



Analysis of the Ethiopia Charities and Societies Proclamation 00/ 2008

17 September 2008

By Mandeep S. Tiwana, CIVICUS: World Alliance for Citizen Participation

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

A number of draft bills on the regulation of charities and societies have been put in circulation in Ethiopia. This analysis looks at the latest draft, in circulation since August 2008. Since February 2008, there have been two previous official drafts, and one early unofficial draft.³ The August 2008 Charities and Societies Proclamation 00/2008 (hereinafter the proclamation) retains many restrictive aspects of the previous bills despite numerous submissions and critiques by civil society organisations (CSOs) - both domestic and international. Key provisions give authorities excessive powers to interfere in the internal affairs of CSOs to stifle their independence and also deny local CSOs access to crucial funds from abroad, which may result in them having to discontinue their activities. In sum, the Proclamation severely limits civil society space, is discriminatory and reflects a deep official distrust of CSOs rendering valuable services to the people of Ethiopia.

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.

³ To view the CIVICUS analysis of the May 2008 draft, please visit http://www.civicus.org/csw_files/AnalysisEthiopiaCharitiesProc140808.pdf

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) Ethiopian Residents Charities or Societies⁵ and, (iii) Foreign Charities or Societies.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 human and democratic rights, (b) promotion of equality of nations, nationalities, peoples, gender and religion, (c) promotion of the rights of the rights of the disabled and children, (d) promotion of conflict resolution or reconciliation and, (e) promotion of the efficiency of justice and law enforcement services.⁷

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 the 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.

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 whose members are Ethiopians, generate income from Ethiopia and are wholly controlled by Ethiopians. However, they must not receive more than ten percent of their funding from abroad.

⁵ Article 2 (3) defines Ethiopian Residents Charities or Societies as those charities or societies that are formed under the laws of Ethiopia, all of whose members reside in Ethiopia and who receive more than 10% of their funds from foreign sources.

⁶ Article 2 (4) 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.

⁷ Article 14 (5)

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*”.

Discretion in registration and excessive powers to interfere and control

The Proclamation permits excessive governmental discretion and interference in the registration and 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.

Charities and societies are required to apply for registration within three months of their formation.⁸ However, registration is to be refused on mere conjecture that an organisation is *likely* to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Ethiopia.⁹ There is no requirement to prove *sufficient reason* for such a surmise.

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.¹⁰ Moreover, “sector administrators” (designated federal executive offices assigned by the Minister of Justice to oversee CSOs) are empowered to “make arrangements” for coordinated efforts towards achieving common goals of the charities and the sector administrator.¹¹ 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 CSOs in general, a class of CSOs or an individual CSO can be carried out from “time to time” either “generally or for particular purposes”.¹² 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.¹³ 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.

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.¹⁴ They are also required to furnish an annual statement of accounts to the Charities and Societies

⁸ Article 65

⁹ Article 70

¹⁰ Article 87

¹¹ Article 88

¹² Article 85

¹³ Article 90

¹⁴ Article 78

Agency in accordance with “acceptable standards”.¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸ The requirement to renew the license and registration certificate every three years constitutes an unnecessary bureaucratic hurdle, which could lead to motivated harassment of outspoken CSOs.

Excessive penalties and harsh punishments

The Proclamation excessively penalises CSOs and their staff for failing to adhere to requirements of the Proclamation in respect of reporting procedures.

A minimum fine of 10,000 Birr to 20, 000 Birr is prescribed for CSOs that fail to maintain (i) accounting records which are “sufficient” to show and explain all transactions at any time, (ii) day to day entries of sums of money received and expended, (iii) entries showing the identity of all donors (receipt of anonymous donations is illegal), and, (iv) accounting records of the last five years.¹⁹ Failure to submit an annual statement of accounts in accordance with “accepted” standards²⁰ and to report annually is also punishable by similar fine.²¹ Moreover, officers and workers responsible for committing the above-mentioned acts are liable to punishment with a minimum fine of 5,000 Birr or imprisonment between three to five years.²²

Besides being excessive and disproportionate, the above punishments reflect deep official distrust of the civil society sector. Their inclusion in the Proclamation may serve to discourage individuals from exercising their constitutional freedom to associate and participation 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

¹⁵ Article 79

¹⁶ Article 80

¹⁷ Article 81

¹⁸ Article 77

¹⁹ Articles 103 & 78

²⁰ Articles 103 & 79

²¹ Article 103 & 84

²² Article 103

²³ Article 105 (2)

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 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. 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.

²⁴ Article 105 (3)