

Comments of Ethiopian Civil Society Organisations on the Draft Charities and Societies Proclamation

(16th NOV 2008)

I. Positive aspects of the draft proclamation

In spite of concerning provisions, the draft proclamation, has several encouraging features. These positive features include the following:

- a) The drafting of a separate legislation focusing on NGOs/CSOs: The current legislation does not create an enabling environment for their operations because it was not formulated in such a way as to accommodate the diversity of civil society institutions, their operations, and unique characteristics. The drafting of a separate legislation focusing on NGOs/CSOs is therefore a positive development.
- b) The incorporation of specific provisions for different types of NGOs/CSOs:
- c) Making provision for the establishment of consortium of charities or societies:
- d) Allowing charities and societies to engage in income generating activities:
- e) Exemption from income tax for charities:

II. concerning provisions of the draft proclamation that need to be amended:

a) Definition of Ethiopian Charities and the kind of activities they are allowed:

According to Article 14(5) of the draft proclamation, only Ethiopian Charities or Societies i.e. 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. Other types of charities and societies are relegated to undertaking only service delivery activities.

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 area of human rights and good governance and policy advocacy etc. It is also a counter-productive strategy of control which aims to drastically minimise financial donations by the Ethiopian Diaspora that seek to channel their support for the democratisation and development processes in the country through the associations of their fellow countrymen.

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

b) Concerning the right to an independent judicial review:

Only Ethiopian organizations (those groups that receive less than 10% of their income from foreign sources) are allowed to appeal to court against the decision of the administrative organ, and even in this case the ground of appeal is restricted to error of law although it is obvious that the overwhelming majority of the potential conflict would be on error of facts than law. International organizations do not have any right of appeal to court whatever decision is made against them by the administrative bodies;

The draft Proclamation denies CSOs their right to access to justice which is guaranteed under Article 37 of the FDRE Constitution and therefore unconstitutional.

c) Requirement of regional Representation:

The draft legislation under Article 58(6) states that national CSOs need to have representation from and branches in five regions. This rule applies to any society whose name implies a national/federal mandate. This provision is arbitrary and unreasonable for different reasons.

- 🇪🇹 A CSO might, when it is established, open an office in Addis Ababa only, though, as its name might indicate, it might plan to open offices in other parts of the country later. It is therefore unreasonable to expect a CSO which has not even obtained legal personality to open offices in five or more regions before registration.
- 🇪🇹 A society formed to promote national dialog on policy issues might effectively undertake its activities in Addis Ababa (which is the seat of policy makers at the Federal level), while occasionally organizing workshops in some of the regions. Under these circumstances, requiring such a society to open offices in 5 regions sounds unreasonable.
- 🇪🇹 Moreover, given the administrative cost is limited to 30%, it would be difficult or impossible for any organization to open five branches in five regions at a time.

d) Mass Based Organization

Article 58(7): states that Ethiopian *mass organizations* may actively participate in the democratization process, especially in monitoring elections, conducting seminars and understanding platforms of candidates seems to imply that these activities are reserved to such mass organizations. This is an ambiguous provision as it is not clear if it means that

other societies are barred from engaging in advocacy activities related to the democratization process, especially in civic and voter education, organisation of forums for public debates, election observation. The discriminatory selection and privileging of mass-based organisations to engage in such activities cannot be justified and accepted.

Moreover, the revised proclamation that determined the powers of the Election Board that was enacted in 2007, provided that determining which type of societies can participate in elections and civic education is within the mandate of the Election Board. Thus, the two provisions contradict each other.

e) Self-Regulation

The law fails to provide recognition for self-regulation by the sector. There is no provision even in the preamble which encourages the sector for self regulation.

f) Administrative Cost:

The draft legislation also puts a limit on charities from allocating more than 30% of their expenses towards administrative costs. It creates unnecessary hurdles for them as in some circumstances it may be difficult to differentiate administrative expenses from programme costs. The administrative share of the cost of a charity is determined by various variables and should not be fixed arbitrarily. It is better to provide a range to accommodate a diversity of institutional set-ups.

f) Composition of the board.

According to Article 8, the Board shall have seven members to be nominated by the government, two of which shall be nominated from the charities and societies. This same board is given the power to hear appeal from decision of the Agency. Therefore, In order to ensure the interest and demands as well as accountability and independence/ autonomy of charities and societies, the number of representatives from charities and societies should be raised

h) Concerning tax exemptions and income generating activities

The draft legislation recognises the legality of income generating activities and exempting charities from income tax. This will enable the organisations to build their capacity; these are hence very useful measures. However, the draft legislation fails to recognize that charities and societies should also be exempted from VAT and customs duty for imports of goods and equipment necessary for their operations.

I) Transition period:

The requirement that they have to register within one year of the coming into effect of the proclamation means that most of them (i.e., the indigenous ones) will need to make adjustments that will drastically affect their programme orientation and scale of operation, if they manage to survive financially.

The period of transition should be extended to at least three years so that existing association can have enough time to finalize projects at hand and see to adjust themselves how to operate under the new Proclamation; to survive or die.