



WORLD MOVEMENT *for* DEMOCRACY

Confronting the Challenges to Democracy in the 21st Century

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Defending Civil Society

*Report on Laws and Regulations
Governing Civil Society Organizations
in
Ethiopia*

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I. PROVISIONS OF THE GENERAL LAWS

General Framework

The Ethiopian legal system generally adheres to the civil law tradition, though there are some areas influenced by the common law tradition. Ethiopia is a federal country divided into nine regional states and two chartered cities administered by the Federal Government. Parallel to the Federal Government, Regional States also have legislative, executive, and judicial powers. The Constitution of the Federal Democratic Republic of Ethiopia (FDRE) accords Regional States residual power, wherein all powers not expressly assigned to the Federal Government or concurrently to the Federal Government and the States are reserved to the States.¹ Article 51 of the FDRE Constitution, which defines the power of the Federal Government, does not give the Federal government exclusive power over the administration of civil society organizations (CSOs) in the country. The power of the Federal Government is in fact restricted to the regulation of CSOs working in the two chartered cities—Addis Ababa and Dire-Dawa.²

General Constitutional Framework

One third of the constitutional provisions are devoted to human rights, including those of individuals and groups. The Constitution guarantees freedom of expression, association, and assembly, which are crucial for the operation of active CSOs in a democratic system. Specifically, Article 31 of the FDRE Constitution provides that “[E]very person has the right to freedom of association for any cause or purpose. Organizations formed, in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited” (emphasis added).

The Constitution guarantees freedom of association for “every person” regardless of nationality, race, color, etc. In addition, the Constitution guarantees freedom of association irrespective of the cause or purpose for which the association is established or standing. Indeed, it should be noted that Article 31 of the FDRE Constitution enjoins only the positive freedom to associate, without explicitly stating the negative freedom not to associate. In other words, the Constitution does not give explicit protection to individuals to be not forced to join a certain association.

The FDRE Constitution prescribes two permissible grounds for state interference and limitation of freedom of association, including the formation of an association in violation of the “appropriate law” and establishment with the intent of illegally subverting the constitutional order. The first ground of limitation—“in violation of the appropriate law”—is too wide and open to subjective interpretation. The provision should have explicitly stated under what grounds the appropriate law can limit freedom.

Types of Organizations

¹ Article 50 and following of the Constitution of the Federal Democratic Republic of Ethiopia; Proclamation No. 1/1995

² Contrary to this Constitutional restriction, however, the new CSOs Proclamation enacted by the Federal Government includes charities or societies that operate in more than one regional state or whose members are from more than one regional state, and Foreign Charities and Ethiopian Resident Charities and Societies, even if they operate only in one regional state.

Recently, the Federal Government of Ethiopia adopted one of the most controversial proclamations in the country, the Charities and Societies Proclamation (CSP) dealing with the formation and operation of CSOs.³ This law divided CSOs into two broad categories known as “Charity” and “Society.” Under the previous practice, the registering authority divided CSOs into the categories of development, advocacy, religious, and professional associations. Nevertheless, the new law envisages three forms of legal establishment of charities or societies, which may vary depending on their place of registration, source of income, composition of members’ nationality, and place of residence. The three forms of association include:⁴

1. **"Ethiopian Charities" or "Ethiopian Societies"** are Charities or Societies formed under the laws of Ethiopia and whose members are Ethiopians, generate income from Ethiopia, and are wholly controlled by Ethiopians. However, they may be deemed Ethiopian Charities or Ethiopian Societies if no more than 10 percent of their funds are received from foreign sources;
2. **"Ethiopian Residents Charities" or "Ethiopian Residents Societies"** are Charities or Societies that are formed under the laws of Ethiopia and consist of members dwelling in Ethiopia, and who receive more than 10 percent of their funds from foreign sources;
3. **"Foreign Charities"** are Charities that are formed under the laws of foreign countries, or consist of members who are foreign nationals, or are controlled by foreign nationals, or receive funds from foreign country sources.

II. ESTABLISHMENT and REGISTRATION

Purposes

CSOs can be established for the benefit of third parties and classified as “Charity,” or for the benefit of their members, and classified as a “Society” or for the benefit of both their members and third parties, and classified as “Charitable Society.” Article 14 of the CSP lists the types of charitable activities in which CSOs may or may not take part. The law implicitly restricts organizations categorized as “Ethiopian Residents” or “Foreign” from taking part in advocacy activities, such as advancement of human rights, gender equality, the rights of children and disabled persons, and the efficiency of the justice system.

The Agency may also refuse to register a Charity or Society on the grounds that “the proposed Charity or Society is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Ethiopia.”⁵ The proclamation further provides that the Agency may refuse registration if the name under which the proposed Charity or Society is to be registered is considered to be contrary to public morality or is illegal.

Registration as a Voluntary vs. Mandatory Requirement

³ The Proclamation is cited as “Charities and Societies Proclamation (CSP) No. 621/2009. This law came into effect as of 13 February 2009.

⁴ See Art. 2 (2, 3 and 4) of the CSP

⁵ See Art 69(2) of the CSP.

The law makes registration a mandatory prerequisite to forming an association, and thus “any Charity or Society shall apply for registration within three month of its formation.”⁶ Failure to register within the prescribed period shall be grounds for cessation of the formed Charity or Society.

Registration or Incorporation Requirements

The law puts no explicit restrictions on who can be founders of a Charity or Society, and there is no limitation on the number of founders. Accordingly, natural or legal persons can establish an association of their choice, whether a charity or society.⁷ However, there is an implied inference from the reading of Article 57 (6) that a society that has a federal character and nomenclature should have members from at least five Regional States. This means, in effect, that the law is attempting to determine the number and composition of the founders.

The power of licensing, registering, and supervising CSOs is given to a special Agency established as a separate legal entity, but accountable to the Ministry of Justice, which is in turn accountable to the Council of Ministers. Therefore, the administration of CSOs falls under the executive branch.

Concerning registration formalities, the application for CSO registration includes particulars, such as the goals, objectives, and activities of the CSO. The form prepared by the Agency must be accompanied by:

1. A copy of the rules of the Charity or the Society and, where applicable, documentation of the act of constituting a Charitable Trust or Charitable Endowment;
2. Other similar documents and duly completed forms as the Agency may require.

CSO Registry

Article 71 of the CSP deals with Register of CSOs and instructs the Agency to keep a registry of Charities and Societies. However, this provision fails to specify whether the registry would be accessible to the general public or any interested person. The Agency is also mandated to publish the list of Charities and Societies registered, suspended, or cancelled.

Foreign Organizations

In addition to the above requirements, Charities that are established abroad shall present:

1. Duly authenticated certificate of registration showing the CSO’s establishment in its country of origin;
2. Proof of the decision of its competent organ to operate in Ethiopia;
3. A letter of recommendation from the Embassy of the country in which the Charity is incorporated, or in the absence of such by a competent government office in that country;
4. A letter of recommendation from the Ministry of Foreign Affairs of the Federal Democratic Republic of Ethiopia;

⁶ See Art. 64 of the CSP.

⁷ Charities or Societies can establish a consortium to coordinate their activities. See Articles 15 (3) and 55 (2) of the CSP.

5. Power of attorney of the CSO's representative in Ethiopia.

The law also provides for a registration fee determined by a regulation of the Ministers of Council.

The Agency is required to register the applicant and issue a certificate of legal personality within 30 days from the date of application. If the Agency does not issue a certificate of legal personality, or does not make known that it will not do so, the applicant may apply to the Board⁸ no later than 45 days from the date of application. Article 104 of the CSP provides that the decision of the Board is final on the administrative level, and only organizations classified as Ethiopian Charities or Societies have the right to a judicial appeal of the decision of the Board. Ethiopian Resident or Foreign CSOs do not have the right to lodge an appeal of the decision of the Board.⁹

Registration may be denied on one of the following specific grounds:

1. The rules of the proposed Charity or Society do not comply with the necessary conditions set by the proclamation;
2. The proposed Charity or Society is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare, or good order in Ethiopia;
3. The application for registration does not comply with the provisions of this law;
4. The name under which the proposed Charity or Society is to be registered resembles the name of another Charity or Society, or any other institution, or is contrary to public morality, or is illegal;
5. The nomenclature of the Charity or Society is countrywide and the composition of its members or its work place does not show the representation of at least five Regional States.

However, the law fails to put an obligation on the Agency to provide a written communication on the refusal of a registration.

The following are significant constraints on the registration/incorporation process that should be considered:

1. The requirement imposed on CSOs having federal character or nomenclature to have members from or a work place in at least five Regions;
2. The restriction on CSOs in the formation stage to not raise funds of more than 50,000 Ethiopian Birr; and
3. The additional requirement imposed on foreign organizations to produce letters of recommendation from Ethiopian embassies and the Ministry of Foreign Affairs.

⁸ The Board is an administrative body in the Agency that is accountable to the Ministry of Justice. It has 7 members, 5 from government and 2 from civil society, and all are appointed by the Government. See Articles 8 & 9 of the CSP.

⁹ See Article 104 of the CSP

III. SUPERVISION and ENFORCEMENT

Regulatory Authorities

The law has mandated the following supervisory organs to oversee the administration and operation of CSOs:

1. Ministry of Justice, as the Agency accountable to the Ministry;
2. Charities and Societies Agency, a special organ established to administer the registration, operation and dissolution of Charities and Societies;
3. Charity and Society Board, established under the Agency, consisting of 7 members nominated by the government, including two from the civil society ; and
4. Sector Administrators, having a supervisory and advisory role in the administration of CSOs.

Internal Governance

In principle, the law recognizes the rights of CSOs to determine their own structure.¹⁰ Nevertheless, there are some provisions that require CSOs to adopt certain forms of structure. For example:

1. Charitable Endowments and Charitable Institutions must have a board of management, manager, and auditor within their structure;
2. Charitable Trusts should have a trustee manager, a trustee treasurer, and a trustee auditor;
3. Societies and Charitable Societies must have a general assembly, executive committee, and an internal auditor.

The law further provides the power and responsibilities of the different organs in the administration of the organization.

There are various provisions that allow or call for the interference of the Agency in the internal affairs of the organization. Societies must notify the Agency, in writing, of the time and place of any meeting of the General Assembly of a Society no later than seven working days prior to such a meeting.¹¹ No Charity or Society may employ expatriates unless a work permit is granted in accordance with the relevant law. The Agency may order the appropriate organ of the Charity or Society to remove an officer who falls short of any of the requirements set forth under Article 70 of the CSP and to assign another person as an officer. In addition, Article 70 identifies individuals who cannot be assigned as officers of Charities or Societies, including:

1. Convicts of a crime that involves fraud or other crimes that involve dishonest acts;
2. Convicts of any crime whose punishment results in the deprivation of her/his civil rights, which have not yet been restored; and
3. Individuals outside Ethiopia whose absence impedes the proper administration of the Charity or Society.

¹⁰ See Article 59 of the CSP.

¹¹ See Article 86 of the CSP.

Moreover, the Agency may, upon the request of one or more members or officers of the Society, convene the meeting of the General Assembly through the Chairperson or on its own. The Agency may, where appropriate, nominate a Chairperson of the General Assembly.¹² The Agency may also suspend an officer responsible for misconduct or mismanagement of the administration of the Charity or Society and order the appropriate organ of the Charity or Society to assign another person.¹³

Reporting

CSOs are generally required to submit statements of accounts, annual activity reports, and bank accounts. The statement of account (accounting record) must show all sums of money received and expended by the Charity or Society on a day-to-day basis, the context in which the receipts and expenditures took place, and a record of the assets and liabilities of the Charity or Society. The annual statement of accounts shall be prepared in accordance with standards set by a Certified Auditor. It should also be noted that Charities and Societies may not receive anonymous donations, and shall at all times keep records clearly indicating the identity of donors.¹⁴ Charities and Ethiopian Resident Societies shall prepare and transmit to the Agency an annual report on the major activities carried out and relevant information regarding the Charity. Ethiopian Societies are not required to submit annual activity reports. CSOs are to report to the Agency annually and upon request concerning all bank accounts of the Charity or Society with necessary particulars. Charities and Societies whose annual flows of funds do not exceed Birr 50,000 may choose to prepare a statement indicating receipts and payments as a statement of assets and liabilities. The law also exempts organizations whose annual income is less than Birr 100,000 from being examined by Certified Auditors. Finally, CSOs that are engage in income-generating activities are expected to keep books of income-generating activities separate from books of account.

State Enforcement and Sanctions

The CSP contains enforcement mechanisms for violation of its provisions consisting of both administrative and judicial measures. Any person who violates the provisions of the proclamation may be punished in accordance with the provisions of the criminal code, and in addition:

1. Any Charity or Society failing to keep its book of accounts; to record money received, its source, and the amount expended; to preserve any accounting records for at least five years from the end of its financial year, will be punishable with a fine of no less than Birr 20,000 and not exceeding Birr 50,000.
2. Any Charity or Society that, in violation of Article 79, fails to submit to the Agency an annual statement of account prepared in accordance with acceptable standards, fails to prepare the statements of receipts, payments and assets and send the same to the Agency, or does not preserve any statements of accounts and related documents for at least five years from the end

¹² See Article 61 of the CSP.

¹³ See Article 91 of the CSP.

¹⁴ See Article 77 of the CSP.

of its financial year will be punishable with a fine of not less than Birr 10,000 and not exceeding Birr 20,000.

3. Any Charity or Society that, in violation of Article 84, fails to report annually or upon request its bank accounts with the necessary particulars will be fined not less than Birr 50,000 and not exceeding Birr 100,000.
4. Any Charity or Society that, in violation of Article 90, allocates less than 70 percent of its expenses in the budget year for the implementation of its purposes and not more than 30 percent for its administrative activities shall be punishable with a fine of not less than Birr 5,000 and not exceeding Birr 10,000.
5. Any officer, employee or person who participates in criminal acts stated under sub article (2) of this article shall be punished with a fine of not less than Birr 10,000 and not exceeding Birr 20,000 or imprisonment of not less than five years and not exceeding ten years or both.

One should recall that it is only Ethiopian Charities or Societies that have the right to a judicial appeal the decision of the Agency, and thus Ethiopian Residents or Foreign CSOs do not have such rights.

Dissolution, Winding Up, and Liquidation of Assets

A Charity or Society can decide on its dissolution according to its own rules. In addition, CSOs of any type may be dissolved involuntarily by the Agency in any one of the following cases:

1. The Agency cancels or suspends the license of the Charity or Society in accordance with Article 93 of the proclamation; or
2. The Charity or Society has become insolvent.

The following are grounds for suspension of an organization:

1. Failing to comply with the Agency's orders to amend a rule of the organization or correct another fault;
2. Submitting falsified accounts or reports to the Agency;
3. Contravening the provisions of the proclamation or regulations and directives issued thereunder or orders of the Agency or its own rules; or
4. Failing to provide the Agency with information required by the Proclamation.

On the other hand, the license of any Charity or Society can be cancelled if:

1. The registration of the organization has been procured by fraud or misrepresentation;
2. The organization has been used for unlawful purposes or for purposes prejudicial to public peace, welfare, or security;
3. The organization fails to rectify the causes for suspension within the time limit set by the Agency;
4. The organization fails to renew its license; or

5. The organization commits a crime by violating the provisions of the criminal code or that of the Proclamation.

The dissolution of Ethiopian Charities and Societies may be effected by a decision of the Federal High Court, whereas the dissolution of Ethiopian Residents Charity or Society or Foreign Charity shall be effected by the decision of the Agency, with no judicial recourse. Dissolution has the following effects:

1. The property of the organization will be liquidated;
2. After settling all debts and liabilities of the organization, the remaining property will be given to a Charity or Society with a similar purpose, or to any Charity or Society by the order of the Agency;
3. A Charity or Society that is being dissolved may not perform activities other than those necessary for its liquidation without the authorization of the Agency.

IV. CSO ACTIVITIES

General Powers

Once legally registered, CSOs have legal personality and thus enjoy the general rights and powers of juridical entities, such as ownership of property or entering into contracts. However, though not provided by the CSP, the Civil Code requires foreigners to have special permission from the Government to own immovable property in Ethiopia.¹⁵

Expressive / Advocacy / Public Policy Activities

Advocacy activities are considered “political activities,”¹⁶ which are allowed only for Ethiopians and Ethiopian organizations that can mobilize more than 90 percent of their income from local sources. Article 14 (5) of the CSP lists those activities that are reserved only for Ethiopian Charities:

1. The advancement of human and democratic rights;
2. The promotion of equality of nations, nationalities and peoples and that of gender and religion;
3. The promotion of the rights of the disabled and children’s rights;
4. The promotion of conflict resolution and reconciliation; and
5. The promotion of the efficiency of justice and law enforcement services.

Communication and Cooperation

One of the strengths of the CSP is that it clearly provides for the rights of Charities and Societies to establish consortiums that coordinate their activities.¹⁷ The law permits CSOs to engage in income-generating activities with the following conditions: the activity must be approved by the Agency; the activity must be incidental to the achievement of the purposes of the organization; and the profits must

¹⁵ Article 548 of the Civil Code of Ethiopia

¹⁶ The Prime Minister and, subsequently, the drafters of the CSP, argued that activities dealing with rights of individuals are political activities, and hence only citizens can work on these issues.

¹⁷ See Articles 15(3) and 55 (2) of the CSP.

be used only to further the activities of the organization.¹⁸ The registration and licensing requirements shall be determined in accordance with other law applicable to business organizations.

Seeking / Securing Funding

One of the most contentious provisions in the CSP is the provision dealing with access to foreign funds. CSOs opting to be registered as Ethiopian are not allowed to receive more than 10 percent of their funds from foreign sources.¹⁹ There is no law binding the Government to fund the activities of CSOs, though there are some CSOs that work closely and with the support of the Government.²⁰

V. TAX LAWS

The Proclamation does not specify which taxes CSOs are required to pay. Article 103 of the CSP states that CSOs may engage in income-generating activities, but are subject to laws concerning registration and licensing requirements for activities related to trade, investment, or any profit-making activities. Income from grants, donations, and membership fees are not subject to tax. CSOs generally pay different taxes when buying services and goods.²¹

CSOs working on service delivery and relief activities may be exempt from some forms of taxes, such as customs duties on imported items. Similarly, CSOs working with the financial support of international organizations like USAID may also be exempt from value-added taxes (VAT) due to agreements between the U.S. and Ethiopian governments. The Income Tax Proclamation considers donations to CSOs from business organizations or individuals to be non-deductible expenses,²² and provides limits on expenses for administrative and core business of CSOs. Accordingly, no Charity or Society can allocate less than **70 percent** of the expenses in the budget year for the implementation of its purposes, and cannot exceed 30 percent for its administrative activities.²³

VI. CONCLUSION

Priority Issues

The following can be identified as the highest priority legal issues confronting CSOs in Ethiopia:

¹⁸ There is a discrepancy between the English version and the Amharic version which is the ruling version. The Amharic version adds another requirement which is not in the English version. According to the Amharic version CSOs are also required to prove that the income generating activities are related to their main activities.

¹⁹ See Article 2(2) of the CSP.

²⁰ Women and youth associations are among those organizations which the government is encouraging and working together.

²¹ CSOs working on service delivery and relief activities may have exemption from some form of taxes like custom duties on imported items, and CSOs working with the financial support of international organizations like USAID may also have exemption from VAT because of the agreement between the US and the Ethiopian Governments.

²² See Art.21 (1) (n) of the Income Tax Proclamation No. 286/2002. This Proclamation provided that the Council of Ministers may by regulations allow donations or gifts donated for public use to be deducted. However, the Council has not issued the said regulation so far.

²³ See Articles 2 (14) and 89(1) of the CSP. The law defines administrative costs as “those costs incurred for emoluments, allowances, benefits, purchasing goods and services, travelling and entertainment necessary for the administrative activities of a Charity or society.”

1. **Access to foreign funds:** the restriction on Ethiopian CSOs that forbids access to more than 10 percent of income from foreign sources should be rescinded, as most of the CSOs in the country are foreign-fund dependent.
2. **Restrictions on activities:** the restriction imposed on organizations deriving their funds from foreign sources to not participate in advocacy activities, such as advancement of human rights, women, child and disabled persons' rights, conflict resolution, and the efficiency of the justice system, is against the Constitution, which guarantees the rights of "everyone" to associate for any lawful "cause or purpose."
3. **Denial of access to justice:** The Proclamation, against the Constitution and the ICCPR to which Ethiopia is a party, denies the right of CSOs established in the form of Ethiopian Residents or Foreign Charities to have access to judicial recourse or appeal of administrative decisions.
4. **Membership:** Article 31 of the Constitution does not require any qualification on membership while guaranteeing freedom of association. The CSP, however, requires organizations to meet certain criteria in relation to membership composition. Article 58 of the CSP states that where "the Society has Federal character and nomenclature, its work place and composition of the members shall show the representation of at least five Regional States." Failure to observe this requirement may lead to refusal of registration as stated under Article 71(5) of the CSP, which reads, "[the] Agency shall refuse to register a Charity or Society where the nomenclature of the Charity or Society is countrywide and the composition of its members or its workplace do not show the representation of at least five regional states."
5. **Branch Offices or Work Places:** As stated above, organizations that have federal character and nomenclature are required to represent at least five Regional States in their workplace. In other words, these organizations must show that they are operating in at least five Regional States. The law defines "place of work" as "the place where a person's records and books of account are kept or the place where a person conducts work." Accordingly, organizations may not have branch offices *per se*, but are required to operate in five Regional States from their headquarters.
6. **Administrative Cost vs. Operational Cost:** Article 90 of the CSP provides for the regulation of administrative and operational costs. This provision reads; "Any Charity or Society shall allocate not less than 70 percent of the expenses in the budget year for the implementation of its purposes and an amount not exceeding 30 percent for its administrative activities." In tandem with Article 2 (14) of the same Proclamation,²⁴ this provision places organizations in a challenging situation regarding the administration of their costs. The definition given to "administrative cost" is very vague and circular. Second, the definition of expenses, classified as "administrative costs," is too broad, incorporating expenses that were previously considered to be operational costs.

²⁴ Administrative costs shall mean those costs incurred for emoluments, allowances, benefits, purchasing goods and services, travelling and entertainment necessary for the administrative activities of a Charity or Society.

Government rationale

The Government's rationale for the enactment of this law can be found in the law itself and other relevant documents.²⁵ These include the following objectives:²⁶

1. To ensure that citizens' right to association is enshrined in the Constitution of the Federal Democratic Republic of Ethiopia;
2. To aid and facilitate the role of Charities and Societies in the overall development of Ethiopian peoples;
3. To provide varieties of measures to be taken against CSOs in case of fault;
4. To ensure the accountability, transparency and consistency of CSOs and their objectives to the public;
5. To provide legal basis for the relationship between CSOs and Sector Administrators, which did not exist before; and
6. To determine the amount of money CSOs may spend for administrative purposes and project activities (core objectives).

Strategic Response

There are two broad, strategic ways to defend CSOs from the Proclamation. One dictates that the current law be improved by:

1. Challenging the constitutionality of the law both at the national and international levels;
2. Engaging in comprehensive legal advocacy activities to improve the law;
3. Continuing dialogue between CSOs and the international community and the Government to improve the law;
4. Establishing a strong system of monitoring the impact of the new legislation, and using findings for advocacy activities;
5. Organizing comprehensive public outreach activities on the role and contribution of CSOs in Ethiopia to economic development and the democratization process to change the public's negative perception of them;
6. Developing coping mechanisms, particularly in domestic resource mobilization;
7. Ensuring that members of the international community make use of their leverage in dealing with the Government, and that their development assistance also includes CSOs and
8. Urging the Government to accept the classification of major aid channels as foreign, including UN agencies, European Commission (EC), World Bank (WB), etc.

²⁵ See Paragraph 1 and 2 of the Preamble of CSP and the explanatory note prepared by the Ministry of Justice, Pp 5 and 6 as well as the Minutes of the Legal and Administrative Affairs Standing Committee's public debate on the draft CSP, 24 December 2008, House of Peoples Representatives Assembly Hall.

²⁶ For objectives mentioned under 1 and 2, please see the Preamble of the CSP, whereas the rest are taken from the Minute of the Legal and Administrative Affairs of the House of Peoples' Representatives of Ethiopia, December 24, 2008.

The second broad strategy should focus on supporting Ethiopian CSOs in adapting to the legal environment and continuing their work, particularly on human rights issues. In this regard, capacity-building training is crucial.