



Analysis of the Ethiopia Charities and Societies Proclamation 00/ 2008

By Mandeep S. Tiwana, Civil Society Watch Associate, CIVICUS

INTRODUCTION

CIVICUS: World Alliance for Citizen Participation is an international alliance based in South Africa. CIVICUS works with our members and partners in over 100 countries to support and strengthen civil society and citizen action around the world. CIVICUS works with diverse stakeholders to assist them in ensuring legislation and administrative practices related to civil society comply with best practice around the world.

CIVICUS recognises the constitutional commitment of the Federal Democratic Republic of Ethiopia to safeguard fundamental rights and freedoms including freedom of association, assembly and expression. These rights are also guaranteed to the Ethiopian people under international treaties¹ and other commitments.² CIVICUS looks towards the Government of Ethiopia to create an enabling environment for civil society to flourish.

Concerns Regarding Charities and Societies Draft Proclamation No 00/ 2008

Since the last quarter of 2007, the Ethiopian government has released three draft bills on the regulation of charities and societies. This analysis looks at the third and latest draft which was released in May 2008. The May 2008 Charities and Societies Proclamation 00/2008 (hereinafter the proclamation) retains many restrictive aspects of the previous bill and contains enhanced overly punitive restrictions on associating without official sanction. Key provisions give authorities excessive powers to interfere in the internal affairs of civil society organisations. Moreover, the Proclamation seeks to deny local civil society organisations (CSOs) access to crucial funds from abroad and thereby frustrate their activities.

On a positive note, some of the more restrictive provisions that appeared in the previous draft (February 2008) have been toned down in the present draft. These include: (i) the power to refuse registration on mere conjecture that a charity or society is *likely* to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order – in the present draft, the standard has been raised to *sufficient reason to believe* that a charity is to be used for

¹ Ethiopia is a party to the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), African Charter on Human and People's Rights

² U.N Declaration on Human Rights Defenders, UN Declaration on Social Progress and Development, the New Partnership for Africa's Development (NEPAD) and the Cotonou Agreement.

the above mentioned purposes, (ii) the requirement to take prior permission from the government before establishing a branch has been omitted, (iii) the power to dissolve a charity or society in the 'national interest' has been excluded, (iv) the requirement to renew the license of registration every year has now been extended to every three years, (v) overbroad grounds to refuse or cancel a license for 'public collections'³ (ie. fundraising) such as when the collections have not been made in 'good faith' or that the persons involved in the efforts are not 'fit and proper' to either administer or be associated with the collections or that the public collection was 'improperly' administered, have been removed.

Nevertheless, despite some improvements from the previous draft, the Proclamation continues to severely limit civil society space, is discriminatory and reflects a deep official distrust of civil society organisations rendering valuable service to the people of Ethiopia.

The following are the main areas of concern:

Arbitrary limitations on domestic organisations that receive funds from abroad and discriminatory treatment of foreign organisations

The Proclamation discriminates against CSOs that receive more than 1/10 of their income from abroad by preventing them from working on vital issues of public importance and contributing to national life in Ethiopia. The Proclamation also unduly restricts the scope of activities of foreign civil society organisations and thereby seeks to deny the people of Ethiopia the benefit of access to international best practice on important matters, such as gender equality and criminal justice sector reform. The combined effect of this can virtually cripple civil society activities in Ethiopia.

The Proclamation creates three categories of charities and societies. These are: (i) Ethiopian Charities or Societies,⁴ (ii) Foreign Charities or Societies⁵ and, (iii) Charities or Societies of Ethiopian Residents.⁶ Only Ethiopian Charities or Societies ie. those groups that receive less than 10% of their income from foreign sources - are allowed to work on: (a) advancement of the practical implementation of human and democratic rights, (b) promotion of equality of nations, nationalities, peoples, gender and religion, (c) promotion and protection of the rights of children and the disabled, (d) advancement of conflict resolution or reconciliation and, (e) promotion of the efficiency of justice and law enforcement agencies.⁷

³ Art 2 (9) defines a public collection as an appeal in any public place or by means of visits to places of business or residence for money or other property whether for consideration or otherwise and which is made in association with a representation that the whole or any part of its proceeds is to be applied for charitable purposes and shall not include an appeal made on any land or building used for the purposes of worship or burial and does not include any land adjacent to it.

⁴ Article 2 (2) defines Ethiopian Charities or Societies as those charities or societies that are formed under the laws of Ethiopia and all of those whose members are Ethiopians and are funded or controlled by Ethiopians. However, they must not receive more than ten percent of their funding from abroad.

⁵ Article 2 (3) defines Foreign Charities or Societies as those charities or societies that are formed under the laws of foreign countries or which consist of members who are foreign nationals or are controlled by foreign nationals or receive funds from foreign sources.

⁶ Article 2 (4) defines Charities or Societies of Ethiopian Residents as those charities or societies whose members reside in Ethiopia, more than 10% of whose funding originates from foreign sources and which are formed under the laws of Ethiopia.

⁷ Article 14 (5)

Other types of charities and societies are relegated to undertaking only service delivery activities such as: (a) prevention or alleviation or eradication of poverty or disaster, (b) advancement and improvement of economic development and environmental protection, (c) advancement of animal welfare, (d) advancement of education, (e) advancement of health or saving of lives, (f) advancement of the arts, culture, heritage or science, (g) advancement of amateur sport or welfare of the youth, (h) relief of those in need by reason of age, physical and mental disability, financial hardship or other disadvantage and, (j) advancement of capacity building on the basis of the country's long term development directions.

Given the lack of fundraising opportunities inside Ethiopia, most organisations rely on foreign sources of funding. Therefore, by cutting off the sources of funding for local Ethiopian CSOs , the Proclamation would result in the closing down of many vocal and prominent organisations, particularly those who continue to work in the already contentious area of human rights and governance.

It is unconstitutional and against public interest to restrict a substantial section of civil society to a limited set of activities. Article 31 of the Constitution of Ethiopia guarantees: "*Every person has the right to freedom of association for any cause or purpose*".

Unwarranted interference and unwarranted powers of control

The Proclamation permits excessive governmental interference in the functioning of CSOs, jeopardising their autonomy. Such independence is a key feature of civil society and integral to its ability to contribute meaningfully to public debates.

The Proclamation seeks to keep CSOs under perpetual observation, by the requiring them to give the government seven days prior notice before holding any general assembly meeting.⁸ Moreover, "sector administrators" (government institutions appointed under the Proclamation to assist the Charities and Societies Agency in implementation of the law) are empowered to "make arrangements" for coordinated efforts towards achieving common goals of the charities and the sector administrator.⁹ Existence of such a power enables executive authorities to browbeat CSOs into toeing the official line and prevents them from taking independent positions on matters of national importance.

Furthermore, CSOs are made vulnerable to executive control through the inclusion of random powers of inquiry. Although the general rule on inquiries is that they should be instituted only in exceptional circumstances on receipt of credible information about the breach of specific legal obligations, inquiries against charities or societies can be carried out from "time to time" either "generally or for particular purposes".¹⁰ This essentially amounts to giving the authorities the license to heckle the non-profit sector at will.

Limits are also placed on charities from allocating more than 30% of their expenses towards administrative costs.¹¹ This amounts to unwarranted interference in the internal running of civil society organisations. Moreover, it creates unnecessary hurdles for them as in some circumstances it may be difficult to differentiate administrative expenses from programme costs.

⁸ Article 87

⁹ Article 88

¹⁰ Article 85

¹¹ Article 90 (1)

Excessive reporting requirements and red tape

By creating a web of exhaustive reporting procedures, the Proclamation gives the government a convenient way to intimidate CSOs, particularly those that seek to act as the eyes and ears of the people against official wrongdoing.

Charities and societies are required to maintain day-to-day records of financial transactions.¹² They are also required to furnish an annual statement of accounts to the Charities and Societies Agency.¹³ Despite the requirement to submit to an annual audit of accounts by certified auditor, an internal auditor or an auditor designated by the Charities and Societies Agency, an organisation can be subject at anytime to an audit of accounts according to the directives of the Minister of Justice.¹⁴ Furthermore, CSOs are required to submit to the Agency an annual activity report outlining their major activities and other relevant information along with a statement of accounts.¹⁵ They are also required to renew their license and registration every three years, which is subject to an executive evaluation of the completeness and accuracy of their performance and audit reports.¹⁶ The requirement to renew the license and registration certificate every three years, coupled with the fact that no time limit is prescribed for renewal, leaves ample scope for motivated procedural delays.

Compulsory registration requirements and draconian punishments

The Proclamation requires all societies and charities to register and obtain official sanction for their activities. If an organisation fails to register within the prescribed time of three months of its formation, it is declared "unlawful",¹⁷ and its members risk excessively harsh punishments.

According to international standards, the decision to officially register should be voluntary and not imposed by the government. Such harsh repercussions could serve to deter individuals from freely exercising the right to associate and take part in civil society activities.

The Proclamation prescribes draconian punishment for participation in the management of an "unlawful" charity or society - a minimum fine of 10,000 Birr and five to fifteen years rigorous imprisonment.¹⁸ Mere membership of an "unlawful" charity or society or attending its meetings is punishable by a minimum fine of 5000 Birr and three to ten years in prison.¹⁹ Knowingly allowing a meeting of an unregistered charity or society in one's premises is punishable by a minimum fine of 2000 Birr and imprisonment of three to five years.²⁰ Carrying out fundraising or income generating activities without a valid permit is punishable by a minimum fine of 10,000 Birr and rigorous imprisonment from three to ten years.²¹ Furthermore, disseminating information in the interests of any "unlawful" charity or society is punishable by a minimum fine of 3000 Birr and three to five years in prison.²²

¹² Article 78

¹³ Article 79

¹⁴ Article 80

¹⁵ Article 81

¹⁶ Article 77

¹⁷ Article 104 (1)

¹⁸ Article 104 (2)

¹⁹ Article 104 (3)

²⁰ Article 105

²¹ Article 106

²² Article 107

The harshness of the above punishments, usually reserved for offences of a grave nature, is disproportionate and reveals deep official distrust of the civil society sector. Their inclusion in the Proclamation not only discounts the important contribution that civil society makes to national life but also appears to be intended to discourage ordinary people from taking part in civil society activities.

Exclusion of judicial oversight in certain cases

The Proclamation limits judicial oversight of executive actions in the case of Ethiopian civil society organisations and unfairly discriminates against foreign civil society organisations by denying them recourse to judicial remedies.

Civil society organisations classified as foreign are arbitrarily denied the right to appeal to the courts against grievances relating to the implementation of the Proclamation.²³ Ethiopian civil society organisations have limited right to appeal within a short period of 15 days to the Federal High Court against executive decisions on questions of law but not of facts.²⁴ Denying civil society organisations the right to approach the local courts on both questions of law and facts essentially amounts to a denial of access to justice.

CONCLUSION

CIVICUS: World Alliance for Citizen Participation respectfully calls upon the Government of the Federal Democratic Republic of Ethiopia to reconsider introducing the Charities and Societies Proclamation 00/ 2008 in Parliament. Prevention of illegal acts is a genuine concern of the government. However, any regulatory mechanism must be underpinned by legislation that is equitable, just and fair. The Charities and Societies Proclamation 00/ 2008 substantially fails this test. Enactment of the Proclamation would serve to undermine democratic space and the independence of the civil society sector in Ethiopia which presently provides significant support to the people of Ethiopia.

²³ Article 110 (2)

²⁴ Article 110 (3)