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Ethiopia

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1. (A) Introduction

1.1. CIVICUS: World Alliance for Citizen Participation is an international movement with members and partners in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizens' freedom of association are threatened. CIVICUS seeks to amplify the voices and opinions of ordinary people. For effective and sustainable civic participation to occur, citizens must enjoy rights of free association and be able to engage all sectors of society. CIVICUS is an accredited NGO member of UN ECOSOC.

1.2. In this document CIVICUS: World Alliance for Citizen Participation outlines key concerns related to the freedoms of expression, association and assembly in Ethiopia.

- Under section B, CIVICUS focuses on the issues of concern regarding the exercise of the freedom of association in Ethiopia through the provisions of the Charities and Societies Proclamation enacted in January 2009.
- In section C, CIVICUS focuses on the issues of concern regarding the exercise of the freedoms of expression, assembly and association in Ethiopia through the proposed FDRE Draft Anti-Terrorism Proclamation dated January 2009.
- In section D, CIVICUS makes a number of recommendations in the areas of concerns listed.

2. (B) Concerns regarding the Charities and Societies Proclamation 2009

2.1. Constitutional and international law provisions in relation to the freedom of association

2.1.1. The Constitution of Ethiopia, under Article 31, guarantees everyone the right to form associations for whatever purpose although a prohibition is placed on associations formed in violation of the appropriate laws or associations formed with the objective of overthrowing the constitutional order or associations carrying out these activities. Under the International Covenant on Civil and Political Rights to which Ethiopia is a party, no restrictions may be placed on the freedom of association except those

which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (odre public), the protection of public health or morals or the protection of the rights and freedoms of others.

2.1.2 The Charities and Societies Proclamation, 2009 (hereinafter the "charities law") passed on 6 January 2009 creates an extremely restrictive framework for civil society organisations to operate (explained and elaborated upon in the following paragraphs), which impedes the exercise of the freedom of association.

2.2. Limitations on the activities of CSOs that receive funding from foreign sources

The non-profit sector provides considerable support to the people of Ethiopia. Given the limited domestic sources of funding, CSOs have to rely on well-respected international donor and philanthropic organisations for essential funding. The charities law prohibits organisations that receive more than 10% of their overall funding from foreign sources from working in key areas. These areas are: advancement of human and democratic rights; promotion of the equality of nations, nationalities, peoples, gender and religion; promotion of the rights of the disabled and children's rights; promotion of conflict resolution or reconciliation; and the promotion of the efficiency of justice and law enforcement agencies. These limitations will practically cripple the civil society sector in Ethiopia and restrict civil society from supporting democratic development and the protection and promotion of human rights in the country.

2.3. Wide discretion to refuse registration to CSOs and mandatory renewal of licenses every three years

It is important that laws regulating civil society activities create an enabling environment that allows new civil society organisations to be formed. International best practice dictates narrowing the scope for executive discretion by prescribing limited and well defined grounds to refuse or cancel registration or licenses. Nevertheless, the charities law allows refusal of registration – which is a necessary requirement under the law - on mere conjecture that an organisation is *likely* to be used for unlawful purposes or purposes prejudicial to public peace, welfare or good order in Ethiopia. This provision provides ample scope for refusal of registration to individuals wishing to form an organisation if they are politically opposed to official policies.

2.4 Restrictions on the independence of CSOs

CSOs are best able to function when they are subjected to minimal regulation of their lawful activities. Nevertheless, the charities law severely curbs the independence of CSOs. It allows the institution of random inquiries against a CSO or a class of CSOs "either generally or for particular purposes". There is no requirement for a credible complaint to be instituted. Furthermore, CSOs are required to notify the authorities about the time and place of their meetings at least seven days in advance. This can seriously impact on CSO discussions on campaigns and strategies, particularly those targeted towards good governance and critical evaluation of official policies. In a departure from international best practice principles where licensing and registration should be a one time activity, CSOs are subjected to further control by requiring them to renew their license every three years. Financial autonomy of CSOs is curbed through an arbitrary requirement that prevents them from allocating more than 30% of their expenses towards administrative costs.

2.5. Exhaustive reporting requirements and harsh fines for administrative lapses

The charities law creates an exhaustive web of reporting procedures which subjects CSOs to excessive bureaucratic red tape. CSOs are required to maintain day-to-day records of financial transactions. They are also required to furnish an annual statement of accounts. Despite the requirement to submit to an annual audit of accounts by a certified auditor, an internal auditor or an auditor designated by the authorities, an organisation can be subject at anytime to an audit of accounts according to the directives of the Minister of Justice. Furthermore, CSOs are required to submit an annual activity report outlining their major activities and other relevant information along with a statement of accounts. Renewal of license is subject to an executive evaluation of the completeness and accuracy of CSO performance and audit reports. Heavy fines are also imposed for above administrative lapses.

3. (C) Concerns regarding the Draft Anti-Terrorism Proclamation 2009

3.1. Constitutional provisions in relation to freedom of expression and assembly

3.1.1The Constitution of Ethiopia under Articles 29 and 30 guarantees the right to hold opinions, thoughts and free expressions; and the right to freedom of assembly, public demonstration and the right to petition. Moreover, procedural safeguards for those arrested and subject to criminal proceedings are guaranteed under Articles 18-23.

3.1.2 The Draft Anti-Terrorism Proclamation (hereinafter "anti-terrorism bill"), released in January 2009 and currently pending consideration for the Ethiopian Parliament, could seriously impact upon the exercise of the freedoms of expression, assembly and association. Concerns regarding the wide definition of a terrorist act and leeway to designate civil society organisations as terrorist groups, curbs on media freedom and enhanced powers of surveillance and interception of communications are outlined below. Although not elaborated upon in this submission, CIVICUS is also concerned about the dilution of fundamental due process guarantees in the bill through enhanced police powers of search and seizure; possible extension of the period of pre-charge detention to four months; provisions regarding forcible undertaking of medical tests by suspects and extraction of their bodily fluids, voice recording, fingerprints, hair samples as well as handwriting samples; and shifting of the burden of proof to the accused in certain cases.

3.2. Wide definition of terrorist act

In a departure from general norms that narrow the definition of terrorism to lethal acts designed to create terror in the minds of the general population, the anti-terrorism bill contains an overbroad definition of a terrorist act which can seriously impact the exercise of political dissent and outpourings of public protest in the country. The bill seeks to punish with "imprisonment of 15 years to death", whoever "for the purpose of advancing political, religious or ideological cause; and with the intention of (a) coercing or intimidating the government, (b) intimidating the public or section of the public or, (c) destabilising or destroying the fundamental political, constitutional, economic or social institutions of the country:…(iv) causes damage to property…(vi) endangers, seizes or puts under control, causes interference or disruption of any public service. Under this catch-all definition, a peaceful blockade of public services or incidental damage to property during public demonstrations could be deemed as terrorist acts.

3.3 Impact of the wide definition of terrorist act on civil and political activities and press freedom

The anti-terrorism bill defines a "terrorist organisation" as one "which is composed of not less than two members with the objective of committing acts of terrorism or plans, prepares, executes acts of terrorism or assists or incites others in any way to commit acts of terrorism, or an organisation proscribed in accordance with this proclamation". Given the wide ambit of what constitutes a terrorist act, civil society and political groups that organise peaceful blockade of public services or cause incidental damage to property during public demonstrations could find themselves being designated as terrorist organisations, mere membership of whom is punishable by 5 to 20 years imprisonment.

The anti-terrorism bill also punishes with rigorous imprisonment of 10 to 20 years, anyone who "writes, edits, prints, publishes, publicises, disseminates, shows, makes to be heard any promotional statements encouraging, supporting or advancing" terrorist acts or the objectives of a terrorist organisation. This provision will put a freeze on media criticism of official treatment and actions against individuals, civil society and political organisations who may have organised a peaceful blockade of public services or who may be responsible for incidental damage to property during public demonstrations.

3.4 Interception, surveillance and controls over communication

The anti-terrorism bill also gives official agencies extensive powers to (a) intercept communications or conduct surveillance on the telephone, fax, radio, internet, electronic, postal and similar communications of a person suspected of terrorism, (b) enter into any premise in secret to enforce the interception, (c) install or remove instruments enabling the interception. Given the ease with which civil

society and political organisations can be brought under the anti-terror bill, this provision will seriously impact their independence and ability to offer legitimate political dissent against official policies and actions.

4. (D) Recommendations to the Ethiopian Government

4.1. CIVICUS urges the Ethiopian government to permit space for legitimate dissent to official actions and policies and to uphold the freedoms of expression, association and assembly in the spirit of the ICCPR and the African Charter on Human and People's Rights to which Ethiopia is a party and to its own constitution which guarantees these freedoms. In light of this, the following recommendations are made:

4.2. Regarding the Charities and Societies Proclamation 2009:

- The bar for CSOs receiving in excess of 10% funding from foreign sources to work on key areas should be removed to enable CSOs to contribute meaningfully to public life and democratic development in Ethiopia.
- The grounds to refuse registration to a CSO should be narrow and well-defined. The stipulation that permits CSOs to be denied registration on mere conjecture that they are likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order without the founders having committed any overt act towards these ends, should be removed.
- Registration and licensing should be a one-time activity. The requirement for CSOs to renew their license every three years should be removed.
- CSOs should be guaranteed a secure environment to carry out their independent activities. Inquiries against them should be permitted only upon the institution of a credible complaint.
- The independence of CSOs in their operational and financial affairs should be maintained. The requirement to give seven days prior notice to the authorities before organising a meeting as well as the bar on keeping administrative expenses to a maximum of 30% should be removed.
- Excessive reporting requirements should be done away with. These should be limited to an annual report outlining an organisation's major activities and other relevant information along with an audited statement of accounts.

4.3. Regarding the Draft Anti-Terrorism Proclamation 2009

- The definition of what constitutes a terrorist act should be narrow and limited to ensure that acts of political dissent and incidental damage caused during public protests are not brought into the purview of the definition of a terrorist act to allow space for legitimate dissent against official actions whether by political or civil society groups.
- While not the focus of this submission, numerous other provisions of the draft anti-terrorism bill regarding enhanced police powers, extension of the period of pre-charge detention, use of force in gathering evidence and shifting of the burden of proof to the accused in certain cases, should be seriously reviewed for their constitutionality and adherence to international human rights agreements.