freedom of association. To this end, the article will discuss the origin, development, challenges and prospect of freedom of association in general and particularly the right to form and join to professional association in Ethiopia. Finally, the article assess critical legal impediments which are stumbling blocks with respect to the right to freedom of association and the right to form and join professional association under the three successive regimes in Ethiopian jurisdiction. Toward this end, the article thoroughly scrutinizes the legal basis of the subject matter with reference to both national legislations enacted and international instruments which Ethiopia adopted to the effect.

**Keywords:** Freedom of Association, Professional Association, Trade Union, Civil Society Organizations.

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## 1. INTRODUCTION

Freedom of association is inherently exercised with the intent to pursue either political or socio-economic rights of individuals against government and employer respectively. Indeed, freedom of association is a broad concept that could be manifested in multifaceted forms like political, civic and labor association (Brody, 2002). Accordingly, this article is, however, specifically limited to the associational right of professionals. Traditionally, freedom of association was often related with the idea that group would had better bargaining power than individual especially to settle economic or other interest between employee and employer (Olson, 2002). The right to freedom of association is also the right that has been recognized as capable of being enjoyed individually or by the association itself in the performance of activities and in pursuit of the common interest of its founders and members (Link, 2015).

It is, however, worthy to note that the notion of freedom of association gradually but certainly transcend to a political realm that governs the relation between state and citizens. Although few authors used the term association and union interchangeably, most of the time there is a prevailing trend to use association for professionals and union for traders or laborers (Reichman, 2015). Furthermore, literatures dictate that labor unions and trade unions are common group organizations in British and US America respectively. Group organization is naturally a consequence of existence of interacting individuals who possess a set of common values or norms together (Schlachter, 1976). Broadly speaking, group organization of workers are often took the form of either professional association or labor union since collective effort are repeatedly witnessed as more effective approach than sporadic individual attempts.

In so doing, group organizations could improve the amount of wage paid, working condition and autonomy of members and even strive to ensure quality and maintain standard of service. Although both professional association and labor union are basically intended to pursue special interest of their respective members, the distinction between them lies only on the nature of occupation in which their members engaged (Lovejoy, 1938). Professional mostly refers to individuals who had taken intensive formal training from a recognized institution to the effect in a certain special field of study and eventually acquired a bit advanced intellectual knowledge while laborer denotes individual whose task is predominantly skill or technical oriented. However, clear demarcation between these dichotomies is often found to be challenging and difficult task to delineate thus an overlap is more likely (Bunge, 2004).

Conventionally, professionals are more often tend to join professional association than labor union mainly because the goal of the former is to promote public good while the goal of the latter is basically to keep private interest of members. At this critical point, it is worthy to note that the difference between association and union is merely based on the inherent nature of occupational interest of a group they represent. The type of organization that professionals prefer is a one with strong occupational identity that places priority on professional issues like professional development and standard of public services instead of working condition job security and salary (Lakhani, 2008).

However, unlike trade unions, professional associations are persistently charged with being unrealistic since no one is prefer to be member without expectation of certain personal benefit that accrue to him. Professional associations are typical group organizations in which the freedom of association would be adequately exercised in its strictest sense. Professional association members enjoy ranges of benefits, including purely private goods such as career advice and specialized field information, and public goods such as amplified civic voice and the cultivation of normative standards of professional conduct (Fisher, 1997). For the purpose of this article, the conceptual scope is deliberately limited only to professional association.

Freedom of expression would not be exercised in its abstract sense rather through active engagement within a certain association of one's interest apart to individual level. The ultimate purpose of joining association is to exert pressure or influence other actors and also to strive for the furtherance of the specific interest of group members. Association is literally refers to state of being organized under certain umbrella to protect the interest of groups' member. The right to freedom of association is interrelated with other human rights and freedoms, such as the right to freedom of expression and opinion, freedom of assembly and freedom of thought (Link, 2015). More importantly, Freedom of Association and Freedom of Expression are highly interdependent and mutually reinforcing one another. Freedom of Association is one of the fundamental human rights that usually attributed as basic means to enhance and consequently make the implementation of freedom of expression more full-flagged.

Had it not been for the freedom of expression, associations cannot make their objectives, interests and demands openly known to the public. Besides, without freedom of expression associations would much less publicize their activities as well as their views and comments on government policies and measures. As a result, effective realization of freedom of association is a typical manifestation of prevalence of freedom of expression. The development of the right to freedom of association and the right to freedom of expression often goes hand in hand (Seleshi, 2014). Most of the time (if not always), individual want to join an association based on a profession to which they affiliate in order to express their interest institutionally. Thus, if the existing circumstance in a country is conducive to exercise freedom of association it would also consequently favors freedom of expression at institutional level.

At international level, the principal sources of legal framework in relation to freedom of association is often emanate from the two basic authoritative human right instruments to the effect; namely, UDHR and ICCPR. In fact, freedom of association is also mentioned under various regional right instruments and national constitutions. According to Article 20(1) of Universal Declaration of Human Rights everyone has a right to freedom of peaceful assembly and association. The recognition of freedom of association under UDHR implies that any member state has an obligation to make an overall environment convenient for every respective possible member or citizen to exercise this right. Besides, sub-article 2 of the same provision enunciates that no one may be compelled to join in to an association except his free willing (UDHR, 1948).

At this point, it is worthy to note that membership to association should not be imposed on individual instead it has to be solely based on voluntariness. In short, with regard to the enforcement of the freedom of association the state is supposed to discharge two major responsibilities; namely to allow individual establishing association and refrain from interference

and to protect citizens from not to be compelled. Likewise, according to Article 22 of International Convention for Civil and Political Rights everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests (ICCPR, 1966). Thus, ICCPR also entitles individual the right to form and join any association so that exercise their right and defend possible exploitation.

And once again, freedom of association in the field of labor relation is further provided under Article 8 of International Covenant on Economic, Social and Cultural Rights, which followed by relevant provisions of two International Labor Organization sponsored instruments; namely, the convention concerning Freedom of Association and Protection of the Right to Organize and the convention concerning the Application of the Principles of the Right to Organize and Bargain Collectively. Under the Convention concerning Freedom of Association, workers and employers have a right to establish and, subject only to the rule of organization concerned, to join organization of their own choosing without previous authorization.

Unlike other international and regional instruments, as pursuant to Article 10(1) of African Charter on Human and Peoples Rights an individual has a right to free association so long as he abide by a law. This is particularly strongly worded qualification and fear has been expressed that the “term” law in this provision would be interpreted to justify and excuse any action whatsoever taken by government, provided such action is coached in legislation or otherwise conforms to law. It is, therefore, possible to infer that **African Charter on Human and Peoples Rights** requires further conditions to exercise freedom of association.

In Ethiopia, the freedom of association is a constitutionally guaranteed right. The constitution of Federal Democratic Republic of Ethiopia on its article 31 provides that everyone shall have the right to form associations for whatever purpose. Associations formed in a violation of appropriate laws or association formed with the objective of overthrowing the constitutional order, or associations carrying out these activities shall be prohibited. This also implies that Ethiopian constitution tends to resemble with the trend in African Charter on Human and Peoples Rights. In addition, the constitution of Federal Democratic Republic of Ethiopia under its article 42(1(a and b)) clearly states that factory and service workers, farmers, farm laborers, other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form associations to improve their working condition of employment and economic well being. This right includes forming trade union and other associations to bargain collectively with employers or other organizations that affect their interest (FDRE's Constitution, 1995).

## 2. FREEDOM OF ASSOCIATION UNDER ETHIOPIAN LAWS

In order to examine the origin and development of the notion of the freedom of association in Ethiopia, one has to trace back to the history of constitution in the country. The 1955 revised constitution of Ethiopia was the pioneer legitimate legal document to officially recognize the freedom of association thus lay down the legal framework to the effect. The then Emperor, Haileselassie I, handed down the constitution to his subject with the following introductory remark in the preamble: We Haileselassie I (...) hereby proclaim and place into force and effect as from today the revised constitution of the Empire of Ethiopia, for the benefits, welfare and progress of our beloved people (Redae, 2015).

Accordingly, the revised constitution devoted a full chapter to the “Rights and Duties of the People” (Article 37-65). The constitution enunciates provisions that have more to do with the freedom of association, namely; freedom of speech (Art. 41), the right to peaceful assembly (Art. 45) and the right to form or join association (Art. 47). In contrast, all of those provisions were accompanied by a limiting phrase such as “in accordance with law” or “within the limit of the law”. This presumes the need for detail legislation for the proper implementation of the constitutional provisions to be issued. Thus, in order to make freedom of association significant, the revised constitution should have been followed by legislation with detail rules for implementation. However, there is no yet implementing legislation that was put in place pertaining to the freedom of association.

Particularly, Article 47 of revised constitution provided that “Every Ethiopian subject has the right to engage in an occupation, and to that end, to form or join associations, in accordance with the law. The phrase “...in accordance with the law” indicates the precondition for the existence of law granting authorization to form associations. (Redae, 2015) There was, however, no law that governs a further implementation of the freedom of association at least for couple of years.

Once again, the 1957 Penal Code of Ethiopia which is proclaimed two years after the coming in to force of the revised constitution had a provision with a chilling effect to potential organizer who intends to form or join association. In other words, according to Article 476 of the Ethiopian Penal Code whosoever founds, organizes, or commands the society, band, meetings or assemblies forbidden, either generally or from time to time by law, by government or by competent authority; or whosoever knowingly takes part in such activities is punishable with a fine not exceeding five hundred Ethiopian dollars. To make matter worst, ring-leaders, organizers, or commanders are punishable with simple imprisonment not exceeding six months (See Article 476 of Ethiopian Penal Code). Thus, one may safely conclude that this specific provision, in one way or another, would have a chilling effect over the task of ensuring freedom of association

Interestingly, it is often argued that human right provisions under the alleged constitution, like freedom of association and freedom of assembly are mere nominal rather than genuine commitment. At this juncture, it is important to recall that the way the revised constitution's provisions on freedom of association was designed resembled the provision in the treaty of Versailles (1919) which provided the right of association for all lawful purpose by the employees as well as by employers. The phrase of "lawful purpose" was feared to provide heavy handed interference by the government against unwanted associations under the guise of the purpose is unlawful (Redae, 2015).

Of course, the Civil Code of 1960 posses a chapter on the "Formation and Administration of Associations established for nonprofit purposes. Article 404-482 of the Ethiopian Civil Code devotes pertinently to nonprofit making civil association such as association of mutual assistance among member rather than professional association which is at the heart of topic under this discussion. According to article 406 of Ethiopian Civil Code, trade unions refer to groups formed with a view to defend the financial interest of their members or to represent a particular call being subject to special laws to the effect. It is, however, worthy to remind that the ultimate objective of professional association is far beyond a mere financial interest (See Article 404-482 of Ethiopian Civil Code). Thus, it is hardly possible just to apply this general provision on professional associations.

Given the fact that freedom of association could be inherently enjoyed through organizations like civil society, their members would use civil societies as a plat form to exercise the right to freedom of association. Civil society is assumed to represent all those organized, in particular groups or individuals representing communities, non-government organizations, sector focused advocacy groups who have direct or indirect concern on issues under consideration (Yealemzewd Bekele, 2009). The most common entities falling under this category are local and international NGOs, interest groups, environmental groups, and professional associations. Civil society is the form of self-help system (traditional mutual help association) has long existed in Ethiopia. Some of these self-help systems have been registered as neighborhood associations since 1960's.

Good case in point, the workers struggle that started in 1943 by Franco-Ethiopian Railway workers and intensified by other workers in the 1950's with the development of new industries was first organized and initiated through workers' self-help traditional associations. As time goes on, initiatives of workers, together with the democratic idea of young intellectuals, paved the way for the establishment of labor associations in Ethiopia (Mebratu, 2015). Among many others, the Ethiopian Teachers Association which was established in 1949 by few school teachers was a good case in point (Gebre-Egziahber, 2002). Finally, typical modern interest groups such as labor unions and professional associations mainly began to emerge as part of civil society organizations in 1963, after the labor relation decree of government was proclaimed.

Unlike the period of Emperor, where the state (employer by default in case of public service) was relatively hostile toward professional unionist and organizers, there was no fear of retaliation during the military regime as long as professional associations were not acting against the political system. In this state of affairs and on the perception that the then prevailing communist ideology was favorable especially toward trade unions was an overwhelming trend at the time than ever before. Moreover, there was no law that empowers the concerned Ministry to suspend or dissolve associations except where associations were refused to comply legal registration. It is, however, contemplated that gradually professional associations were found to be politically affiliated with the ruling party. At times, there existed an overlapping of responsibilities in the sense that leaders of professional associations were at the same time influential figures in the political structure as well. To the worst, the affiliation between the ruling political party and a notable association of trade union was so intimate that the line of demarcation was hazy (Redae, 2015).

Surprisingly, as indicated above, the Imperial regime had put legislative measures in place and employed watching activists to restrict professional associations from engaging political activities. In contrast, the military government introduced a paradigm shift by encouraging professional associations to step into the political arena. Hence, the degree of politicization of professional associations was unavoidable. The politicization of professional associations was not, however, a blank cheque given to the associations in that they were not at liberty to make affiliation with any political party of their own choosing. On the contrary, professional association leaderships who were not politically allied with the military regime were suffering from severe ill treatment that amount to suppression (Redae, 2015).

After a downfall of military rule in 1991 a renewed approach came in place with regard to associations in general and professional associations in particular. Due to a change in ideological orientation and the introduction of new economic policy specifically from command economy to market-led economy, Ethiopia necessitate revising the existing legal framework to make it compatible with the prevailing international norms. To this end, the new labor proclamation was issued in 1993 in conformity with political and economic disposition of the period. It was also stated in preamble of the proclamation that one of rationale to its adoption was to ensure compliance with ILO conventions on freedom of association and other legal commitments to which Ethiopia is a party.

Even though the ILO constitution of 1919 had an explicit statement simply on the right to freedom of association, it was silent about the issue of collective bargain. Moreover, ILO convention No. 87, which regulates the right to freedom of association in a detail manner, is directed towards regulating the autonomy and independence of associations from governmental interference rather than regulating the relationship of the social partners. Article 10 of the convention merely indicated the objective of formation of association to be furthering and defending the interest of the members. More importantly, the ILO convention No. 98 of 1949 on the right to organize and collective bargaining would not extend to the extent that regulating the relationship between professional associations and their respective governments. It rather limited its regulatory scope to the prohibition of interference by the social partners with each other and prohibits anti-union discrimination in any of its form.

It is, therefore, argued that in most cases formation of associations is not an end in itself. It is rather a means to protect members' interests that associations are ultimately formed. It could, thus, be contended that freedom of association should be interpreted to include the right to collective bargaining because one of the measures of ensuring members' interest is believed to be collective bargaining. The committee on freedom of association of ILO governing body has interpreted the right to freedom of association to encompass the right to bargain freely with employer with respect to the working condition.

It has been evident that the status of professional association in Ethiopia was transformed from self-help associations to full-fledged contemporary professional association overtime. Although Ethiopia was one of the oldest members of ILO and although the ILO constitution required every member state to accord freedom of association as a matter of urgent importance, it had to wait for forty years (1923-1963) before introducing a comprehensive law on freedom of association.

However, with the attempt to introduce modernity to the traditional Ethiopian society through legal reform in early 1960s, a policy of suppression of professional association gave a way to recognizing professional association but accompanied by restrictions from any political engagement. At the earliest stage of its inception, in Ethiopia it was only non-political professional associations were tolerated to exist and function. A dramatic change of direction came with the military period with highly centralized and partisan approach to professional associations whereby politicization of professional associations' administrative structure was introduced for the first time in history of the country (Ezana Amdwork, 2012).

Finally, the part of law to this effect of post-military rule has progressively adopted relatively more liberal positions. Thus the general pattern of the legal framework for professional association has moved from suppression to regulation and from regulation to over-regulation; and finally from over-regulation to minimal regulation. The pattern reflected the economic and political disposition of the three consecutive regimes in that the over-regulation was associated with command economy of the military rule whilst the minimalist regulation has been correlated with the market oriented economy (Mebratu, 2015).

Generally, the development has been slow and incremental, and at times registering significant regression, the general trend is that ILO conventions on freedom of association have positively influenced the contents of the successive Ethiopian laws to the effect as many of the stipulations of the conventions have been gradually incorporated. However,

due to lack of uniform and consistent policy toward associations by the three successive Ethiopian regimes professional associations have been weak owing to lack of continuity (Redae, 2015). Hence, maximum effort should be exerted in order to protect and empower the potential professional associations through developing adequate legal frameworks and potent institutions to the effect.

The recent and prominent legal framework with regard to the essence of the freedom of association is exactly the constitution of the Federal Democratic Republic Ethiopia. The freedom of association is a constitutionally guaranteed right in Ethiopia. The constitution of Federal Democratic Republic of Ethiopia on its article 31 provides that everyone shall have the right to form associations for whatever purpose. Associations formed in a violation of appropriate laws or association formed with the objective of overthrowing the constitutional order, or associations carrying out these activities shall be prohibited (FDRE's Constitution, 1995). The constitution provides enabling legal conditions for the formation and flourishing of Civil Society Organizations or professional associations-in the context of this article, in two folds. On one hand, through recognizing universality of the freedom of association that allow the formation of diverse types of Civil Society Organizations that pursuing any lawful purpose. And, on the other hand, through barring uncivil and illegal organizations that could discredit the sector from the public sphere.

### 3. PROFESSIONALS' ASSOCIATIONS UNDER ETHIOPIAN LAWS

Professional Association is an organization that consist the group of people who consider themselves engaged in a same sort of work; whose identity is drawn from work and who share with one another a set of values, norms and perspectives (Hovekamp, 1997). Professional Associations, quite simply, provide various professionals with an opportunity to remain current in their respective field and to develop professional identity (Livingstone, 2014). Besides, they also provide a platform where like-minded professionals can come together to focus on the issue of most paramount to their career (Hager, 2014).

Professional associations are the typical manifestation of exercising fundamental human rights and freedoms, more importantly; the freedom of association. The development and realization of the freedom of association is naturally a long and tough process that would be made happened through intensive tasks performed by bunch of actors like political associations, religious associations, trade or labor union, professional association and other many more mass-based governmental and non-governmental associations (Ezana Amdwork, 2012). With cognizant of the contribution of all these associations, this article emphasizes on the challenges and paramount role of professional association in Ethiopia.

The origin and development of professional association in the world in general as well as in Ethiopia in particular is automatically associated with the emergency of private and public service rendering organizations. Although labor union and professional societies in Western countries already exist in nineteenth century, it was in last hundred years when both of them managed to successfully attract a large number of individuals and legitimize themselves as a means to pursue the interest of their memberships (Alemayehu, 2010). Historically, twentieth century was considered as a landmark period when professional association was formed in America. As a result, it was exhibited the fact that occupation could be also a main source of income just like property does (Lovejoy, 1938). In fact, it is naïve to think that all professional associations had got their existence simultaneously together. Instead, it is more plausible to perceive that the influential role and the pressing magnitude of various professional organizations was a result of long dated back sectarian movements (Macauley, 2013).

The same is true in the history of professional associations of Ethiopia. Like any other developing countries, Ethiopia has been predominantly engaged under agrarian economy. Given being an agrarian society, feudal landlords, poor farmers and small businessmen were remained the major economic force in the history of Ethiopia. At the then time, property was the only source of income while occupation has no any significant impact in terms of income generation (Redae, 2015). However, through time public and private sectors' employees gradually began to assume active and strong position in Ethiopia. To be clear, professionalization is something that has more to do with being a graduate in certain specialized field from recognized institutions. Ostensibly, the history of modern educational institutions, particularly Universities was relatively a recent phenomenon in Ethiopia. Thus, in one way or another the quality and quantity of professional associations in Ethiopia was determined by the expansion and proliferation of educational institutions. To this end, foreign educated elites and graduates of local universities were ultimately managed to establish various professional associations under their respective fields of profession or occupation.

A good case in point, Ethiopian Teachers Association was informally established in 1949 and got nationwide recognition in 1965. Ethiopian Teachers Association was primarily established with a view of supporting primary level teachers in career development, alleviating difficulties teachers faced due to lower salary rate, improve quality education and some others related issues. Through time the Association evolved to an institution reaching beyond the immediate needs of its members through its activism and started being at odds with the government on matters related to social, economic and political policies (Gebre-Egziabher, 2002).

Ethiopian Teachers Association was among the prominent actors who significantly contributed to the end of monarchial and dictatorial regimes that existed in Ethiopia until the year 1991. The story of the Association after 1992 is marked by an extended internal conflict between groups who alleged to be the legal representatives of the Association. After an extended court litigation that took more than 14 years, the Supreme Court Cassation Division ruled in June 2008 upholding the ruling of lower courts by ordering the transfer of all property including bank asset. The group that lost the case has been trying in vain to register at the CSA under the name National Teacher Association (Ezana Amdwork, 2012).

In Ethiopia, the freedom of association is a constitutionally guaranteed right. The constitution of Federal Democratic Republic of Ethiopia on its article 31 provides that everyone shall have the right to form associations for whatever purpose. Associations formed in a violation of appropriate laws or association formed with the objective of overthrowing the constitutional order, or associations carrying out these activities shall be prohibited. This particular provision envisages that individuals are legitimately entitled to exercise the right to freedom of association provided that their act is not contravened in any ways with certain underpinned justifiable restrictions (FDRE's Constitution, 1995).

In addition, the constitution of Federal Democratic Republic of Ethiopia under its article 42(1(a and b)) clearly states that factory and service workers, farmers, farm laborers other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form associations to improve their working condition of employment and economic well being. This right includes forming trade union and other associations to bargain collectively with employers or other organizations that affect their interest (FDRE's Constitution, 1995).

Accordingly, professional associations along with other counterpart associations had persistently strived to protect members' interest on one hand and to realize the freedom of association on the other hand. As it was already attempted to discuss above, in Ethiopia be it freedom of association in general or freedom of professional association in particular was subject to unbearable threats and challenges under Imperial regime, Military rule and even to some extent under current legal and political realm.

#### **4. RESTRICTIONS AND LEGAL IMPEDIMENTS TO PROFESSIONALS' ASSOCIATION**

The right to freedom of association is guaranteed at the international level under article 23 of Universal Declaration of Human Rights, article 22 of International Convention on Civil and Political Rights, and article 8 of International Convention on Economic and Social Cultural Rights all these guarantee the right to freedom of association. On top of this at the regional level, article 10 of African Charter on Human and People's Rights also guarantees the right to freedom of association. Likewise, under article 12(3) of African Charter on Democracy Election and Governance, state parties are obliged to take all appropriate measures to create conducive environment for the operation of Civil Society Organizations, an umbrella under which professional associations are found at the lower hierarchy.

Although the right to freedom of association is guaranteed in most African countries' constitutions and international conventions, the enjoyment of right is not yet aligned with stipulated provisions to the effect. Indeed, it is naïve to expect that exercising absolute freedom of association even in Western countries let alone in developing countries. Thus, due to various practical reasons the notion of the freedom of association is subject to certain legitimate restrictions. Unfortunately, several governments in Africa have used different limitation modalities to suppress Civil Society Organizations; more importantly, professional associations under the guise of legitimate restrictions (Trywell Kalusopa, 2012).

As a result, government continues to intimidate and impose immense restrictions on professional associations in order to preserve political status quo. The practical and legal restrictions imposed on the operation of professional associations includes enacting and employing stringent laws that require mandatory or cumbersome registration, intensive monitoring

by the government, restriction on relation with foreign associations, and prohibition of recipient of foreign fund that exceed certain limit (Heymann, 2014). In doing so, governments persist in establishing diverse mechanisms to preclude professional associations from any possible active role in order to perpetuate their oppressive rule regardless of fundamental freedoms of association to the professionals and the society at large.

In Ethiopia, however, since 1995 the freedom of association is a constitutionally guaranteed right which has been relatively addressed as detail as possible. The constitution of Federal Democratic Republic of Ethiopia on its article 31 provides that everyone shall have the right to form associations for whatever purpose. Associations formed in a violation of appropriate laws or association formed with the objective of overthrowing the constitutional order, or associations carrying out these activities shall be prohibited. Accordingly, only two constitutional limitations are imposed on Civil Society Organizations' freedom to choose and to pursue any purpose. These restrictions are non-violation of appropriate law and non-disruption of constitutional order. As pursuant to article 9 of Federal Democratic Republic of Ethiopia's constitution international human instruments parts are integral part of the law of the land (FDRE's Constitution, 1995).

Besides, the constitution of Federal Democratic Republic of Ethiopia under its article 42(1(a and b)) also further states same right in such a way that factory and service workers, farmers, farm laborers other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form associations to improve their working condition of employment and economic well being. This right includes forming trade union and other associations to bargain collectively with employers or other organizations that affect their interest (FDRE's Constitution, 1995). It is, therefore, logical to deduce that the right to form or join professional association in Ethiopia is constitutionally enshrined.

However, despite this constitutional provision Ethiopian government had lately adopted a contentious proclamation on Charities and Societies Proclamation No. 621/2009 that regulates the registration and activities of Non-Governmental Organizations in the country. Accordingly, the professional workers including those who undertake their carrier in the public and private sector can form associations with a view to promoting their respective interest as a society. However, professional workers' associations established under Charities and Societies Proclamation is not a prototype trade union and it is not entitled with the rights guaranteed under article 42 of the constitution, namely the right to bargain collectively and the right to strike (Abebe, 2013).

To make the matter worst, these two significant components of trade union and/or professional association rights are neither sufficiently provided nor adequately regulated under Charities and Societies Proclamation. The proclamation restricts professional association in particular and NGOs in general by placing stringent requirements for entry and operation. According to the proclamation there are two types of NGOs which legally recognized in Ethiopia; Societies and Charities (Proclamation on Charities and Societies, Proclamation No. 621, 2009). At this juncture, it is worthy to note that professional associations which are the subject of this study will falls either under the category of Societies or Charities. In practice, despite what has been provided under the proclamation Societies and Charities are used interchangeably.

It is, therefore, important to discuss Charities and Societies Proclamation no. 621/2009 so as to emphasize the salient distinctive feature of professional association compared to other types of associations. As it can be inferred from the preamble, the basic rationale behind the adoption of Charities and Societies Proclamation is ensuring the realization of citizens' right to association that enshrined in the constitution. Unfortunately, the proclamation neither unequivocally recognizes professional association nor does it adequately regulate professional association (Ezana Amdwork, 2012).

Article 2(2) of proclamation defines Societies and Charities as organizations formed by Ethiopians under Ethiopian law, fully controlled by Ethiopians with at least 90 percent of their income generated internally. However, in case where an organization receives more than 10 percent of its income from foreign it will be rather considered as Ethiopian Resident Societies (Proclamation on Charities and Societies, Proclamation No. 621, 2009). Ethiopian Resident Societies and any other foreign organizations are not allowed to engage in certain right sensitive activities. Obviously, despite attempts made to justify restriction, the ultimate objective of reducing the scope of involvement of NGOs or CSOs is perhaps aimed to insulate foreign interference on one hand. On the other hand, the government is also frequently charged with a tendency to weaken the power of association not to raise stiff challenge against government. As a result of these restrictions, numerous international human rights groups have been forced to suspend their operation and number of



domestic groups have been also forced to reduce the scope of their work or end their advocacy activities altogether to comply with the law (Alemayehu, 2010).

Ethiopian Resident Society is one form of legal entity recognized by the proclamation. As noted above, the key purpose of such association is to further the interest of its members - in case of professional association represent members from a particular profession. Any such organization which is established in Ethiopia may be forced to raise a substantial portion of its funds from international sources if it intends to work for public interest and go beyond simple representation of its members. Many professional societies were established in Ethiopia but works for the benefits of the nation as a whole and mainly using foreign funds. Through the Charitable attribute, most Societies were enabled to work on wider issues than merely sticking the interest of their members. The funds from abroad enable them to conduct policy research, undertake outreach activities, engaged in regional activities and many other wider ranging activities which they consider to be part of their mandate of supporting their respective profession (Mebratu, 2015).

Accordingly, a professional association which is established in Ethiopia by individuals residing in the country for charitable purpose can be registered as Ethiopian Residents' Charitable Society. The mere fact that members of the given association are from specific profession is not in itself a bar for association to be registered as Ethiopian Residents' Charitable Society. In short, there is no legal restriction that prohibits professional associations from registering as an Ethiopian Residents' Charitable Society.

As pursuant to article 55 of CSOs proclamation society is defined as an association of persons organized on non-profit making and voluntary basis for the promotion of the rights and interests of its members and to undertake other similar lawful purposes as well as to coordinate with institutions of similar objectives (Proclamation on Charities and Societies, Proclamation No. 621, 2009). Despite this specific provision, associations or unions in Ethiopia are strictly required not to exceed certain amount of limit to raise funds from foreign sources. This, surprisingly, seems that it is quite self-defeating mainly because technically it prohibit associations or unions to exercise already guaranteed right to coordinate with foreign/international institutions which engaged in similar objectives.

Moreover, a number of serious impediments are placed on domestic resource mobilization under the law. Article 77 requires CSOs to disclose the identity of all donors. In a country where dissidents and government critics are frequently jailed for associations dissident groups, the requirement that all CSOs identify their benefactors greatly deter Ethiopians from supporting human rights organizations. Furthermore, organizations wishing to hold a national fundraising event are required to secure permission for Civil Society Agency (Proclamation on Charities and Societies, Proclamation No. 621, 2009).

The Agency is requesting Ethiopian Resident Societies to re-register as mass based societies. During license renewal period of 2013, the Agency has requested professional societies to re-register and/or change their registration category to be a mass based societies or an Ethiopian Society. This is a core challenge that has ultimately created a chaotic situation among professional societies which have subsequently resisted this proposal. For example, the Ethiopian Midwives Association (EMA) and the Ethiopian Economic Association (EEA) were requested to re-register as mass-based society because they are professional associations.

## 5. CONCLUSION

The right to freedom of association is often associated with the right to form political parties and the right to organize collectively at work place. While these two examples might be the most commonly threatened associations, it is important to recognize that associations are formed everywhere in society, and that many societal functions rely on the free formation of association. It is, however, worthy to note that the scope of this article is limited only to the right to organize collectively at work place on basis of occupation or profession. The right to form or join civil society organizations; more importantly the right to form or join professional association is at the heart of exercising freedom of association.

Article 31 of the Ethiopian Constitution provides that every person has the right to freedom of association for any cause or purpose. As long as the association comply with appropriate laws. What is more, the association should not be involved in any subversive act against constitutional order. In addition, the constitution of Federal Democratic Republic of Ethiopia under its article 42(1(a and b)) further states that factory and service workers, farmers, farm laborers other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form associations to improve their working condition of employment and economic well being. This

right includes forming trade union and other associations to bargain collectively with employers or other organizations that affect their interest. This is a pertinent constitutional provision that guarantees the right to form or join association for group organizations like professional association and union.

Freedom of association, which is a fundamental human right, is guaranteed under article 20 of Universal Declaration on Human Rights, article 22 of International Conventions on Civil and Political Rights and article 10 of Charter on African Human and People's Rights. In fact, the idea of the freedom of association is incorporated nearly within the constitution of all African countries. However, the implementation of freedom of association in most African countries is found to be remained at stake. This is often attributed to the absence of appropriate legal framework and potent institution that enable to enforce the right to freedom of association. According to article 9 of Ethiopian constitution, international human right instruments adopted by the country should amount to an integral part of the law of land. Accordingly, law enforcing organs in Ethiopia have legal duties to observe international human instruments apart to national legislation.

Despite the stipulation of ample of provisions with regard to the right to freedom of association both on international instruments and national statutes, Ethiopia had enacted Society and Charity Proclamation No. 621/2009 that in effect undermined the operation of Civil Society Organizations in general and professional associations in particular. Among many others, inconsistent registration and discriminatory random license renewal are common threats that would be posed to suppress professional association in Ethiopia.

Finally, the author of this article strongly argue that it has to be noted that the wider objective of serving the interest of profession and the wider public should be recognized as legitimate objectives of professional organizations. It is, therefore, the paramount roles and contributions should be taken in to account when assessing the appropriate registration status and while implementing the proclamation on Society and Charity Organizations.

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