

Civil Society in Africa

THE IMPACT OF CHARITIES AND SOCIETIES PROCLAMATION NO. 621/2009 ON ADDRESSING HIV/AIDS ISSUES IN ETHIOPIA

DANIEL MESSELE BALCHA¹

This study explores the effects of the 2009 Charities and Societies Proclamation on addressing HIV/AIDS issues in Ethiopia. The proclamation and the subsequent regulation ratified by the council of ministers provide guidelines for registering and regulating charities and societies. Many stakeholders maintain that the law reflects the government's interest in strictly controlling NGOs (nongovernmental organizations) and limiting their area of engagement, particularly concerning human rights. The study relies on document analysis, a partner tool survey, and semi-structured interviews with the public, private, and NGO sector representatives at the national level and in the three regions. It concludes that the 2009 law has significant effects on partnership endeavors to address HIV/AIDS issues.

1. Introduction

In 2009, the government of Ethiopia ratified the Charities and Societies Proclamation. The proclamation and the regulation subsequently endorsed by the council of ministers provide guidelines for the registration and regulation of charities and societies. The law gives the government vast control over NGO activities. It prohibits national organizations that receive more than 10 percent of their funding from abroad from undertaking human rights activities. It also prohibits human rights activities by foreign NGOs, including campaigning for gender equality, children's rights, disabled persons' rights, and conflict resolution.

Though the law does not explicitly refer to HIV/AIDS, work on the issues is affected by this law. A number of human right issues are attached to HIV/AIDS (Beagle 2013; Utyasheva & Pradichit 2013). Even the HIV/AIDS policy itself suggests combining HIV/AIDS work with other issues (MOH 1998).

This study explores the effects of the 2009 Charities and Societies Proclamation in addressing the HIV/AIDS issue in general and partnership forums in particular.

The Rawls principle of justice emphasizes the necessity of maximizing the advantages of the least preferred. It underlines that fair treatment of citizens results when a society insures equal opportunity to all to succeed and when there is equality in the eyes of the law. Rawls suggests two principles to regulate the distribution of social and economic advantages across society. The first principle states that "Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others." The second principle states that social

¹ Daniel Messele Balcha, danielmessele@gmail.com, is an Ethiopian Ph.D. student of public and social policy at Charles University in Prague.

and economic qualities are to be arranged so that they are both reasonably expected to be to everyone's advantage and attached to positions and offices open to all (Rawls 1971).

Another important consideration of the normative model is that of reducing inequality. This model draws attention to the undesirable aspects to the functioning of market relations. The market does not concern itself with the type of resource individuals use to assert themselves or to the needs of the individual. Under otherwise similar circumstances, some people are gifted with large resources while others lack the resources to satisfy their basic needs. Therefore, the market alone does not promote justice. According to the human dignity model, further, each person has innate value, regardless of his or her contributions to society's well-being. The concept of dignified survival depends on concrete cultural and economic realities of a given country (Potůček et al. 2003). Tarantola (2008) and Tarantola et al. (2008) discuss the interdependent nature of health and human rights.

Providing equal opportunities regardless of state of health or social background is essential when it comes to HIV/AIDS victims. The needs of HIV/AIDS-affected communities are high. HIV/AIDS affects the fundamental human attachments of family life and exposes children to stigma and discrimination. Stigma and discrimination prevent governments and communities from effectively responding by intensifying violations of these children's rights—particularly their access to education, social services, and community and family support (UNAIDS/WHO 2004). Because the prevalence of HIV/AIDS has resulted in high numbers of orphans and vulnerable children, not only those who are directly affected by HIV/AIDS but also increasing number of children face social problems.

Children orphaned or made vulnerable by AIDS are more likely to be malnourished, less likely to be educated, and more likely to be abused and suffer severe psychosocial distress. In many communities, traditional ways of caring for orphans and vulnerable children, such as the extended family, are being severely strained by the impacts of HIV/AIDS. As the number of orphans and vulnerable children increases and an ever larger number of adults is affected by HIV/AIDS, family networks have come under severe strain (Strobbe et al. 2010).

Therefore, there needs to be a legal environment that helps communities care for the children and families left vulnerable by HIV/AIDS. Moreover, due to the magnitude and multifaceted nature of the HIV/AIDS problem, there is a high need for multi-sectoral ways of addressing the problem. These can only be achieved by strong partnership relations among the major actors involved, including the public, the for-profit sector, and the not-for-profit sector, which is the main concern of this study.

2. Methodology

The research makes use of interviews with representatives of the major actors, a partner tool survey,² and document analysis. The key informants are individuals representing the three sectors—the public sector, business (for profit), and the NGO (not-for-profit) sector—as well as HIV/AIDS Prevention and Control Office (HAPCO) representatives both at the national level

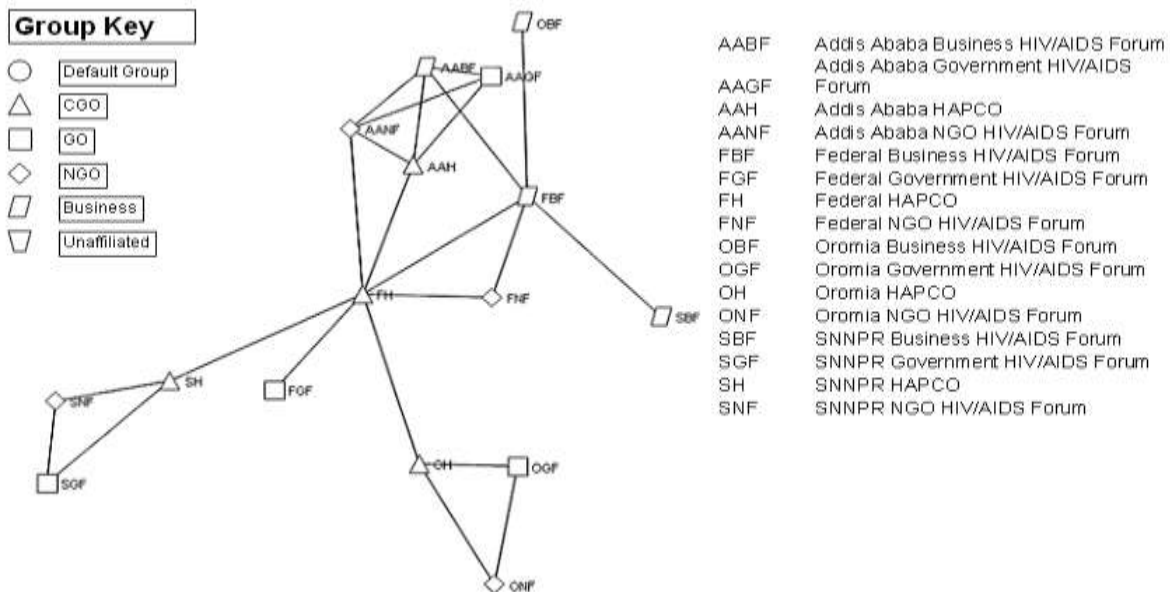
² PARTNER tool survey is a Social Network Analysis Tool to Collect, Analyze, & Interpret Data to Improve Collaboration within Community Networks which is available at <http://www.partnertool.net/>.

and at three regions: Oromia Region,³ Southern Nations, Nationalities, and Peoples' Region⁴ (SNNPR), and Addis Ababa.⁵ Though HAPCO is a government institution, it is included among the key informants because it is coordinating the HIV/AIDS partnership forums. A total of 13 key informants and four others who provided important information have been interviewed using semi-structured interviews. Additionally, a partnership tool online and a paper survey were used to collect data from the key informants representing the partnership sub-forums and HAPCO. Both primary and secondary data are used in the research. The partner tool social-network analysis and thematic analysis are used to identify and analyze the dominant themes. Using these themes as categories of the analysis, the partnership practice has been compared, to understand how partnerships among the public, business, and the NGO sectors are affected by the Charities and Societies Proclamation No. 621/2009.

3. Result

The Charities and Societies Proclamation No. 621/2009 is the most recent NGO law, which was adopted by the Ethiopian Parliament in January 2009. It gives the government broad, unrestricted control over NGO activities, which allows government to interfere in the operation and management of NGOs. This power is exercised particularly against those NGOs focusing on human rights. Most HIV/AIDS programs are interrelated with human rights and other programs carried out by national and international organizations, so the law has hindered efforts to address the problem of HIV/AIDS. The following sections present a short description of the partnership

Graph 1 – HIV/AIDS Partnership Forums Map



³ The Oromia Region is selected because it is one of the nine ethnically based regions of Ethiopia. It covers 284,538 square kilometers. The 2007 census reported its population at more than 27 million, making it the largest state in both population and area.

⁴ Southern Nations, Nationalities, and Peoples' Region (SNNPR) is selected because it is one of the nine ethnic divisions of Ethiopia. It is also referred as little Ethiopia. Nearly 50 ethnic groups live in the region. Diversity is a symbol of the region.

⁵ Addis Ababa is selected because it is the capital of Ethiopia. It is the largest city in Ethiopia, with a population of 3,384,569, according to the 2007 census, with an annual growth rate of 3.8%.

forums, the results for the major outcomes of the HIV/AIDS partnership forum, the effects of the law in limiting financing for HIV/AIDS partnership forums, the mismatch between expectations from partnerships and the working environment, and finally the effects of reregistering.

3.1. Description of the Partnership Forums

Before looking at the major outcomes reported of the HIV/AIDS partnership forums, it is worth describing the HIV/AIDS partnership forums. As we can see from graph 1, the partnership forums are mainly working in their respective areas and have no or limited connections with partnership forums that exist in other parts of the country.

The partnership forums map shows that the Federal Government HIV/AIDS Forum (FGF) has only the single connection with the Federal HAPCO (FH). Even if the partnership forums are created in accordance with where they are located, there is no question about the FGF’s strong influence over regional government sub-forums (SGF, OGF, and AAGF). Therefore, creating new connections will be highly beneficial. This is true also for both the federal NGO HIV/AIDS forum (FNF) as well as the federal business HIV/AIDS forum (FBF). Even if there is no active representation of the business sector in the Oromia region or in SNNPR, the federal business HIV/AIDS forum claims to have representatives in these regions who work together. In the case of Addis Ababa, the same people representing FBF also represent Addis Ababa business HIV/AIDS forum (AABF). Moreover, we see that only the FH has established a relationship with regional HAPCOs.

3.2. Major Outcomes of the HIV/AIDS Partnership Forum

All of the stakeholders believe that the HIV/AIDS partnership forums have a number of benefits. Principal benefits cited include improvements in knowledge-sharing, resource-sharing, community support, public awareness, and communication. According to stakeholders, these benefits result largely from the HIV/AIDS partnership forums’ success in bringing together diverse stakeholders, meeting regularly, exchanging information and knowledge, fostering informal relationships among partnership members, facilitating collective decision-making, and enabling shared goals and efforts to achieve them.

Table 1 - Major Outcomes of the HIV/AIDS Partnership Forum

<i>Major Outcomes of the HIV/AIDS Partnership Forum</i>	<i>Percentage</i>
Health education services, health literacy, educational resources	8.6%
Improved services	8.6%
Reduction of health disparities	2.9%
Improved resource sharing	11.4%
Increased knowledge sharing	25.7%
Community support	11.4%
Public awareness	11.4%
Policy, law, and/or regulation	5.7%
Improved health outcomes	2.9%
Improved communication	11.4%

Table 2 shows the specific aspects of the HIV/AIDS partnership forum identified as having contributed to the outcomes presented in table 1. The assumption that partnership paves the way for resource-sharing was not reflected in the survey. But some have indicated that they have benefitted from particular forms resource-sharing, such as sharing experts during trainings and workshops. A large number of those surveyed also believe that exchanging information and knowledge have contributed substantially to the success of the partnerships (33.3%).

Table 2 – Important Aspects of the HIV/AIDS Partnership Forum

<i>Important Aspects</i>	<i>Percentage</i>
Bringing together diverse stakeholders	25%
Meeting regularly	8.3%
Exchanging info/knowledge	33.3%
Sharing resources	0%
Informal relationships created	16.7%
Collective decision-making	4.2%
Having a shared mission, goals	12.5%

However, most of the respondents believe that the success of the HIV/AIDS partnership forum is being tested due to the law. The following sections provide details.

3.3. Limitation of Finance for HIV/AIDS Partnership Forums

The major effect of the Charities and Societies Proclamation No. 621/2009 is related to accessing finances from foreign sources. Without such funds, many NGOs could not carry out their work.

The 30/70 percent guideline introduced in this legislation directly affects partnership efforts. According to Article 88, No. 1, “Any charity or society shall allocate not less than 70 percent of the expenses in the budget year for the implementation of its purpose and an amount not exceeding 30 percent for its administrative activities.” This law has affected initiatives to form partnerships or consortiums of NGOs working to address HIV/AIDS. The 30/70 percent limit makes running such partnerships as independently registered organizations difficult, because they tend to incur higher administrative costs.

One effort to establish a partnership in the Oromia region failed, according to a respondent: “We had planned to create consortium of NGOs working on HIV and health issues and to have legal status from federal charities and society agency. We talked to them and the reply was, because it has no program of its own, if you create consortium you can run only using members’ contribution for admin cost. You cannot pool other funding. You cannot get funding for this purpose because you are working on coordination and capacity-building. It has been a year now. For this reason, we are discouraged and we left the idea of creating consortium. There is negative effect of the new law if you want to register and operate on legal basis.”

With the 30/70 percent law as well as the government’s initiative to “confer various incentives to a charity or society that allocate more than 80% of its total income for operational

purposes or demonstrate outstanding performance” (Article 88, No. 2 of CSP), the government seeks to minimize administrative costs and maximize benefits for project beneficiaries. However, because the law does not carve out exceptions for partnerships or “consortiums,” as the law calls them, there is the unintended effect of discouraging such partnerships. One interviewee said, “There are many rules and guideline for CSOs to follow ... but in general it seems 30/70 guideline [law] affects partnership forums [because] partnership, networking, capacity building and related activities are conducted by admin costs.”

The data from the partner tool survey also confirms how significantly the Charities and Societies Proclamation No. 621/2009 has affected HIV/AIDS partnership forums. Even though only 19.2% of respondents expressly cited the law’s effect on partnerships, the qualitative data shows a substantial decrease in funding since the law came into effect. Here it is also worth noting other causes for the limitations in funding (46.2%), which is indicated as the major factor affecting HIV/AIDS partnership forums.

Table 3 – Major Factors Affecting HIV/AIDS Partnership Forums

Major Factors Affecting HIV/AIDS Partnership Forums	Percentage
Limited funding	46.2%
Lack of trust	7.7%
Unhealthy competition for funding among members	15.4%
Lack of interest	11.5%
The new NGO law	19.2%

3.4. The Question of Survival

The principal cause of the limitations on funding is the restriction on foreign funding. The Charities and Societies Proclamation No. 621/2009 limits the funding that NGOs can receive from international sources. Under Article 2 of the law, “‘Ethiopian Charities’ or ‘Ethiopian Societies’ shall mean those Charities or Societies that are formed under the laws of Ethiopia, all of whose members are Ethiopians, generate income from Ethiopia and wholly controlled by Ethiopians. However, they may be deemed as Ethiopian Charities or Ethiopian Societies if they use not more than ten percent of their funds which is received from foreign sources.” This restriction hobbles many local NGOs, which are working effectively with communities.

There are two important issues to stress here. One is the lack of local financial sources and the significant dependence of local or Ethiopian NGOs on foreign funding, which is discussed here. The other is the limitation on Ethiopian charities’ and societies’ areas of work, which is discussed in section 3.5 in more detail.

The lack of local financial sources and the dependence on foreign funding has been the practice for local and Ethiopian NGOs for quite a long period of time. Due to this fact, many NGOs undertake income-generating activities (IGA). Moreover, some NGOs are able to cover their training and other project-related costs by selling their products. For instance, some produce furniture while training AIDS orphans and vulnerable children in wood and metal work, and others produce agricultural products or cloths by training HIV/AIDS-positive people in urban

agriculture and tailoring. As a result, most favor efforts to help such products come to market and to enable the NGOs to be self-sufficient and even expand their number of beneficiaries.

But the same law that limits NGOs' foreign funding also sets tough criteria for conducting income-generating activities. Article 103 of the CSP sets forth prerequisites that must be met in order to engage in income-generating activities. Under the law, the NGO must receive written approval of the agency; proceeds must not be distributed among members or beneficiaries; proceeds must be used to further the purposes for which the charity or society is established; and the work must be incidental to achieving the NGO's purposes. Moreover, the law makes it difficult for NGOs to engage in IGA activities. Under the CSP, charities and societies must follow the registration and licensing requirements and procedures laid down in other laws for activities related to trade, investment, and other profit-making activities. These factors make it exceedingly difficult for Ethiopian NGOs to generate 90% of their funding locally. For these reasons, the law creates a difficult environment for Ethiopian NGOs to generate income from local sources.

Such restrictions, accordingly, are contrary to the principle that social and economic qualities are to be arranged so that they are reasonably expected to be to everyone's advantage (Rawls 1971). Moreover, in reducing inequality, the law does not give adequate consideration to the undesirable aspects of market relations. For example, the market is not concerned with the type of resources used by individuals. Under similar circumstances, some people are gifted with large resources while others lack the resources to satisfy their basic needs. This signifies the importance of supplementing the market with a redistribution of resources (Potůček et al. 2003).

But the restrictions discussed above not only put the existence of some NGOs in question. They also discourage those socially and economically disadvantaged citizens from actively engaging in the betterment of their socioeconomic status.

3.5. Big Expectation in a Restricted Environment

In addition to all its other hindrances on NGOs, the Charities and Societies Proclamation No. 621/2009, Article 14 limits particular fields of engagement to Ethiopian charities. It specifies fifteen areas of work that "only Ethiopian Charities and societies" can engage in; Ethiopian residents and foreign charities cannot take part. Those areas include "the advancement of human and democratic rights," "the promotion of equality of nations, nationalities and peoples and that of gender and religion," "the promotion of the rights of the disabled and children's rights," "the promotion of conflict resolution or reconciliation," and "the promotion of the efficiency of the justice and law enforcement services."

Many respondents question how Ethiopian charities can take on these big challenges, especially in light of the financial and legal restrictions. As a result, many NGOs are abandoning their programs addressing these issues and shifting to other areas where such restrictions do not apply. If any areas of work are to be limited to Ethiopian charities, most respondents believe that the law must be changed to provide a more positive environment for their work.

As was earlier discussed, there is significant interdependence between human rights and HIV/AIDS. Most of the domains restricted to Ethiopian charities overlap with HIV/AIDS work.

Table 4 shows the effects of the Charities and Societies Proclamation No. 621/2009 on HIV/AIDS partnership forums. As we can see, the law clearly played a negative role. It decreased the number of HIV/AIDS partnership forum members (37.5%). It discouraged HIV/AIDS partnership forums (25%). It had some unintended negative effects on HIV/AIDS partnership forums, such as limiting funding (18.8%).

Table 4 – Effects of the Charities and Societies Proclamation No. 621/2009 on HIV/AIDS Partnership Forums

Effects of the Charities and Societies Proclamation No. 621/2009	Percentage
Has some unintended negative effects on HIV/AIDS partnership forum (e.g., by limiting funding)	18.8%
Has no effect at all on the HIV/AIDS partnership forum	12.5%
Encouraged/strengthened the HIV/AIDS partnership forum	6.3%
Discouraged/weakened the HIV/AIDS partnership forum	25%
Decreased the number of HIV/AIDS partnership forum/sub-forum members	37.5%
Increased the number of HIV/AIDS partnership forum/sub-forum members	0%

In sum, even though HIV/AIDS is not explicitly mentioned in the Charities and Societies Proclamation No. 621/2009, the general restrictions in the law make it harder for HIV/AIDS partnership forums as well as local and nationwide NGOs to fulfill what is expected of them.

3.6. Effects of Re-registration

Under Charities and Societies Council of Ministers Regulation No. 168/2009, Article 10, No. 2, “The effects of re-registration shall commence only a year after the effective date of the proclamation and not immediately after re-registration.” Because of this provision, most international NGOs can no longer continue being members of consortiums with Ethiopian charities. The effect is well presented by one of the respondents: “Soon after its establishment we had about 107 members because we are mainly working on capacity building like proposal writing, fund raising, fund management, and project management and the number of members kept increasing due to these benefits Now there are 45 members because we are reregistered at the national level as Ethiopian Residents’ Charity Organization⁶ Network. Since we have this new registration, the institutions which can be members to us are only Ethiopian Resident Charity Organizations.”

⁶ According to Charities and Societies Proclamation No. 621/2009, based on where the organization was established, its source of income, the composition of its membership, and its membership residential status, a charity or society is given one of three legal designations:

1. Ethiopian Charities or Societies: Charities or Societies formed under the laws of Ethiopia, whose members are all Ethiopians, generate income from Ethiopia, and are wholly controlled by Ethiopians. These organizations may not receive more than 10% of their resources from foreign sources (Article 2 of CSP).
2. Ethiopian Resident Charities or Societies: Ethiopian Charities or Societies that receive more than 10% of their resources from foreign sources (Article 2 of CSP).
3. Foreign Charities: Charities formed under the laws of foreign countries, or whose membership includes foreigners, or foreigners control the organization, or the organization receives funds from foreign sources (Article 2 of CSP).

In the survey, 69.2% of respondents indicated that the number of HIV/AIDS forum members is decreasing. In the process, partnership institutions have lost significant opportunities to gain experience from well-established foreign charities. They have lost financial resources as well, with fewer members making contributions. The major reasons for these declines are the restrictions in the Charities and Societies Proclamation No. 621/2009.

4. Conclusion

The study concludes that the 2009 Charities and Societies Proclamation No. 621/2009 has both implicit and explicit effects on addressing HIV/AIDS issues in general and on creating and running HIV/AIDS partnership forums in particular. Even though HIV/AIDS is not explicitly mentioned in the law, the general restrictions make it harder for HIV/AIDS partnership forums to fulfill what is expected of them. When organizations withdraw, the partnership forums lose finances, in-kind resources like meeting space, community connections, paid staff, facilitation and leadership, data resources, information and feedback, and specific expertise. Accordingly, the law has had the unintended effect of weakening HIV/AIDS partnership forums and, in turn, diminishing the effectiveness of NGOs' efforts to address HIV/AIDS.

Currently, the partnership forums work mainly in their respective areas or regions, with limited or no connections to partnership forums in other parts of the country. Only the federal HAPCO has an established relationship with regional HAPCOs. Nurturing such links also among similar sub-partnership forums across regions and the federal HIV/AIDS sub-partnership forums can promote the sharing of resources and experiences .

The law must create an environment more favorable to addressing HIV/AIDS issues. First, it should create exceptions for HIV/AIDS partnership forums, so that they can be created at various levels. Second, understanding their unique nature, the law should let independently created partnership forums seek funding and use it to coordinate their efforts. This could include aiding their income-generating activities in consideration of their vulnerability to compete in the market, as long as they use their financial gains to further their objectives. Third, in light of the interdependence between HIV/AIDS and human rights, the law should ease the 10 percent limit for not-for-profit organizations working exclusively on HIV/AIDS issues.

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