

## Practical Guide and Commentary

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# Ethiopia's Organizations of Civil Societies Proclamation No. 1113/2019

## Introduction

Earlier this year, President Sahlework Zewde signed into law Proclamation No. 1113/2019: Organizations of Civil Societies Proclamation (“the Proclamation”). The Proclamation appeared in the March 12, 2019 issue of the Federal Negarit Gazette, published in April. The Proclamation repeals and replaces the highly restrictive 2009 Charities and Societies Proclamation. The Proclamation was drafted through a consultative process, wherein the drafters and legislators solicited input from stakeholders including civil society at various stages.

The International Center for Not-for-Profit Law (ICNL) has created this Practical Guide and Commentary to support civil society organizations (CSOs) in Ethiopia and other interested stakeholders in understanding and navigating the Proclamation. It also identifies key areas requiring further advocacy and collaboration with the Government to ensure that the implementation of the Proclamation and any associated Regulations and Directives adhere to international best practices on the protection of the freedom of association.

## International Law

Article 22 of the International Covenant on Civil and Political Rights (ICCPR), guarantees the right to freedom of association.<sup>1</sup> Restrictions on this right must be (1) prescribed by law; (2) necessary in a democratic society; and (3) in furtherance of one of four clearly-defined interests: national security or public safety; public order; the protection of public health or morals; or the protection of the rights and freedoms of

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<sup>1</sup> Ethiopia ratified the ICCPR in 1993.

others. These limited circumstances must be “construed strictly; only convincing and compelling reasons justify restrictions on...freedom of association.”<sup>2</sup>

To meet the ICCPR’s requirement that a restriction be “prescribed by law,” the restriction must be sufficiently precise to enable an individual or non-governmental organization (NGO) to assess whether their intended conduct would be in breach of the law, and to foresee the likely consequences of any such breach.<sup>3</sup>

To meet the requirement that a restriction be “necessary in a democratic society,” the restriction must be proportionate to one of the legitimate aims enumerated above. A restriction is proportionate where it is the least restrictive means required to achieve the purported aim.<sup>4</sup>

Similarly, with reference to Article 10 of the African Charter on Human and Peoples’ Rights (ACHPR)<sup>5</sup> protecting the right to associate, the African Commission on Human and Peoples’ Rights has clarified that restrictions on the right to association must meet the same conditions prescribed under the ICCPR.<sup>6</sup> The African Commission on Human and Peoples’ Rights’ *Guidelines on Freedom of Association and Assembly in Africa* serve as a useful tool for states to ensure the protection and promotion of the freedoms of association and assembly.

The Proclamation recognizes as a primary motive for enactment the need to “give full effect to the freedom of association enshrined in the...International Human Rights Instruments ratified by Ethiopia.”<sup>7</sup>

## Overview of Major Processes and Obligations

### FORMATION OF ORGANIZATIONS

- Two or more persons may establish an organization (Article 17).
- An organization may be formed for a definite or indefinite period (Art. 16/1).
- Membership in an organization is voluntary, and one can withdraw at will (Art. 16/2).
- An organization shall freely determine its membership criteria (Art. 16/3).

<sup>2</sup> *Sidirouopoulos v. Greece*, 4 Eur. Ct. H.R. 500 (1998); *United Communist Party v. Turkey*, 4 Eur. Ct. H.R. 1 (1998); *Socialist Party and Others v. Turkey*, Application No. 21237/93 (1998), para. 50. See also *Freedom and Democracy Party v. Turkey*, Application No. 23885/94 (1999); *Refah Partisi (The Welfare Party), Erbakan, Kazan, and Tekdal v. Turkey*, Application Nos. 41340/98, 41342/98, 41343/98, and 41344/98 (2001).

<sup>3</sup> See United Nations General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, U.N. Doc. A/HRC/20/27 (2012), para. 16.

<sup>4</sup> *Id.* at para. 17.

<sup>5</sup> Ethiopia ratified the ACHPR in 1998.

<sup>6</sup> See African Commission on Human and Peoples’ Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 24.

<sup>7</sup> Proclamation, Preamble.

- Organizations may not be established to distribute profit to members (Art. 16/6).

**COMMENTARY:** The principles for formation generally align with best practices recognized under international law. Allowing organizations to control the duration of their existence and determine their membership enables organizations to adjust their practices in accordance with their needs. Requiring a minimum of two persons to establish an organization allows smaller organizations to operate. Prohibiting profit distribution is standard practice to ensure that commercial enterprises do not establish themselves as CSOs to avoid taxation.

## SCOPE OF APPLICATION

The Proclamation applies to:

- organizations operating in two or more regional states;
- foreign organizations;
- organizations established in Ethiopia to work on international, regional or sub-regional issues or not operate abroad;
- organizations operating in the City Administration of Addis Ababa or Dire Dawa; and
- charitable organizations established by religious institutions (Article 3/1)

It does not apply to:

- religious institutions;
- Edir, Equb, and similar traditional institutions; or
- organizations formed under other laws (Art. 3/1).

Local and foreign organizations fall under the Proclamation:

- Local organizations are CSOs formed under the laws of Ethiopia by Ethiopians, foreigners resident in Ethiopia, or both (Art. 2/2).
- Foreign organizations are non-governmental organizations formed under foreign countries' laws and registered to operate in Ethiopia (Art. 2/3).

“Organizations” for purposes of the Proclamation include:

- non-governmental organizations;

- professional associations;
- mass-based societies; and
- consortiums.

**COMMENTARY:** The Proclamation appears to only apply to groups seeking registration, given that the definition of a CSO includes that it is “registered to carry out any lawful purpose.” This presumably means that the Proclamation allows informal groups not seeking registration to carry on their activities—a practice that aligns with the international best practice of allowing unregistered associations to operate freely.<sup>8</sup>

Organizations that work in only one regional state of Ethiopia do not fall under the Proclamation. They are regulated by the current regional state CSO laws.

**ADVOCACY POINT:** Ensure that government speedily aligns the regional state CSO laws to the Federal Law and ensures their compliance with international law.

## TYPES OF ORGANIZATIONS

There are five types of registered local organizations under the Proclamation:

- **Association:** an organization (including a professional association) formed by five or more members and governed by a General Assembly (Article 19);
- **Board-led organization:** an organization founded by two or more people and governed by a Board of between five and thirteen members (Art. 20);
- **Charitable endowment:** an organization through which certain property is perpetually and irrevocably designated by donation, money, or will for a purpose that is solely charitable, and governed by a Management Board (Art. 21).
- **Charitable trust:** an organization founded by a donation or will solely for a charitable purpose and administered by three to five trustees in accordance with the instructions given by the instrument constituting the charitable trust (Art. 31).
- **Charitable committee:** a group of at least five people who have come together to solicit money or other property from the public for charitable purposes (Art. 48).

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<sup>8</sup> Report of the Special Rapporteur, A/HRC/20/27, supra note 3, at para. 56. Guidelines, supra note 6, at para. 1.

**COMMENTARY:** Although Article 17 provides that “two or more persons may establish an Organization,” the provisions governing associations (including professional societies) require more members for establishment.

**ADVOCACY POINT:** The government should reconcile Article 17 and Article 19 by revising Article 19 to only require two members for establishment. This follows international best practice and matches other provisions in the Proclamation.

## **BODIES INVOLVED IN REGULATION AND THEIR MAIN FUNCTIONS**

### **CSO Agency:**

Key functions in relation to CSOs include:

- Registration, support, facilitation and coordination (Article 6/1);
- Monitoring and supervision to ensure compliance with the law (Art. 6/2);
- Examination and follow up of annual activity and financial reports (Art. 6/3);
- Supporting internal governance and self-regulation to ensure transparency and accountability (Art. 6/4);
- Establishing information centers with CSO data (Art. 6/5);
- Organizing consultation forums for CSOs with Federal and regional government bodies (Art. 6/6);
- Encouraging participation in development of laws and policies (Art. 6/7);
- Research and advising government on role of organizations in protecting human rights, democratization and development activities of the country (Art. 6/9);
- Developing policy guidelines to ensure development activities of CSOs align, to the extent possible, with government development plans (Art. 6/10).

The Agency also convenes and coordinates the founding meeting of the newly proposed Council of CSOs (Art. 85/2).

### **CSO Agency’s Board of Directors:**

- sets policy directions for the CSO Agency to ensure the full exercise of freedom of association and public benefit (Art. 9/1);

- hears complaints where the CSO Agency fails to issue a certificate of registration within the stipulated time-frame (Art. 57/3);
- considers appeals of the CSO Agency's decisions on registration (Art. 59/5);
- decides on the dissolution of an organization (Art.78/4)
- sets up an independent complaint review committee as necessary and gives administrative decisions based on the committee's recommendations (Art. 9/2);
- issues rules of procedure for the Complaint Review Committee and follows up implementation (Art.9/3);
- issues directives under the Proclamation (Art. 9/4);
- examines and approves annual activity plans and reports of the CSO Agency (Art. 9/5); and
- decides on other matters submitted by the Director General (Art. 9/7).

#### **Council of CSOs ("Council")**

- enacts a Code of Conduct for CSOs and devises enforcement mechanisms in consultation with the Agency, donors and other stakeholders (Art. 85/5);
- advises the CSO Agency on the registration and administration of organizations;
- represents and coordinates the civil society sector; and
- selects three members of the Agency's Board to represent organizations (Art. 85/6).

#### **Federal High Court**

The Court hears appeals of the Board of Directors' decisions on registration, suspension and dissolution (Articles 59/8, 78/4, and 78/5)

**COMMENTARY:** The newly constituted CSO Council will elect three members of the Agency's Board to represent civil society (Article 8/1b). Out of 11 members, another four represent people with disabilities, women and youth. There is also an "expert knowledgeable in the workings of civil society" who is appointed by the Attorney General.<sup>9</sup> This significant representation of civil society on the Board of Directors can

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<sup>9</sup> Proclamation, Article 8.

allow civil society to meaningfully participate in creating standards and practices that will enhance their ability to freely operate.

The Proclamation also aligns with the internationally recognized best practice of allowing associations to challenge registration and sanctions decisions before an impartial and independent court.<sup>10</sup>

The establishment of a CSO self-regulatory mechanism in the form of the Council is welcome. However, the provisions as they stand are a bit unclear and leave room for potential or perceived government interference into the internal regulation of CSOs. Article 85 contains positive provisions allowing civil society to self-regulate by enacting its internal rules (Article 85/3) and writing a Code of Conduct for CSOs (Article 85/5/a). The Agency, however, is the authority with the power to “convene and coordinate the founding meeting of the Council” (Article 85/2). The structure and rules of the Council will be informed by the founding meeting. Without more guidance on how the Agency will “convene and coordinate” the founding meeting, it is not clear what process the Agency will use to decide which CSOs to invite to the meeting, and to set the agenda for the meeting. This can have implications on decisions made during that first session and undermine stakeholder confidence in the founding meeting. Similarly, Article 85/8 requires the Agency to “extend the necessary cooperation for the establishment and strengthening of the Council.” This provision is vague and could permit the Agency unjustifiable discretion to involve itself in the affairs of the self-regulatory body on the grounds that the interference is “necessary” to “strengthen” the Council.

Additionally, it is unclear if all organizations are required to join the Council to meet Article 85/1’s requirement of “full participation of all Civil Society Organizations.” This needs to be clarified because Article 85/7 notes that the Council will derive its funds from member contributions and other legal means. If organizations are required to join the Council, this is a cost of operating that they need to plan for.

Finally, it is not clear if it is mandatory for organizations to adopt the Code of Conduct written by the Council of CSOs. Articles 2/14, 5/7, and 85/5/A send mixed signals about whether adopting the Code of Conduct is mandatory. Making the adoption of the Code of Conduct voluntary would grant organizations the most agency over their internal regulations, to ensure that the rules adopted are most suited to their organizations.

**ADVOCACY POINT:** The process by which the Agency will convene the founding meeting should be clarified, along with the Agency’s powers related to the Council, so that the Agency has a facilitative role. To this end, the government could issue a Directive requiring the CSO Agency to hold an open public consultation soliciting

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<sup>10</sup> *Report of the Special Rapporteur, A/HRC/20/27*, supra note 3, at para. 95. *Guidelines*, supra note 6, at para. 56.

input from CSOs regarding how the founding meeting of the Council should be convened and coordinated. This would allow CSOs to suggest ways to ensure the meeting is inclusive, and identify key agenda points. The Agency could then synthesize the input from the consultation to convene and coordinate the founding meeting, as required under Article 85/2.

The government should also clarify that the adoption of the Code of Conduct is voluntary.

## REGISTRATION, RE-REGISTRATION AND DISSOLUTION

*Note: All organizations registered under the previous Charities and Societies Proclamation No. 621/2009 except for those Organizations operating in a single region must register under the procedure in the new Proclamation within one year of the coming into force of the new Proclamation (Article 88/3).*

### TIMELINE FOR REGISTRATION

#### STEP 1:

Organization submits required documents to the CSO Agency.

#### STEP 2:

Where the organization meets the requirements for registration, the CSO Agency must issue a registration certificate:

- For local organizations: **within 30 days** of submission of application for registration
- For foreign organizations: **within 45 days** of submission of application for registration (Article 57/2).

Where the organization has not met the requirements for registration, the CSO Agency must issue a written response permitting the applicant to revise and resubmit its application **within 30 days** (Article 59/3). If the organization fails to do so, the CSO Agency shall reject the application and state the legal grounds for rejection (Article 59/4).

#### STEP 3 (OPTIONAL):



Where the CSO Agency **fails** to issue a certificate of registration within the period noted in Step 2 (i.e. the applicant does not hear from the CSO Agency), the applicant may file a complaint to the Board of Directors **within 30 days** of the expiry of the period within which the CSO Agency was obligated to provide the response (Article 57/3). Within **60 days** of receipt of the complaint, the Board will:

- Direct the Agency to issue the certificate of registration, or
- support the Agency's decision to not register the organization for good cause.

The CSO Agency may **refuse** to issue a certificate of registration under Article 59/1 if it finds that the organization has:

- not provided the required documents for registration;
- aims or activities are contrary to law or public morals;
- the name or symbol resembles that of another organization or is contrary to public morals or illegal; or
- furnished documents that were fraudulently obtained or forged.

"The Agency may not refuse applications for reasons other than those specified under this on the basis of practice or directive" (Article 59/2).

In the case of refusal, the applicant may lodge a complaint to the Board of Directors **within 30 days** of receiving the CSO Agency's written decision (Article 59/5). The Board reviews the complaint and give a decision **within 60 days** (Article 59/6).

#### **STEP 4 (OPTIONAL):**

An organization can appeal the Board's decision to the Federal High Court **within 30 days** of receiving the decision (Articles 57/6 and 59/8).

**COMMENTARY:** The grounds for refusing registration are too vague. First, the definition of "contrary to public morality" is ambiguous and subjective, and thus does not meet the "prescribed by law" requirement under international law. Because the provision does not explicitly provide a definition for "public morality," it is largely within the discretion of the CSO Agency to define what types of names, aims, and

activities are immoral. The CSO Agency may abuse this discretion when determining an organization's eligibility for registration.

**ADVOCACY POINT:** The government should clarify that registration is voluntary. It should also remove the clauses referencing "public morality" under Article 59/1, and revise Article 59/2 to clarify that the CSO Agency may only refuse registration on the basis of the grounds listed under Article 59/1.

#### **DOCUMENTS REQUIRED FOR REGISTRATION (Article 58)**

Both **local and foreign organizations** must submit:

- a) the minutes of the formative meeting indicating the names, addresses and citizenship of the founders;
- b) copy of identity card or passport of the founders;
- c) the name of the organization and its logo, if it has one;
- d) the objectives of the organizations and its intended sector of operation;
- e) the region where it intends to operate;
- f) the rules of the organization approved by the founders; and
- g) the organization's address.

**Foreign organizations** must also submit under Article 58/2:

- a) duly authenticated certificate of registration showing its establishment from country of origin,
- b) duly authenticated resolution of its competent organ to operate in Ethiopia,
- c) duly authenticated power of delegation of the country representative and a letter of recommendation from the embassy in which the organization is incorporated (or, if absent, from Ethiopia's Ministry of Foreign Affairs, and
- d) an action plan for a minimum period of 2 years.

To form a **consortium** (i.e. a grouping of two or more organizations, including consortiums of consortiums) organizations must submit to the CSO Agency (Article 58/3):

- a) rules of the consortium signed by the representatives of founders,
- b) minutes of the decision among members to form the consortium, and
- c) certificates of registration of the members of the consortium.

Certain organizations (i.e. **charitable endowments, charitable trusts, and charitable committees**) have additional guidelines for registration/establishment (Articles 21-55).

**COMMENTARY:** The U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasizes that foreign organizations should be subject to the same procedure as local organizations.<sup>11</sup> Imposing additional requirements on foreign organizations may undermine their ability to associate freely in Ethiopia, particularly because the process for obtaining a letter of recommendation from the embassy of the organization’s country of origin or from Ethiopia’s Ministry of Foreign Affairs is unclear.

Failing to clearly outline the requirements for a letter of recommendation leaves foreign organizations unable to ask for a document that the CSO Agency deems sufficient to support its application for registration, and so fails the “prescribed by law” test under international law. The requirement for extra documents also fails to articulate how requiring additional documents from foreign organizations will further a legitimate aim.

**ADVOCACY POINT:** The law should allow foreign organizations to register by the same procedure as local organizations. In near term, the Government should facilitate the registration process for foreign organizations by clarifying the process for an organization to request a letter of recommendation (e.g. naming a point of contact to whom an organization must submit its request for a letter of recommendation) in a Directive or Regulation.

**DISSOLUTION**

An organization may be dissolved in three circumstances (Article 83/1)

- (1) by the Organization’s competent organ in accordance with its rules;
- (2) by the Board of the CSO Agency in two situations:
  - a. in accordance with Article 70 (if the organization does not verify its existence after failing to provide its annual report), or

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<sup>11</sup> See *Report of the Special Rapporteur, A/HRC/20/27*, supra note 3, at para. 59 (noting that foreign associations should be subject to the same procedure recommended for the general establishment of an association).

- b. under Article 78 (if the Organization has failed to rectify violations of the Proclamation after receiving two warnings from the Agency). This decision may be appealed to the Federal High Court;
- (3) by the Federal High Court, if the Organization is convicted of a serious criminal offence, repeatedly found guilty of a minor criminal offense, or insolvent.

**COMMENTARY:** Most of the rules for dissolution provide adequate procedural safeguards such as notice and opportunity to appeal to an impartial and properly constituted court. However, it is unclear if dissolution orders by the Board under Article 70 may be appealed to the Federal High Court.

**ADVOCACY POINT:** The government should clarify that all involuntary dissolution orders may be appealed to the Federal High Court.

## OPERATIONS

### Activities

An organization:

- has the right to engage in **any lawful activity** to accomplish its objectives (Article 62/1),
- can operate in Ethiopia or abroad and implement global, regional or sub-regional objectives (Art. 62/2),
- may propose recommendations for the change or amendment of existing laws, policies or practices, or issuance of new laws and policies relating to the organization's activities (Art. 62/4),
- shall make necessary efforts to ensure its activities bring about sustainable development, contribute to the democratization process, promote the rights and interests of its members or enhance their profession (Art. 62/8),
- must consider the interests of women, children, persons with disabilities, the elderly, and other vulnerable or marginalized groups in society (Art. 62/9), and
- engage in income-generating activities, so long as the profits are used to pay for programmatic or administrative expenses and are not distributed to organization members (Art. 63-64).

However, note that **foreign organizations and local organizations established by foreign citizens residing in Ethiopia** may not engage in lobbying political parties, engaging in voter education, or election observation (Article 62/5).

Also, an organization cannot engage in **sectors requiring additional permits** without obtaining the necessary permit from the relevant government bodies (Article 62/10).

Article 56/3 bars a consortium from being involved in “operations that place it in direct competition with a member organization.”

**COMMENTARY:** Permitting organizations to engage freely in all lawful activities aligns with international law.<sup>12</sup> Granting organizations the ability to engage in income-generating activities provided that members do not receive the profits is also in line with international best practice.<sup>13</sup>

The bar on foreign organization engagement in lobbying activities, voter education, and election observations under Article 62/5 is concerning because those terms are vague enough that they could be expanded to prohibit a broad range of activities. This could severely limit the types of activities foreign organizations may undertake. For example, “lobbying” could cover any type of activism, such as public health campaigns aimed at pushing lawmakers to adopt policies to promote individual access to health services.

Article 56/3’s bar on direct competition among organizations belonging to the same consortium, if read narrowly, could prohibit consortiums from engaging separately in the same types of activities as their members. This provision could undermine the purpose of consortiums, which facilitate collaboration between organizations with similar missions. Article 56 does, however, permit numerous activities as joint endeavors, including conducting research and policy advocacy activities.<sup>14</sup> Thus, there is a question of whether consortiums may work separately on the same issues as their members, even though that may put them in direct competition with their members (e.g. competition over the same grants).

<sup>12</sup> *Report of the Special Rapporteur*, A/HRC/20/27, supra note 3, at para. 64. *Guidelines*, supra note 6, at para. 11.

<sup>13</sup> See *Guidelines*, supra note 6, at para. 40.

<sup>14</sup> Proclamation, Article 56/2.

**ADVOCACY POINTS:**

- The government should precisely define the types of electoral activities that foreign organizations may not implement under Article 62/5, in accordance with international best practices.<sup>15</sup>
- Ask the government to clarify what types of activities would place organizations in “direct competition” with other organizations, such that they would violate Article 56/3 barring “direct competition” among organizations belonging to the same consortium.

**Cap on Administrative Costs**

Article 63/2 prohibits an organization from spending more than 20% of its total income on administrative costs.

“Administrative expenses” are defined as “expenses which are not related to the project activities of an Organization but are necessary to ensure the continuity of an Organization and related to administrative activities, and shall include: salaries and benefits of administrative employees; purchase of consumables and fixed assets and repair and maintenance expenses related to administrative matters; office rent, parking fees, fees for electricity, fax, water and internet services; postal and printing expenses; tax, purchase and repair of vehicles for administrative purposes, and procurement of oil and lubricants for the same; insurance costs, penalties and attorney fees.”

The CSO Agency may issue directives to exempt organizations from this 20% cap (Article 63/3).

**COMMENTARY:** Regarding the imposition of a 20% cap on administrative costs, certain administrative expenses are essential to ensure sound organizational management, compliance with applicable rules and regulations, and cost-effective delivery of services and programs. ICNL commends the Ethiopian government’s efforts to define “administrative expenses” narrowly, so that expenses more broadly related to project activities are not limited by the cap. However, imposing a strict limit on administrative expenses of all organizations using a uniform measure is not appropriate because such expenses vary widely for different types and sizes of organizations. The consequence of this provision is that organizations may have less autonomy to use their funding in accordance with their own needs. Smaller

<sup>15</sup> The Carter Center’s Election Obligations& Standards Database (available at <https://eos.cartercenter.org/>) contains sources of public international law related to human rights an elections, and can serve as a guideline for determining CSOs’ rights related to elections. For example, the “Voter Education” section cites several international and regional guidelines emphasizing the right of civil society organizations to educate voters.

organizations in particular may struggle to stay within the 20% administrative cap because they may have to expend a greater proportion of their funds on administrative costs than larger organizations, which have more funds to draw from.

**ADVOCACY POINT:** The government should remove the 20% cap on administrative expenses.

### **Hiring Practices**

An organization may only hire foreign nationals if “the office granting [the] work permit verifies that the work cannot be performed by Ethiopians” (Art. 76/3).

**COMMENTARY:** While building local capacity is a legitimate goal, requiring organizations to employ foreign individuals only when there are no available local professionals is too absolute a rule. The rule fails to recognize that some organizational missions (such as those that work regionally) may require a higher concentration of international staff.

As a consequence of these hiring restrictions, organizations may be unable to hire qualified candidates who are not Ethiopian, and regional organizations may choose to relocate to countries with more permissive hiring rules. It is also unclear what the procedure and timeline is for the office granting the work visa to verify that there are no Ethiopians available/able to do the job—thus organizations might wait for an undetermined amount of time for the office to conduct the verification, which could cause them to lose qualified candidates, and would also stall those organizations’ activities.

Additionally, NGOs should be governed by the same work permit rules as for-profit organizations. There is no need to create separate hiring rules for NGOs in the Proclamation.

**ADVOCACY POINT:** The Government should soften the language in Article 76/3 so that organizations “are encouraged” but not required to hire Ethiopians before foreigners.

## **FINANCING**

Article 75/1 requires an organization to get written approval from the CSO Agency to open a bank account. The Agency is required to respond to such requests within 5 days of receipt of the request. Furthermore, an organization is required to perform all financial transactions through a bank account opened by the organization in its name (Article 75/2).

Article 75/3 requires banks to provide bank statements of accounts held by any organization to the CSO Agency when requested.

Article 49/I prohibits charitable committees from collecting funds and performing any activities without the approval of the CSO Agency.

**COMMENTARY:** In relation to the requirement for CSO Agency approval to open a bank account, the former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasizes that “the ability to seek, secure and use resources is essential to the existence and effective operations of any association, no matter how small.”<sup>16</sup> Requiring government approval to open a bank account restricts an organization’s access to resources because without a bank account, the organization would be unable to freely receive and utilize funds. This provision is concerning because it does not outline the process by which the CSO Agency will consider an organization’s request to open a bank account. The ambiguity regarding the approval process grants the CSO Agency broad discretion over whether to approve such a request, which it can use to prevent organizations whose activities it disapproves from securing funds. Moreover, laws affecting banking typically apply to all persons with accounts; thus, organizations should be subject to the same treatment as for-profit enterprises.<sup>17</sup> There is no reason an organization should be subject to a higher barrier to open a bank account than a for-profit entity.

The obligation on banks to permit access to organizational bank accounts to the CSO Agency is similarly concerning. There is broad recognition that the right to privacy protected by Article 17 of the ICCPR can be extended to protect entities like CSOs.<sup>18</sup> Article 75(3) is concerning because it does not set out procedural safeguards to such an invasive step (i.e. accessing bank statements) by the Government. For example, the provision does not list the circumstances under which the CSO Agency can invoke this power, the process by which the Agency can obtain the statements, or whether an organization will be given notice or opportunity to object to the disclosure of its bank statements. The Government may abuse this provision to monitor organizations that work on contentious issues. This type of surveillance of an organization’s bank statements could inhibit organizations from carrying out legitimate activities. For example, if an organization makes payments to a shelter for survivors of gender-based

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<sup>16</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/23/39 (2013), para. 8.

<sup>17</sup> See *Guidelines*, supra note 6, at para. 39 (recommending that associations be subject to the same general laws governing money laundering, fraud, corruption, trafficking and similar offenses as individuals and for-profit enterprises).

<sup>18</sup> *Report of the Special Rapporteur*, supra note 3, at para. 65. See also International Center for Not-for-Profit Law (ICNL) & World Movement for Democracy, *Defending Civil Society: Report, 2<sup>nd</sup> Edition*, (Washington, D.C.: ICNL and the National Endowment for Democracy, 2012), p. 42 (referencing *Niemietz v. Germany*, 13710/88, ECHR 80 (1992), “in which the Court found no reason why the notion of “private life” should exclude activities of a professional or business nature,” and ICCPR Human Rights Committee’s General Comment No. 31(9), where the Committee noted that privacy is a right that may be enjoyed in community with others).



violence, the bank statement could expose the identities and location of those individuals, placing them in danger. Organizations may be unwilling to continue those activities if they fear that the Government can easily access (and later disclose<sup>19</sup>) this information.

Likewise, “The ability to seek, secure, and use resources is essential to the existence and effective operations of any association.”<sup>20</sup> Requiring the CSO Agency to approve a charitable committee’s collection of funds and activities directly contradicts this recommendation, and profoundly hinders a charitable committee’s ability to freely operate.

**ADVOCACY POINT:**

- The government should remove Article 75/1.
- The government should revise 75/3 to require the CSO Agency to provide the organization in question with notice and opportunity to be heard if the CSO Agency wants to access the organization’s bank statements. The CSO Agency should also be required to obtain a court order to access an organization’s bank accounts.
- The government should remove Article 49/1.

**REPORTING AND INFORMATION DISSEMINATION**

An organization must submit its annual “major activity report” to the CSO Agency **within three months** from the end of the budget year (Article 73/1).

Within three months of the end of the financial year, an organization must also submit (Article 72):

- Its **annual audited accounts** if its “annual flow of funds” exceed Birr 200,000; or
- a **receipts and payments account and statement of assets and liabilities** if its annual flow of funds does not exceed Birr 200,000

An organization must also inform the CSO Agency of any changes to its name or symbol, operational sector, headquarters, region of operation, executive members of chief executive, internal rules, or bank account or signatories (Article 68).

An organization engaged in income-generating activities, including the solicitation of funds, must notify the CSO Agency within 15 days (Article 64/7).

<sup>19</sup> Article 74/1 empowers the CSO Agency to disclose any documents it obtains in the course of its work.

<sup>20</sup> *Report of the Special Rapporteur, A/HRC/23/39*, supra note 18, at para. 8. See also paras. 15-17 (on the international legal framework relating to CSO’s ability to access funding).

An annual activity report “or other document kept by the Agency” must be made available to the public on request by “any concerned body” or members of an organization at any given time. An organization must also make its books of account, audit and annual reports available at all times to beneficiaries and members (Article 74).

**COMMENTARY:** The disclosure of “other documents” may infringe on an organization and its members’ privacy rights, protected under Article 17 of the ICCPR.<sup>21</sup> In the course of its work, the CSO Agency may have access to information such as personal details of the founders, staff, or Board members, financial information like salaries, bank statements,<sup>22</sup> and strategic documents such as an organization’s detailed work plan and logistics for activities. Disclosing these types of information without discussing the ramifications with the organization in question could endanger the individual members and the organization and may also undermine an organization’s planned activities. For example, if the CSO Agency discloses the personal details of an organization’s members, those members could be subject to harm or harassment by those who oppose the organization’s work.

**ADVOCACY POINTS:** Government should amend Article 73 to limit the information that the CSO Agency may generally disclose to the annual activity report.

It would also be helpful for the Government to issue a directive or regulation clarifying the deadline by which an organization must inform the CSO Agency of any changes, in accordance with Article 68. Otherwise, the CSO Agency has broad discretion to claim that an organization has missed its notification deadline, and apply a penalty under Article 78.

The Government should also clarify whether organizations engaged in income-generating activities must notify the CSO Agency within 15 days of the start or conclusion of the activities.

## LAW ENFORCEMENT

### Investigations

<sup>21</sup> *Report of the Special Rapporteur, A/HRC/20/27*, supra note 3, at para. 65. See also *Defending Civil Society*, supra note 7, at p. 42 (referencing *Niemietz v. Germany*, 13710/88, ECHR 80 (1992), “in which the Court found no reason why the notion of “private life” should exclude activities of a professional or business nature,” and ICCPR Human Rights Committee’s General Comment No. 31(9), where the Committee noted that privacy is a right that may be enjoyed in community with others).

<sup>22</sup> Article 74/3 permits the CSO Agency to request an organization’s bank statements directly from the bank.

Article 77 permits the CSO Agency to investigate an organization to determine if it is “carrying on its activities in accordance with the law” if it finds that “it has sufficient reason to conduct the investigation.” The CSO Agency may launch the investigation on the basis of information obtained from government organs, donors or the public, and information obtained by the CSO Agency in the course of its work (Article 77/1).

If in the course of an investigation the CSO Agency finds that an organization has committed a “grave violation of the law,” the Director General of the CSO Agency may order the suspension of the organization for up to three months (Article 78/4). This suspension is subject to appeal to the CSO Agency Board and then the Federal High Court within 30 days after the Board gave its decision (Article 78/5).

**COMMENTARY:** The right to the freedom of association includes a right to be free from excessive state interference, which is generally realized through a “minimalist approach” to supervision by the state.<sup>23</sup> The African Commission on Human and Peoples’ Rights notes that “the oversight powers of the authorities shall be carefully delimited, so as not to infringe on the right to freedom of association.”<sup>24</sup> There is also broad recognition that the right to privacy protected by Article 17 of the ICCPR can be “enjoyed in a community with others,” extending to protect private legal entities like civil society organizations.<sup>25</sup> While state access to some information is necessary for purposes of transparency and accountability, this must be balanced with the organizations’ and individual members’ right to privacy. Article 77 grants the CSO Agency broad discretion to supervise organizations through investigations and fails to meet the precision and predictability required to be “prescribed by law.” The provision allows the CSO Agency to launch investigations for “sufficient reasons,” which is too vague. It also does not provide for any procedural protections like notice, an opportunity to object, the right to counsel, or the right to a hearing with regards to the legitimacy of inquiries. Without a concrete definition of the “sufficient reasons” to begin an inquiry or procedural safeguards, Article 77 grants overbroad powers to the CSO Agency to supervise civil society organizations.

<sup>23</sup> Hina Jilani, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (New York City: United Nations Office of the High Commissioner for Human Rights, 2011); See also *Defending Civil Society*, supra note 20, at p. 39-42, *Guidelines*, supra note 6, para. 33.

<sup>25</sup> *Report of the Special Rapporteur, A/HRC/20/27*, supra note 3, at para. 65. See also *Defending Civil Society*, supra note 20, p. 42 (referencing *Niemietz v. Germany*, 13710/88, ECHR 80 (1992), “in which the Court found no reason why the notion of “private life” should exclude activities of a professional or business nature,” and ICCPR Human Rights Committee’s General Comment No. 31(9), where the Committee noted that privacy is a right that may be enjoyed in community with others).

The CSO Agency's broad investigative power is particularly concerning because Article 74/1 requires that the CSO Agency must make any annual activity report or other document it keeps open to the public at any given time. There is a risk that the CSO Agency may be forced to disclose certain sensitive documents obtained during an investigation, which would undermine the privacy rights the organization, its members, and its beneficiaries, and potentially place these groups at risk of personal harm.

**ADVOCACY POINT:** The government should revise Article 77/1 to include a description of the factors that the CSO Agency will consider when determining whether there is "sufficient reason" to investigate an organization, and explain how each factor will weigh for or against a finding of "sufficient reason." The government should also add a provision requiring the CSO Agency to notify CSOs of an inquiry and allow CSOs to contest an inquiry before a regularly constituted court.

#### **Administrative Measures (Article 78)**

##### **STEP 1:**

The Agency may give a written warning to an organization that does not comply with the Proclamation "or other laws" and provide time for the organization to rectify this (taking into account gravity of the violation and complexity of the case).

##### **STEP 2:**

If the violation is grave and the organization fails to redress its fault, the Agency will give a **strict warning**.

##### **STEP 3:**

If the organization fails to rectify its practice, the Director General of the Agency may order the **suspension** of the organization and, if the organization fails again to make the necessary rectifications within three months of the suspension order, the organization will be **dissolved** except:

- where the Board lifts the Director General's suspension order; or
- the dissolution is blocked by court order.

##### **STEP 4:**

If dissolved by the Board, the organization can appeal to the Federal High Court within 30 days following the decision.

If the violation by the organization entails criminal responsibility, the Agency can direct the case to the police or public prosecutor.

Any organization has a right to be heard and present its arguments before the Agency imposes any administrative measure (Article 79).

**COMMENTARY:** Article 78 complies with the internationally-recognized best practice of providing organizations with the right to approach an impartial and regularly-constituted court for protection or redress.<sup>26</sup> However, article 78(4) fails the “prescribed by law” requirement because it is unclear what types of non-compliance with the Proclamation constitute a “grave violation.” Without a clear definition of the types of activities that constitute “grave violations” of the Proclamation, or a clear process by which the CSO Agency would determine that a violation is “grave,” the provision grants broad discretion to the CSO Agency and its Director to determine that an organization’s actions are so serious as to trigger suspension. Furthermore, this broad provision could lead to disproportionate punishment of suspension for small administrative violations, such as a failure to notify the CSO Agency about a symbol change.<sup>27</sup>

**ADVOCACY POINT:** The government should revise Article 78 to clarify the types of activities that would constitute “grave violations” (such as money laundering or fraud), or lay out the procedure by which the CSO Agency will determine if a violation is “grave.”

## TRANSITIONAL PROVISIONS

Those provisions under the 2009 Charities and Societies and Directives issued by the Agency which do not contravene the new Proclamation will remain in force for one year (Article 88/1).

All rights and obligations under the 2009 Proclamation will continue provided that they do not contravene the Fundamental Rights and Obligations provided for under the new Proclamation (Article 88/2).

Organizations registered under the previous Proclamation No. 621/2009 except for organizations operating in a single region must register again within one year (Article 88/3)

The Proclamation grants the Council of Ministers the power to enact Regulations necessary to implement the Proclamation. The CSO Agency may also issue

<sup>26</sup> *Guidelines*, supra note 6, at para 56. *Report of the Special Rapporteur*, A/HRC/20/27, supra note 3, at para. 61, 76, and 84(e).

<sup>27</sup> Proclamation, Article 68/a.

Directives to implement the Proclamation and Regulations enacted by the Council of Ministers (Articles 89/1 and 89/2).

## ADDITIONAL QUESTIONS

In addition to the points for further clarification noted above, the Proclamation raises the following questions:

**HOW WILL THE CSO AGENCY ENGAGE ORGANIZATIONS TO PARTICIPATE IN THE DEVELOPMENT OF LAWS AND POLICIES?**

Article 6/8 requires the CSO Agency to engage organizations in the development of policies and laws, but does not articulate concrete steps for this engagement.

**HOW WILL THE CSO AGENCY WORK TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING?**

Article 6/16 states that the Agency has an obligation to “work in close cooperation with the relevant Government Agencies to prevent money laundering and the financing of terrorism,” but does not articulate concrete steps to implement this obligation. In the past, we have seen the exaggeration of the risk that organizations may engage in money laundering or terrorist financing—a misperception that greatly undermined the ability of organizations to freely operate. Ethiopian civil society will need to monitor this issue to ensure that the same mischaracterization does not occur in Ethiopia to the detriment of organizations.

## UPCOMING PROCESSES TO WATCH

- Review, revision and drafting of new implementing Regulations, Directives and Guidelines for effective implementation of the Proclamation (compliance with international norms and best practices; level of participation of civil society);
- How the CSO Agency undertakes the one-year process of re-registration and new registration of organizations under the new Proclamation, and how well it deals with queries and complaints;
- Whether civil society will be free to organize the founding meeting of the Council of CSOs, how representative the meeting and the Council are, and how free the Council will be to determine its own procedures, including the development of the Code of Conduct;
- Continued review other laws related to civil society and encouraging states to adopt regional legislation in conformity with federal law and international norms and standards while there is momentum from the adoption of the federal law.