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NGO LAWS AND REGULATIONS IN ETHIOPIA*

I. INTRODUCTION

This document presents the country report of NGO laws and regulations in Ethiopia, prepared and submitted to International Center for Not-for-profit Laws (ICNL) for its project to developing global standards for NGO laws. The report limits itself to presenting the laws and regulations as they stand now, with some analysis as may be necessary.

A fully detailed analysis of the laws, comparison with standards of other countries and recommendations to improve the laws or their administration and enforcement is planned to be undertaken as a subsequent task.

II. BACK GROUND

The Ethiopian legal system is broadly classified as a "Civil Law" system which has its origin predominantly from the French legal system.

Almost all of the basic laws and the first written Constitution were introduced when the Country was under Imperial rule. Various legislations in subsequent Governments have changed only some part of the basic laws, which leaves considerable part of the Imperial laws still in force.

In 1995 the Country has adopted a new Constitution which has established a Federal form of Government.

Accordingly, the Government has declared the establishment of the Federal Democratic Republic of Ethiopia (FDRE). FDRE is a parliamentary form of Government which comprises of nine member states.

As the Federal Government has proclaimed that all prior laws shall continue to apply unless they are inconsistent with the Constitution of FDRE, the basic laws (like the Civil and Penal Codes) continue to be applicable to a large extent.

III. PROVISIONS OF THE GENERAL LAWS

A. Definition and Clarity of the Laws

The first general question that needs to be addressed is the definition of the legal concept of NGOs and whether the various laws and regulations that affect the NGO sector are too numerous, unclear or contradictory.

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NGOs as a concept of juridical entity are variously known in different terminology in the different legal systems of the world. The most important defining characteristics of the entity being non-governmental and not-for-profit institute, the Ethiopian legal system recognizes three types of such institutions that can be assimilated to the concept of NGOs. These are:-

1. "Association" which is defined as "a grouping formed between two or more persons with a view to obtaining a result other than the securing or sharing of profits."
2. "Endowment" which is defined as "an institution where by a person destines certain property irrevocably and perpetually to a specific object of general interest other than the securing of profits."
3. "Trusts" which is defined as " an institution by virtue of which specific property is constituted in an autonomous entity to be administered by a person, the trustee, in accordance with the instructions given by the person constituting the trust."

From among these three types of institutions, the widely used means of establishing a not-for-profit and non-governmental juridical entity is forming an "association" as defined above. Although the law recognizes the institutions of endowment and trusts, the writer did not find any such existing institution.

The defining characteristics of these different types of institutions will be discussed in another section of this paper.

The foregoing analysis being on the definition of NGOs, the basic existing laws and regulations that affect the NGO sector are the ones issued by the Imperial Government which still continue to be applicable. These are the "Civil Code provisions" and the "Associations Registration Regulation".

Although these are the basic legislations, there are also other legislations like the labour law, customs regulations, the constitution at large and some directives that deal with the NGO sector directly or indirectly.

As these various legislations deal with various issues, they shall be discussed in some detail in another section of this paper.

The question that is needed to be addressed in this section is on the consistency and clarity of the laws and the problem related to the federal structure of the government.

Although there are some deficiencies identified with the existing laws and regulations, they do not lack clarity in the sense that the laws are clear enough to be understood.

Notwithstanding the foregoing remark, the Civil Code provisions on Endowment and Trusts have some unclear areas and divergence between the English and the Amharic versions of the code.

With regard to the issue of Federalism, as it is only recently that the country has adopted a Federal State Structure, we have not yet faced with problems of varying provisions in State laws and Federal laws.

However, as the federal framework is only now being formulated, it is an area which deserves a serious consideration to ensure compliance with constitutional standards by the member states.

The relevant provisions of the Federal Constitution which provide on the division of powers between the Federal State and Member States, does not have any specific provisions that allocate jurisdiction over NGOs.

Therefore, both the Federal State and the Member States might found to claim jurisdiction over the NGO sector especially over those NGOs operating in the regions.

However, as it is the power of the Federal Government to formulate the country's policies in respect to over all economic and social development, it can be argued that the Federal Government should have the responsibility to lay down the basic rules of the formation and operation of the NGO sector in the country's development process.

The Federal form of state structure being a new phenomenon to the country, the activities and legislations of the member states warrants a close monitoring to ensure the best possible compliance with constitutional standards.

B. Constitution

The newly adopted Constitution has a number of detailed provisions guaranteeing freedom of speech, belief and freedom of assembly and association. (Article 27, 29, 30 and 31 of the FDRE Constitution).

Furthermore, the Constitution provides that the fundamental rights and liberties contained in the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights, International Human Rights Covenants, Humanitarian Conventions and with the principles of other relevant international instruments which Ethiopia has ratified. {Article 13 (2) of the Constitution. }

However, in each of these provisions, the constitution spell out a number of limitations. It provides for such limitations as are prescribed by law and necessary to protect public safety, order, health, education, morals or the fundamental rights and freedom of others, protection of the youth, protection of the honor and reputation of individuals and war propaganda.

As a result any person in violation of such legal limitaitons is held accountable under the law.

Other than the foregong provisions on fundamental rights and freedoms, the Constitution does not have provisions that specifically deal with the NGO sector.

C. Types of Organisations and Purposes

The Ethiopian Civil Code foresees three types of non-governmental and not-for-profit juridical entities. The defining charcersitics of these different institutions is discussed as follows:-

1. "Associations":- (Article 404-482 of the Civil Code of Ethiopia)

The Civil Code defines an association as a grouping formed between two or more persons with a view to obtaining a result other than the securing or sharing of profits. The Code makes a distinction between Civil Associations as are defined above and other types of Groupings formed with a view to defending the financial interests of their members or to representing a particular calling and groupings of a religious character. Such groupings shall be subject to the special laws concerning them and failing such special laws, however, they shall be deemed to be "associations" as defined above and be subject to the same rules.

An association constituted in accordance with the law and duly registerd is a juridical entity that has all the capacities of a juridical person. Such an association could be a membership or a non-membership organisation and the law does not make a distinction between the two.

The purposes of the associations vary in accordance with various lawful objectives and activities members wish to undertake. There is no limit on the type of purposes as long as it is lawful.

2. "Endowment":- (Article 483-506 of the Civil Code of Ethiopia)

Endowment is another type of not-for-profit institute which is constituted when a person destines a certain property irrevocably and perpetually to a specific object of general interest other than the securing of profits. An endowment may be constituted either by a donation or by a will and it requires the approval of the Ministry of Justice to be definitively constituted.

The act by which an endowment is approved shall determine the organism that is responsible for the protection and control of the endowment.

It provides that the provisions of the Civil Code relating to name, residence, capacity, directors, liquidation and control of associations shall also apply to endowments.

3. "Trusts":- (Article 526-544 of the Civil Code of Ethiopia.)

The Civil Code defines a "trust" as an institution by virtue of which specific property is constituted in an autonomous entity to be administered by a person, the trustee, in accordance with the instructions given by the person constituting the trust.

Article 518 further provides that a trust may be constituted for the benefit of any person, action or idea provided it does not offend public order or moral. (The Amharic version of the code reads differently.)

Although the English version of the code provides a possibility whereby a trust may be constituted for the benefit of a person; trust, however, is one type of institution recognised by law whereby property may be destined for a specific not-for-profit objective.

A trust is administered by the trustees appointed by the person constituting the trust. The trustee shall represent the trust in judicial proceedings.

D. Registration or Incorporation Requirements

1. Associations

Associations are now registered with the Ministry of Justice. The Associations Registration Regulation provides the procedure for Registration or Incorporation requirements.

It is such registration and issuance of the registration certificate that confers the legal personality to the association. An application for registration shall be submitted in the form prescribed by the law and accompanied by copies of the Memorandum and Articles of Association. Upon verification of any application, the Office of associations shall register the applicant association by entering the name of the association in the register established pursuant to the provisions of the Civil Code.

The Office may deny an application if it determines that particulars in the documents submitted are false or misleading or the purpose of the intended association is unlawful or immoral or against national unity or interest.

Any such denial shall be in writing specifically stating the reason of denial and it shall be subject to appeal to the Minister. The Civil Code further provides that the Directors of an association may appeal to the court against a refusal of registration by the Office of associations.

The fee payable on an application for registration is one hundred Ethiopian Birr (Br. 100.=) and the law does not require any base capital to form an association.

An association may be constituted both by natural persons and non-natural persons. Therefore, NGOs may form "umbrella organisations."

2. Endowment

An Endowment is said to have been definitively constituted when approved by the Ministry of Justice (formerly it used to be the Ministry of Interior.)

The Civil Code provides that the approval of the act of endowment may not be sought during the life time of the founder, except by the founder himself or his representative. After the death of the founder, the person entrusted with the task or in his/her default, those persons who have drawn up the act of endowment or the witnesses or those who hold the act can apply for approval.

Failing all these, the approval may be sought by the public prosecutor or by any interested party.

Although the law is apparently silent on issues or refusal of approval and the available remedies, it can fairly and strongly be argued that the relevant provisions on "Associations" shall apply "mutatis mutandis" to endowments.

3. Trusts

The law is not clear enough on how a trust is formally established. The Code provides that a trust may be constituted by a donation "inter vivos" or by a "will" and its constitution shall be subject, as regards to the form and substance, to rules relating to donations or wills. (Article 517 of the Civil Code.) It is the court that has the power to issue a document showing the capacity and powers of the trustee.

Therefore, a trust is said to have been formally constituted when made in accordance with the rules relating to donations or wills as regards its form and substance, and when a court issues a document showing the capacity of the trustee.

E. General Powers

An institution formally established according to the law shall have a status of a juridical person and may perform all civil acts.

The Civil Code provisions on "associations" provides that "an association is an entity distinct from the persons of whom it is composed."

As a juridical person, therefore, an association shall have a name protected by law, a residence, a capacity to perform all civil acts consistent with its nature and capacity to sue or be sued.

These provisions relating to name, residence and capacity of associations shall also apply to endowments. (Article 501 of the Civil Code.)

A trust, being an autonomous entity by definition, is also an institution that has a legal personality to perform civil acts subject to the provisions of the code on trusts.

The trustee is responsible for the administration of the trust and representing the trust in judicial proceedings. The powers and duties of the trustee may be provided by the act that constitutes the trust and the trustee shall conform with the express instructions of the act.

In the case of Endowment and Trusts, the code has specific provisions that allow beneficiaries to take legal actions to enforce their rights against the institutions. There is no such similar provision on the right of beneficiaries against "associations."

F. Membership Organisations

From among the three types of institutions discussed above, it is only an association that may be constituted as a membership organisation.

However, as the law does not make a distinction between membership and non-membership associations, there are no special rules for membership organisations. Members in an association shall have equal rights, without prejudice to any provision to the contrary in the memorandum of association.

A member has a right to withdraw from the association only upon paying subscription that has fallen due and subscriptions of the current year.

A member may be expelled under conditions provided by the memorandum of association or for good cause by a decision of the general meeting. Such an expelled member may appeal to the court on the ground that expulsion is not justified.

Professional Organisations do not have regulatory authority over their members like the power to issue licenses. Regulatory authority of professional societies is vested with the concerned governmental ministry or authority. (Eg. the Ministry of Justice is vested with the power of licensing and controlling privately practicing lawyers.)

G. Governance

The issue of Structure and Governance in the three types of institutions is briefly discussed hereinbelow.

1. Association

An Association is primarily governed by its memorandum of association and its statutes. Whenever the provisions of the statutes are contrary to the law or when they are silent, they shall be superseded or supplemented respectively by the provisions of the code on associations. (Article 408-410 of the Civil Code.)

An association is managed by one or more directors appointed in accordance with the memorandum of association or the statutes.

When an association appoints several directors, they shall form a board of management. Subject to any limitations provided in the statutes of an association, the directors of an association shall perform all the acts necessary for the management of the association and they shall represent the association in judicial and extra-judicial matters.

Without prejudice to any provision to the contrary, the decision concerning the association shall be taken by the board which shall decide by a majority of its members present or represented in a meeting. The rules of the Civil Code relating to agency (Article 2179-2233) shall be applicable to determine the liability of the directors of an association.

The general meeting of all members constitutes the supreme organ of an association which has the over all power to decide on all matters concerning the association, subject to the jurisdiction of other organs of the association.

The statutes of an association would normally provide the different organs of the association with their respective powers and duties.

As mentioned above, when the statutes are silent or contrary to the law, the code has provisions on, among other things, the control and dismissal of directors, admission and expulsion of members, amendment of statutes, convocation and voting. (Article 426-450 of the Civil Code.)

2. Endowment

An Endowment is also primarily governed by its statutes which may be drawn by its founder or, failing such, by the Ministry or by the Organism responsible for its protection. The act by which an endowment is approved shall determine the Organism which is responsible for its protection and control.

An endowment is managed in accordance with such a statute by one or more directors, and the rules relating to the directors of an association shall also apply to the directors of endowments.

The supreme organ of an endowment is a committee of management constituted in accordance with the statutes. This committee has the over all power to decide on all the affairs of the endowment, subject to the powers of other organs of the endowment. It shall, in particular, appoint and dismiss the directors and control their activities.

The Civil Code provides that the decisions of the committee of management shall be taken by an absolute majority, subject to the right of the Organism responsible for the endowment to apply to the court to declare the annulment of such decision or to stay their execution. (Article 49-500 of the Civil Code.)

3. Trusts

A trust is administered by a person appointed as a trustee who is required to conform to the the express instructions of the person constituting the trust.

Where there are several trustees, decision shall be taken by agreement or, in case of disagreement, by a majority vote.

The trustee shall have an over all power to make decisions concerning the affairs of the trust, to represent the trust and to sue or be sued in his/her capacity as a trustee.

The trustee is responsible for the good management of the trust in accordance with the rules relating to agency. He/she shall also render account of his/her administration and of the actual state of the property to the person appointed in the act of constitution of the trust. (Article 524-528 of the Civile Code.)

H. Dissolution, Winding up and Liquidation of Assets.

1. Associations

An association may be dissolved in such cases as are provided in the statutes, by a decision of the general meeting, by a decision of the court or by an administrative decision.

The Board of management or one-fifth of the members or the Office of associatinos may apply to the court to declare the dissolution of an association. The grounds for such an application includes insolvency, pursuing a different objective than provided in the statutes, object has been attained or become impossible to attain or any other cause that make the association unable to function in accordance with its statutes.

Although an association may be dissolved by a decision of the court on the application of the Office of association, the Civil Code also provides an administrative power to the Office of associations to dissolve an association by an administrative decision where the Office determines that the object or activities of an association are unlawful or contratry to morality.

The directors of an association may make an appeal against an administrative decision to the Ministry and may apply to the court to stay the execution of the decision dissolving the association, pending the decision on appeal.

When an association is dissolved, it becomes in a state of liquidation and deemed to have its personality until the end and for the requirements of such liquidation.

Liquidators are appointed either by the statutes of an association or by the court and shall have such powers which appertain to the board of management.

The Civil Code provides that the estate of an association may in no case be partitioned among the members. Unless otherwise provided by the statutes of an association and unless the general meeting of members validly destined the estate for another purpose, such estate shall become the property of the state.

However, if an association is dissolved by the Office of association, the general meeting of members can not decide on the destination of the property. (Article 459-467 of the Civil Code.)

2. Endowment

An Endowment shall be terminated in such cases as are provided by the statutes or it may be declared terminated by court where its object has been attained or become impossible to attain or has become illicit or contrary to morality or the endowment pursues an object different from that provided in the statutes or the endowment has become insolvent.

An application for such declaration is made by the Organism responsible for the protection and control of the endowment or by the public prosecutor.

The provisions of the Civil Code relating to the liquidation of associations shall also apply to the liquidation of endowments. (Article 503-506 of the Civil Code.)

3. Trusts

A trust shall normally terminate on the expiry of the period fixed by the person constituting the trust. A trust may also be declared terminated by court where it thinks fit in the circumstances of the case. such an application to the court is made by the beneficiaries of the trust and the trustee shall be heard during the proceedings. However, the person constituting the trust may provide to prohibit that this power be made use of. At the termination of the trust, the entire estate shall be handed over to the persons who are entitled to it in terms of the act of constitution of the trust. (Article 542-544 of the Civil Code.)

I. Regulation

The Office of associations is the governmental agency which is responsible for the control of associations. This Office was initially under the Ministry of Interior and now it has come under the jurisdiction of the Ministry of Justice. The Civil Code provisions on control of associations shall also apply to control of endowments.

Therefore, it is the same Office of association that has principal regulatory authority over associations and endowments. The Civil Code does not provide which agency has regulatory authority over trusts.

The Civil Code provisions relating to the control of associations require the deposit of statutes with the Office.

Associations and Endowments shall inform the Office of associations whenever a general meeting is held and the Office may be represented by an observer at such meetings.

The Office of associations has such powers as to prescribe any measures it thinks fit to ensure the good functioning of the general meetings. The Office of association shall be informed and supplied with all the decisions taken by the general meeting, where statutes have been amended with a copy of the amended statutes, the name of the members of the board of management with every modification whenever made and an annual balance sheet approved by the general meeting.

Failure to deposit the statutes or contravention of the provisions of the code relating to the declarations to be made to or documents to be deposited subjects to a criminal sanction which is punishable under the Penal Code. (Articles 468-482 Civil Code.)

J. Foreign Organisations

Foreign Organisations that wish to carry out activities in Ethiopia shall apply for an authorisation or approval by the Office of associations.

The Civil Code requires that such an application shall be accompanied only by the statutes of the associations. However, recent practice has shown that the Office of associations requires a lot more documents to be filed than only the statutes. The Office of associations may refuse to grant the authorisation where the proposed activities are contrary to law or morality. The law does not provide any thing on the issue of whether an appeal can be made against such refusal.

Once an authorisation is granted or an approval made, the foreign organisation shall be fully assimilated, as regards the enjoyment and exercise of civil rights, to legal entities established in Ethiopia.

Such an authorisation may be revoked for good cause by the Office of association, subject to a right of appeal to court which also has the power to stay the execution of the revocation order until the appeal is decided on.

The provision of the code relating to foreign organisations are silent about their dissolution and liquidation. It might be argued that their assimilation to legal organisations established in Ethiopia as regards the exercise of Civil rights presupposes assuming of the corresponding duties and responsibilities.

The statement and conditions of authorisation issued recently by the Office of associations Department of the Ministry of Justice provided a set of varying restrictions depending on the type of activities the foreign organisation wants to carry out.

K. Government Funding, Privatization and Tax Laws

In Ethiopia, there is neither government funding nor the system of privatization into the NGO sector of state assets or programs.

Some recent developments have shown that foreign organisation registered in Ethiopia are required to seek the permission of the Office of associations to make grants to indigenous organisations.

It is known that NGOs engage in various types of business activities only as an income generating mechanism for their not-for-profit objectives. In Ethiopia, NGO laws and regulations, there is nothing provided that allows or prohibits such a business investment of NGOs. In any event, as there is no any specific prohibition and as it is one form of income generating schemes, there are some NGOs that are engaged in such activities.

The tax laws of the country do not grant a tax-exempt status nor does it allow deductions of contributions for tax paying donors. Some businesses that make contributions to NGOs make the amount tax deductible in the form of an "advertisement expense" which is tax deductible.

The new customs tariff regulation allows customs duty exemption only for what it referred to as "capital goods" and ascertained to be related to the project of the particular NGO. There is not yet any approved definition of what "capital goods" mean.

L. Conclusion

As mentioned in the introduction, the foregoing discussion has been limited to reporting the laws as they stand now and only with some random analysis where felt appropriate.

The issues of compliance with the laws, fair and effective enforcement, the perception of NGOs in the Ethiopian Community and the concrete steps needed to be taken to improve the laws and their administration will be a subject of further study.