

**Observations and Recommendations of the NGO
Community on the Ministry of Justice's Current
(Third) Draft NGO Registration and Regulation
Proclamation**

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Introduction

Following the Ministry's circulation of its draft, entitled " NGO Registration and Operation Proclamation", it convened a meeting with NGOs, June 3-4, 2002, and invited their observations and suggestions.

In response, the NGO community held consultations among its members on the draft and forwarded to the Ministry its observations and recommendations.

In a further commendable initiative the Ministry invited the NGO community to nominate two representatives who would cooperate with its drafting team in revising the original draft. The ensuing cooperative effort produced a second draft. The latter draft underwent further revision within the Ministry of Justice.

The Ministry has once again invited the NGO community to provide its observations and views on the current (third) revision of the draft. In this connection, the NGO community would like to note that this third revision varies in some important aspects from the second draft, which was an outcome of a cooperative effort.

The NGO community would like to express its appreciation of the Ministry's willingness to entertain and accommodate its views and concerns. The Minister's disposition in this respect in particular reflects the current democratic renewal spirit and the government's commitment to involve popular and stakeholder participation in the evolution of important policies and legislation.

Following the NGO Consultative Group's brief review of the current draft, it was decided to request an audience with the Minister of Justice for its representatives. In the same cooperative spirit the Minister was good enough to respond without delay to the request. At a meeting held with him on 30 October 2003 the NGO representatives conveyed to him: a) The NGO community's view that the current draft does not address its basic concerns; (b) that the NGO community be given a limited time to allow it to study the current draft in depth in order to formulate its observations and suggestions. In response, the Minister assured the NGO interlocutors that the

Proclamation's drafting has not been completed and that he and his Ministry would welcome the civil community's recommendations and suggestions.

In keeping with the Minister's accommodative spirit, this memorandum, addressed to him, outlines the views and observations of the Ethiopian civil society community on the current draft, entitled "A Proclamation to Provide for Non-Governmental Organization".

The memorandum is organized as follows:

Part I:

- ◆ Provides general views and observations on constitutional and legal principles that ought to underpin a democratic legal framework for NGO registration and operation.
- ◆ Underscores the constitutional and legal foundation on which a proclamation that provides for the registration and operation of Ethiopian NGOs should be predicated.
- ◆ Compares the draft Proclamation's second and current versions and points out what it considers to be points of retrogression; and, finally,
- ◆ Outlines general observations on the third (current) version of the Proclamation draft.

Part II:

- ◆ Provides observations on specific provisions of the Proclamation, starting from the preamble going through its remaining parts.
- ◆ In the light of those observations, it forwards recommendations on policy matters that it deems to be inconsistent with the principles and provisions of the FDRE Constitution or standards set by international conventions. It also offers improvements on the language of some provisions.

Part I

General Observations

The following should be the perspectives and the criteria by which the Ethiopian NGO community assesses any legislation that provides for the registration and operation of NGOs:

(a) It should create an enabling environment for citizens to exercise their constitutional rights to freedom of association; and to that end,

(b) It should be predicated on those constitutional rights and existing laws that relate to the exercise in particular of the freedom of association; and

(c) It should reflect policy guidelines and widely accepted legal principles that constitute a conducive environment for the exercise of freedom of association.

1. The Existing Ethiopian Legal Regime on Freedom of Association

1.1. The Civil Code of Ethiopia, in force since 1960, contains specific provisions governing the establishment, governance and operation of associations. In the past, these provisions served well the needs of citizens who wanted to establish associations, endowments or trusts. However, since they did not anticipate the newly emerging roles of NGOs, they were not sufficiently flexible to accommodate their needs.

1.2. Ethiopia's democratic dispensation was inaugurated in 1991 with the adoption of the Transitional Charter in which, among other basic democratic rights, the right to form associations was specifically recognized (Article 1(a)). Similarly, the Constitution of FDRE also guarantees the exercise of democratic rights including freedom of association (Article 31). Furthermore, the Constitution provides (a) that all international treaties that Ethiopia has ratified (that includes all the major international human rights conventions) are an integral part of the laws of the country; (b) that the interpretation of its human rights provisions (Chapter Three) should conform to the standards of international human rights instruments (Article 13(2)).

- 1.3. Since the adoption of the Constitution, the FDRE Government has made statements regarding the exercise of the freedom of association as it relates specifically to NGOs. The most important in this respect is what the Prime Minister stated recently. Elaborating on the role of citizens' associations, including NGOs, as one of the most important vehicles of popular democratic participation, the Prime Minister stated in parliament that the government would facilitate "the establishment and strengthening at all levels of professional and popular associations, as well as of non-governmental organizations. It will provide for the full autonomy of those organizations and ensure and facilitate their participation in development activities and discourse. Irrespective of their political positions, the government will provide forums and facilitate other modalities for their participation... The participation [in national life] of self-organized citizens' associations is not only the foundation of our development, but also of our democracy." (Addis Zemen, Tikimt 1, 1994 E.C. (translation ours)). In a document published by the Ministry of Information, *Be Ethiopia Ye Abiotani Democraciani Sera'at Ginbata Gudayoch* (Issues Relating to Building A Democratic Order in Ethiopia (translation ours)) the government's policy in the context of the current democratic renewal regarding citizens' associations is expressed in great detail (pp. 127-138). The underlying premise of this policy is that popular participation in development and governance is a *sine qua non* of the renewed democratisation process.
- 1.4. During the Transitional Period, Proclamation 41/1993 made the Disaster Prevention and Preparedness Commission (DPPC) supervisor of all NGOs engaged in relief activities. In its administration, this Proclamation created a serious difficulty as it left out other NGOs that were not engaged in relief activities. As a consequence of that, Proclamation 4/1995 was passed by Parliament to transfer the function of registering and supervising NGOs to the Ministry of Justice.
- 1.5. The FDRE Constitution, the prevailing laws and government policy provide a democratic legal framework for the exercise of the freedom of association. The government's policy in particular reflects its commitment to facilitate proactively the participation of popular organizations, including NGOs, in development and governance. In assessing the Proclamation's third draft, observations are made on how far those legal principles and the government's proactive stance are reflected in it.

2. General Legal Principles and Standards

As has been indicated, the human rights provisions of the FDRE Constitution are required to conform to norms and standards laid down by International Human Rights Conventions to which Ethiopia is a party. The legislation's provisions have also been examined in terms of how they measure up to those standards whose underlining principles are outlined below.

- 2.1. Democratic governance should guarantee and protect freedoms of association, assembly and expression. Any derogation of these freedoms should at the minimum meet the standards of the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR), both of which Ethiopia has ratified.
- 2.2. The state and NGO have mutual obligations to cooperate: on the part of the state, to provide a policy and legal framework to proactively facilitate the enjoyment of those freedoms and, on the part of NGOs, to ensure that they live up to the highest standards of ethical conduct, primarily through self-regulation.

However, laws regulating NGO should approach their objective from the premise of non-regulation and encouraging self-regulation of NGOs.

- 2.3. The government agency entrusted with the responsibility for registering NGOs should be adequately staffed with competent professionals. It should be even-handed in fulfilling its role, and its decisions not to register or terminate registration should be appellable administratively and, finally, to an independent court.
- 2.4. The presumption behind laws regulating NGOs should be that individuals, groups and legal persons have the right to form associations for any legal, non-profit purposes. Their establishment should be voluntary, not mandatory. It should be generally possible for all natural and legal persons to form NGOs through relatively quick, easy, and inexpensive processes.

- 2.5. Citizens should be free to exercise their freedoms of association, assembly and speech without creating and formally establishing NGOs, i.e. without their groups or associations acquiring legal personality.
- 2.6. NGOs should be accountable (a) to government, if they require privilege from it, (b) to donors, if they receive grants, (c) to the public, if they raise fund from it, and (d) to the beneficiaries they serve.

Government grant of privileges should be accompanied by obligations but such obligations must be appropriate to the privileges received.

- 2.7. NGOs should have the same rights, privileges, powers and immunities generally applicable to legal persons. The same should also apply with respect to civil and criminal law prohibitions and sanctions.
- 2.8. NGOs should be free to operate in an environment that assumes they are operating lawfully. Regulatory constraints should come only into force after they have violated the law and should therefore be punitive rather than overly regulatory or preventive before the fact.
- 2.9. The legal framework for regulating NGOs should provide certainty and clarity so that they understand exactly what the law is, when they are required to register, with whom they register and what their obligations are in respect of any privilege they receive.

3. Comparison Between the Draft Proclamation's Second and the Current (third) Revisions

Having regard to the considerations set forth above (sections 1.1. and 1.2.), the Ethiopian NGO community believes that the current revision marks retrogression from the second draft. And the major points of difference and retreat are hereunder pointed out.

- 3.1. While the second revision in its preamble predicates the establishment of NGOs on the freedom of association as guaranteed by the FDRE Constitution and other laws of the country, as well as by international conventions to which Ethiopia is a party, the current draft avoids such a reference.

- 3.2.** While the second revision of further recognizes in its preamble that the Proclamation is aimed at providing an enabling environment for the exercise of the constitutionally protected freedom of association, the current draft contains no such reference.
- 3.3.** In democratic legal systems citizens voluntarily associating themselves to promote goals and objectives that they share create NGOs. Such associations that they create may be general membership associations or associations created by more than two citizens who have obtained recognition of their association as a legal entity. What characterizes both is that citizens associating themselves create them. The Civil Code of Ethiopia underscores this foundational nature and refers in all its provisions to such entities as ‘association’, irrespective of whether they are established by a general membership or by a limited number of citizens. While the draft’s second revision clearly expresses this foundational basis, the current draft, by referring to all such legal entities that issue from this associational base as ‘organizations’, fails to underscore the constitutional basis of such legal entities.
- 3.4.** Both the second the current drafts do not provide an enabling regulatory framework for the registration and operation of NGOs. Instead of restraining, they both promote government intrusion, which circumscribes the exercise of freedom of association. Comparing both drafts, one can note that certain provisions of the current draft may permit more and sometimes less intrusions—intrusions that are nevertheless inconsistent with the Constitution.
- 3.5.** While both drafts would make NGO registration and operation cumbersome and time consuming, the current version, as we demonstrate later, would be far more onerous and time consuming.
- 3.6.** While the second draft provides for more definite guidelines for registration, renewal and issuance of certificate, the current draft provides no such precise guidelines but leaves the determination of such guidelines to subsequent regulations to be issued by the Council of Ministers. The effect of this reformulation is to remove the elements of certainty that were included in the second revision. *

* E.g. registration to be made within ninety days from the date of submission of application and to be valid for three years, and renewal of registration to be issued

- 3.7. Whereas the second revision makes serious infringements of the laws of the country and, in particular, of this Proclamation to be a sufficient cause for NGO dissolution after certain procedures had been followed, the current version makes a minor procedural violation, such as the failure to submit a report, of a sufficient cause for dissolution without providing for corrective measures.

4. General Observations on the Current Draft

- 4.1. As pointed out earlier, the current draft does not predicate itself on the appropriate constitutional principles and international legal standards, namely: (a) freedom of association and other constitutionally protected rights, including, *inter alia*, freedom of expression and assembly, right to due process of law and to equal protection of the law (Articles 25, 29, 30 and 31 of the FDRE Constitution); (b) obligations Ethiopia has entered into as a party to international human rights conventions; (c) Article 9(4) of the FDRE Constitution which mandates all international treaties that Ethiopia has ratified (that includes all the major international human rights conventions) to be an integral part of the laws of the country; and (d) the stipulation in the FDRE Constitution that the interpretation of its human rights provisions (Chapter Three) should conform to the standards of international human rights instruments (Article 13(2)).
- 4.2. Instead of facilitating the exercise of those rights, the current draft, like its predecessors, imposes undue restrictions on the exercise of those freedoms. On the whole, it also falls short of international standards of international human rights conventions to which Ethiopia is a party and does not fully reflect the government's commitment to ensuring the exercise and protection of freedom of association as stated by the Prime Minister before the Parliament.

within thirty days from application and such renewal to be valid first for five years and subsequently permanently.

- 4.3. If adopted the current draft would place on the Ministry too many intrusive supervisory responsibilities – responsibilities which would require a much larger staff and financial resources than the government can reasonably be expected to put at its disposal.
- 4.4. In case of NGO dissolution or serious complaint by an NGO, the Proclamation’s current version gives the power of final appellate administrative decision to the Minister of Justice. This is as it should be. However, it undermines the minister’s “ministerial responsibility”, which after all is the hallmark of parliamentary system of government. It does so by providing for the establishment of an investigative committee comprising representatives of other ministries and government agencies to investigate the appeal. If ultimately the power of administrative appellate decision is entrusted to the Minister, it should be left to him to determine and to establish modalities and procedures he deems appropriate for discharging this responsibility.
- 4.5. The current draft, like its predecessors, does not provide for judicial review of the Minister’s final administrative decision in the event of NGO dissolution and serious complaints. The foreclosure of judicial review undermines a basic precept of democracy as underscored in all international human rights conventions and violates, in particular, the right of access to justice and to due process of law.
- 4.6. Finally, the current draft also marks a departure from other regulatory legislation that have been promulgated since the transition and the establishment of the FDRE (e.g. investment, press and labor laws).
- 4.7. The preamble in the first paragraph indicates, without stating it in so many words, that NGOs have an obligation to assist the “government”. As it is well known, the system of government established by the Constitution is a parliamentary system. In such a system, governments often come and go, depending on the outcome of elections and nothing that appears as an obligation to assist the government of the day should be suggested.

Part II

Specific Observations on the Proclamation's Current Draft

2.1. Title

Both in the Amharic and English versions, the title of the Proclamation does not indicate its purpose and scope.

With that in view, it is recommended that the short title be changed to read as follows: This Proclamation may be cited as “Proclamation to Provide for the Registration and Operation of Non Governmental Organizations Proclamation No./2003”

It is further recommended that instead of the restrictive term of non-governmental organization (NGO), the more embracive term “Non-Governmental Organization (NGO)” should be used. In common parlance, NGOs are usually known as membership and non-membership organizations voluntarily formed to promote one or several development purposes. In order to extend the term NGO to embrace associations/organizations which promote human rights, humanitarian principles and good governance, it would be preferable to use the more embracive term Non-governmental organization (NGO).

Most legislation carry captions entitled ‘short title’, ‘definition’, and ‘scope of application’. These are included, however, in the non-operative part and not under chapter headings. The present draft departs from this normal usage and includes them under a chapter heading. It is recommended that this be changed to conform to the usual drafting practice.

2.2. Preamble

It is recommended that the preamble should contain the following elements: (a) the constitutional basis of the Proclamation; (b) statement of the proclamation's purpose of promoting popular and stakeholder participation in the country's development, governance and human rights advancement; (c) the need for enabling citizens' voluntary associations to mobilize and direct their resources to the promotion of those ends; and (d) encouraging cooperation with ‘public authorities’ at all levels of government for the common purpose of promoting development and democracy.

The rationale of the latter recommendation is to avoid any suggestion that NGOs are under compulsion to assist the government of the day. Ours is a parliamentary system and it is presumed that governments come and go depending on election outcomes. Reference in this context to public authorities instead of ‘government’ avoids such an impression.

2.3. Definition (Article 2)

2.3.1. Article 2 (1): Organization

By defining organization as ‘an organization’, a measure of tautology is involved in this definition. It is important that what should be included in this definition are elements that set an NGO apart from other citizens’ voluntary organizations.

It is recommended that in keeping with the Constitution and relevant provisions of the Civil Code the more embracive term ‘association’ rather than the sub-category of association, often called a non-governmental organization (NGO), should be used. This more embracive term conforms to international practice as manifested in major international human rights conventions. (See Paragraph 1 of this section.

It is further recommended that this definition include the following elements:

- (a) That Non-governmental Organization (NGO) is a legal entity established in accordance with the Civil Code provisions as a voluntary, non-profit-making association;
- (b) That its purpose is to promote the welfare of the general public, to render specific services to specific categories or persons, or to promote the advancement of art and science, or of human rights and good governance etc.

2.3.2 Article 2(2)

This provision should be revised to conform to 2(1).

2.3.3 Sub Articles 2(4)-(6)

These sub-articles should be deleted. There is no need to include them in the definition provision, as the terms defined therein are not generic that are repeatedly used throughout the Proclamation but are defined and determined by specific provisions in the Proclamation.

2.3.4 Article 2(8)

It is recommended that this provision should be rephrased to indicate that the definition given therein refers to memorandum of association. The inclusion in the

definition of the phrase “including other related documents” is unnecessary, as those documents are not identified. If it is deemed mandatory that the memorandum of association should include some specific documents, to be attached to the memorandum, those required documents should be specified in the Proclamation’s relevant operative provisions.

2.4. Scope of Application

It is recommended that this provision should take into account the following considerations.

(a) Is the application of the proclamation limited to associations/ organizations, which in their memorandums of association had stated that they would be operating in more than one regional state whether their headquarters are in Addis Ababa or in another regional state? Or is the application limited to those associations/ organizations, which may carry out activities in more than one state? (It is to be recalled that in its original draft, the Proclamation was to apply to those associations/ organizations “conducting activities” in more than one regional state)

It is therefore necessary to clarify whether the Proclamation’s scope of application is to be limited to associations/ organizations, which intend to operate in more than one regional state, irrespective of their headquarters’ location, or to those which actually conduct activities in more than one regional state. If the intent is to refer to the second alternative, one has to reckon with the additional problem of what is meant by “conducting activities” in more than one regional state. Would opening branch offices or organizing from time to time events such as symposiums or short-term training programs fall under this category? If this interpretation of the Proclamation’s application were adopted, it would place almost all NGOs registered by regional states under federal jurisdiction, which might potentially create a constitutional issue regarding federal-state relationship.

(b) One further issue: Is the Proclamation intended to apply in administrative units, which are under federal jurisdiction, i.e., Addis Ababa and Dire Dawa? If it is so intended, it should be so stated. If, however, those self-administering federal territories are excluded on the premise that they can have their own NGO regulatory laws, it should also be indicated.

(c) If “organization” has been defined, as recommended above, it is inappropriate to refer in the definition to only one element, i.e., to its non-profit making nature, while excluding its other elements, among which, for example, are its being a juridical person, or that it is a voluntary association.

2.5. Establishment of An Organization

2.5.1. Article 4: Establishment

2.5.1.1. Article 4(1)

The English and Amharic versions are at variance. The Amharic version stipulates that not more than five persons can establish an organization. If one takes the language of this provision at its face value, it implies that more than five persons cannot establish an organization. On the other hand, the English version stipulates that at least five persons are needed to form an organization/ association. It is thus necessary to reconcile the Amharic and English versions.

Limiting the minimum number of founding members of an association to five raises a constitutional question. Its effect is to deny the constitutional right of less than five citizens to form an association. Furthermore, the rationale and the intent of limiting the minimum number to five are not clear. It violates the Constitution as well as international conventions to which Ethiopia is a party. It also contravenes the Civil Code (Article 404).

In accordance with the definition of “person” in the draft, this provision would allow five or more juridical persons to form an association/organization. If the drafters’ intent is to permit juridical persons to found an association, it should be so indicated, the more so because it would mark a departure from the earlier practice of not allowing juridical persons to form associations.

2.5.1.2. Article 4(2)

It appears that this provision is intended to indicate the types of services that NGOs are expected to render. However, it is not clear whether the enumeration is illustrative or exhaustive. For example, it is not clear whether or not the promotion of culture, science and technology or the protection of environment, is included. It is therefore recommended that, instead of indicating services that NGOs are expected to render, reference should be made to their objectives framed in generic terms.

2.5.2. Memorandum of Association (Article 5)

2.5.2.1. Article 5(1) and (2)

These sub-articles should be reframed to include the following language:

- (a) “An NGO shall be established by a memorandum of association agreed to by its founders;”
- (b) “The memorandum shall indicate the name of the NGO, its objective and the location of its office. However, if at the time of its formation the NGO has not acquired a headquarter premise, it may designate the domicile of one of its founders as a temporary headquarter on the condition that it will notify the Ministry the location of its headquarters within six months of the signing of the memorandum.”

2.5.2.1. Article 5(3)

The purpose of this article is not clear. It is only after registration that an NGO will acquire legal personality and that its founders will be able to enter into dealings with third parties in its name. As drafted this provision is misleading because it suggests that even before registration the NGO will be considered as a juridical person as regards third parties. It is recommended that this provision be deleted to avoid any such erroneous suggestion.

2.5.2.1. Article 5(4)

This sub-article should not be located here. If, from the point of policy, its inclusion is found to be compelling, it should be included in the part dealing with powers of the Board.

However, strictly from a legal point of view, no useful purpose will be served by including this provision in the Proclamation. The memorandum of association of an NGO will, upon registration, be deposited at the Ministry of Justice and will be accessible to the public. Third parties should therefore be presumed to know about the contents of the memorandum of association, including the restriction of the powers of Board members.

2.5.3. Registration

2.5.3.1. Article 6(1)

Both the Amharic and the English versions are not well drafted. The English version says “No organization” whereas the reference should specifically be to an association applying for registration. The Amharic version says “manachewm dirijit” and provides likewise no specific reference.

The blanket prohibition of activities cannot be legally justified, because it may also be interpreted to prohibit founders from getting together to raise funds or to look for premises or interviewing potential staff recruits before registration. What this sub-article ought to prohibit should be founders undertaking, in the name of the association, any action that might affect the rights of third parties, such as entering into a contract with third parties or opening a bank account in the name of the association/organization.

2.5.3.2. Article 6(2)

The rationale used in the analysis of 6(1) equally applies to this provision. The language used in this sub-article is misleading because it implies that an organization may appoint an agent even before acquiring legal personality.

2.5.3.3. Article 6(3)

Its intent both in the Amharic and English versions is not clear. Properties acquired by the founders before their application for registration is rejected cannot become the organization's property because the latter can only come into existence after it has gained legal personality by virtue of registration. The properties in question are either the founders' properties or of those who might have pledged to give money to the association. Unless the founders have defrauded the public or third parties by misrepresenting that they were registered as a legal entity, there is no justification for government intervention, let alone to assume custody or ownership of those properties.

2.5.4. Article 7: Application for Registration

2.5.4.1. Article 7(1)

This article should be reframed as follows: "Application for registration of an NGO shall be duly signed by the founders and submitted to the Ministry in a form prepared by the Ministry for that purpose." The reference to "a person duly authorized" under this sub-article may not be sufficient and should therefore be deleted.

2.5.4.2. Article 7(2)

There is no compelling need for the Council of Ministers to issue regulations on what should be included in the application form, as this can be determined by the Ministry's directive.

2.5.4.3. Article 7(3)

This sub-article is clearly unnecessary and should therefore be deleted.

2.5.5. Article 8: Recommendation

The intent of Article 8 is far from clear. Article 31 of the FDRE Constitution stipulates that citizens have the right to create associations so long as their purposes are lawful. There is therefore no presumptive need for requesting recommendations from other “organs of government” before registering an association.

Whether or not the purposes for which the founders wish to form an association are lawful can be deduced *prima facie* from the content of the memorandum of association. If an association, contrary to what its founders have stated in its memorandum, engages in unlawful activities, the association itself and those responsible for its direction can be held accountable for any violation of laws. However, such accountability is after, and not before those violations have occurred. Under rare circumstances, the Ministry may find it necessary to determine whether all or some of the founders of the association have criminal convictions that might restrict their civil rights, in particular their right of association. In such cases, what is expected at the utmost from the Ministry is to ascertain from the relevant government agency if any of them have a record of criminal convictions. Furthermore, since all applications are made under oath, founders may be held accountable for perjury if they conceal information pertaining to such criminal convictions.

2.5.6. Article 9: Certificate of Registration

As stated in Paragraph 2.1 above, a democratic government has the obligation to proactively facilitate the exercise of freedom of association. And to that end it has to cut off bureaucratic red tape and cumbersome and time-consuming registration process. As observed in connection with Article 8 above, the purposes of an association are expressed in its memorandum, which is submitted under oath. It is improbable if not inconceivable that founders who would want to promote unlawful activities will apply for registration. The Ministry’s clearance should be limited to ascertaining whether the founders as a whole or anyone of them have a record of conviction which limits the exercise of their civil rights, particularly the freedom of association.

Under sub-article 3, this article provides that the Ministry’s examination for registration should ascertain whether the association’s purposes “are not against national unity or public interest”. Such a requirement gives rise to the following constitutional issues:

- (a) What is meant by “ public interest”? In any democratic society, public interest is a highly contested concept, and it cannot be left to a government agency to decide what constitutes public interest. In most democratic societies, legislatures determine what constitutes public interest from time to

time and in specific contexts, in legislation they pass. And such determinations are often not permanent and are likely to change depending on election outcomes.

- (b) It is improbable that founders seeking the registration of an association will state in their memorandum aims and objectives that are contrary to law or are likely to disrupt “national unity”, for example, by setting one ethnic group against the other, or by resorting to terrorist activities. If however founders undertake such illegal activities after the association’s registration, they will of course be held accountable under the Penal Code. But to insert in this legislation the concept of “national unity” in a broad and undefined sense might interfere with citizens’ right of association and freedom of speech. It brings, for example, the question whether the asserting of rights by national communities or articulating grievances or even advocating their secession can be considered as activities against national unity. As it is well known, the FDRE Constitution permits the promotion and advocacy of the rights of national communities, including their right to secession. What the Constitution and other laws of the country ought to prohibit should be resorting to the use of force in the furtherance of those goals. A better solution in this respect is to replace “activities against national unity” by “activities that violate the constitution”

There is no need to determine by this Proclamation or by a subsequent regulation the time required for registration. Instead of making it an almost automatic grant, this provision will have the effect of making the time required indefinite and much longer than necessary.

Finally, since associations are required to submit annual reports of their activities, there is no compelling need to require renewal of registration every 3 years so long as they continue to operate in accordance with this Proclamation and other relevant laws. Such requirement would create an unnecessary bureaucratic burden on the Ministry’s registration office as well as on the associations.

2.5.7. Renewal of Registration (Article 10)

The considerations set forth above in connection with Article 9 make all provisions of this article unnecessary.

2.5.8. Article 11: Merger of NGOs

Sub-article 1 of this provision provides for the merger of two or more associations when their respective “general assemblies” decide. This may be appropriate for general membership associations, but, in order to accommodate the merger of associations directed by boards, an additional reference to the decision of the respective boards of the merging associations should be included.

2.5.9. Article 12: Division

2.5.9.1. Article 12(1)

The observations set forth above regarding Article 11(1) equally apply to this provision.

2.5.9.2. Article 12(2)

The division of rights and obligations between or among the ensuing entities will have to be decided by the general assemblies or the Boards of the pre-existing associations and not by agreements among the entities that resulted from their division.

2.5.10. Conversion (Article 13)

2.5.10.1. Article 13(1)

The Amharic and English versions of this sub-article are at variance and they need to be reconciled.

2.5.10.2. Article 13(2)

The regulation or directive to be issued pursuant to this provision should clearly determine how the structures of the entity ensuing from the conversion should fall under the requirements of this proclamation, rather than, as stated in the provision’s language, merely setting the ‘particulars of conversion’.

2.5.10.3. Article 14

The observations and considerations set forth in Paragraph 2.4 on the scope of application of this proclamation equally apply to this article.

2.6. Members of An Organization

2.6.1. Article 15: Membership

An association’s membership requirements are normally determined by its memorandum or by its general assembly or its board. What can be provided for in this article is that there should not be discrimination on any ground (as defined under the constitution and relevant human rights conventions) in the admission of members to the organization.

2.6.2. Article 16: Membership Rights

With respect to Article 16(2), the following observations are offered:

- (a) The reference to endowments under Article 70 should be deleted because endowments are not membership organizations.
- (b) Membership in an association established in accordance with this Proclamation is voluntary. Such voluntary membership rights cannot obviously be transferred to heirs.
- (c) Juridical persons, including associations, are permitted under Article 15 to be members in an association. If an NGO, which is a member in another association, is itself divided into two or more entities, its membership rights should be transferred to the ensuing entities in accordance with the decision of its highest decision-making organ. An exception should therefore be made to Article 12(2) to accommodate this kind of transfer of rights and obligations.

2.6.3. Article 17: Duties of Members

This article relates to matters that fall within an association's internal governance and there is no need to include it as formulated therein.

If and when a member of an association is denied his membership rights in contravention of the memorandum of association or other laws of the country, he has the right to seek administrative and ultimately judicial redress. This right is already recognized in Article 21.

2.6.4. Article 18: Termination of Membership

This article relates to matters that fall within the internal governance of each association and has no place in this Proclamation.

2.7. Organizational Structure

There should be an introductory provision, which provides that an NGO may be organized as a membership-led or a board-directed association.

2.7.1. Organization Led by General Assembly

2.7.1.1. Article 20: Powers and Duties of the General Assembly

The entire article should be deleted, as all the provisions contained therein are matters that relate to an association's internal governance and need not be provided for by this Proclamation.

If the Ministry wishes to provide proactive assistance to individuals who want to establish an association, it can draft a model memorandum of association in which all elements contained in Article 20 and others are included and recommend them to be followed. It should be realized in this respect that a one-fits-all model should not be

imposed, as associations, depending on their missions and services they intend to provide, may wish to adopt different or additional structures. For example, an association whose objective is the preservation and protection of the environment may have a scientific advisory committee whose recommendations may have equal weight to those of the general assembly or a board.

2.7.1.2. Article 21: Objections to the Resolutions of the General Assembly

This Article provides that a member of an association can seek judicial redress if he believes that a general assembly decision contravenes this proclamation, other laws or the NGO's memorandum of association.

Three observations are called for regarding this provision: (a) there must be an indication of the gravity of the infractions; (b) there must be a prior requirement of administrative redress; and (c) judicial recourse should not be used to harass an association and a complainant should be held accountable for knowingly presenting false charges.

It should be noted in this connection that, whereas no provision exists for an association to seek judicial appeal from a decision of the minister in the event of denial of registration or dissolution, or when a major complaint is thrown out arbitrarily, an unqualified judicial recourse is provided for a member of an association who challenges the decisions of his association's highest decision-making body, even when the decision does not affect his membership rights.

2.7.1.3. Article 22: Meetings

The considerations set forth above regarding Article 20 equally apply to this article.

What should be provided in this article are rules concerning what should be done when the chairperson of an association's assembly fails to call a meeting requested by one-third of the membership. While the provisions of sub articles (2) and (3) should be accepted, the authority to order the convocation of meetings and the designation of the chairperson should be entrusted to the court rather than to the Minister, the more so because no role has been entrusted to the Minister in Article 21 to look into complaints that may be made by members of an association.

2.7.1.4. Article 23: Agreement in Writing

What objective this article is supposed to serve is not clear, the more so since what constitutes "*force majeure*" is not defined or described. Does *force majeure* refer to major disaster, and if it does, is there a possibility of collecting members' signatures as this article envisages, or is the reference to a political emergency which has imposed travel

restrictions or restrictions on associations to hold meetings? This article's implications should therefore be thought through.

2.7.1.5. Article 24: Powers and Duties of the Executive Committee

This article's provisions relate to an association's internal governance, which is normally provided for in its memorandum of association. The considerations set out in Paragraph 2.6.1.1. apply equally to this article. The Ministry can be very helpful by developing a model memorandum of association, which, while allowing some measure of flexibility, can be recommended to all applicants.

2.7.1.6. Article 25: Term of Office

Article 25 (2) should be deleted. What is stated therein should be left to the discretion of the association's general assembly. Since most such associations are voluntary organizations, and their executive committee members are also volunteers who are not normally compensated, they should be free to choose those whom they feel have the ability and the volunteerism needed to serve them best.

2.7.1.7. Article 26: Members of the Executive Committee

It should be noted that the language of this provision is unclear. What is meant, for example, by "when executive committee members fail to carry out their activities"? Does this refer to the failure of one or two members to attend meetings, or to their death or incapacity? The additional requirement of "where their number is less than half" is also unclear. If such a situation arises, couldn't the association elect new members in the place of those who could no longer continue their membership in the committee? Some memorandums of association provide for the election of alternative executive committee/board members who would serve when an elected member resigns or a vacancy is caused by death or incapacity.

2.7.1.8. Article 27: Suspension of Voting Rights

What this article aims to achieve is not clear. In any democratic assembly, executive committee members not only have the right to vote in general assembly meetings on matters they have voted in the executive committee meetings but it is also incumbent upon them to explain their positions and persuade general assembly members to vote as they have voted. The stipulation herein contained is thus against general democratic practice.

What this article should provide for is that, be it in the executive committee or in the general assembly, members should refrain from voting when they believe that a conflict of interest is involved or even to avoid such an appearance. Such judgment should normally left to each member's discretion and conscience.

2.7.1.9. Article 28: Powers and Duties of the Manager

All the provisions of this article relate to an association's internal governance that are normally included in the memorandum of association or in staff rules and regulations approved by the general assembly.

The considerations set forth in Paragraph 2.6.1.1 equally apply to this article.

2.7.1.10. Article 29: Period of Transition

Membership associations acquire legal personality on the basis of Memorandums of association signed by the entire membership at the time of submission. Once a membership association is registered, it can accept new members in accordance with its memorandum of association.

Also in the case of a board-led association, the NGO obtains legal personality on the basis of its memorandum of association signed by the founders. And it is expected that the founders will have agreed on who will serve in the board at the time of registration.

In both cases therefore there is no possibility of an interregnum between registration and the acquisition of legal personality in which the founders fully assume the responsibility of the general assembly or of the board. It seems that the interim arrangements envisaged in this article normally exist in the formation of companies by public subscription. There is therefore no need for similar arrangements for associations that would be established in accordance with the present Proclamation.

2.7.2. Organizations Led by Board

2.7.2.1. Article 31: Powers and Responsibilities of the Board

This article's provisions relate to the internal governance of a board-directed association. These and other functions and responsibilities of the board are normally determined by the association's memorandum and its staff rules and regulations.

Considerations set forth in Paragraph 2.6.1.1. equally apply here.

2.7.2.2. Article 32: Rights and Obligations

Please refer to considerations set forth in Paragraph 2.6.1.7 as they also apply equally to board members.

(a)Article 32(2)

Prohibiting a board member of an association from serving in more than three associations at the same time does not serve any useful policy purpose. It could also be interpreted as limiting an individual's right of association.

It should be realized that persons who are elected to serve on an association's board are volunteers who work without compensation. If the volunteer has the time and the commitment to serve in several boards, no restriction should be placed on his service.

(b) Article 32(3)

This provision raises the question as to who determines whether a board member of an organization has “discharged” his obligations presumably in two or more associations. One would assume and expect that the Ministry does not want to be involved in judging whether a board member has discharged his responsibilities and such a judgment should be left to the individual concerned.

2.7.2.3. Article 33: Powers of the Manager

Reference is wrongly made in this article to Article 31. If reference is to be made at all, it should be to Article 28.

The powers of a board-led association's manager should be stipulated in its memorandum of association and in staff rules and regulations. There is thus no compelling need to provide for the powers and responsibilities of the manager in the present Proclamation.

2.7.3. Foreign Organizations

2.7.3.1. Article 34: Registration

The following widely accepted international legal principles and practice should underpin this article: (a) a foreign association is a juridical person under the laws of the country where it is registered; (b) if the association is registered and permitted to operate in Ethiopia, with respect to all its activities in Ethiopia it falls under Ethiopian jurisdiction and laws; and (c) dual nationality of an NGO is not normally allowed in international legal practice.

Article 14(3) fudges the above principles. It stipulates at the same time that a registered foreign organization shall be considered as “an Ethiopian organization established under Ethiopian law” and that the nationality conferred to it in the country on formation shall be recognized under Ethiopian law.” Read together, would these stipulations mean that the registered foreign association will be required in accordance with this Proclamation and other laws of the country to have a board and membership, or that it will be allowed to simply operate as a branch of the parent association, the governance of which is determined by its highest decision making body? The formulation of this sub-article thus creates an ambiguity that is likely to give rise to serious controversies.

2.7.3.2. Article 35: Management of Foreign Organizations

Most of what is provided under this article cannot be included unless the ambiguity referred to in Article 34 is resolved.

2.7.3.3. Article 36: Relation with Local NGOs

Such a responsibility cannot be imposed as a legal obligation. The Ministry may encourage foreign organizations as a matter of policy to work with local organizations and where appropriate to help them build their capacity.

2.8. Rights and Obligations of the Organization

2.8.1. Article 37

Since this article refers to the effect of an association's registration as a juridical person in accordance with this proclamation, it should, if at all needed, be transposed to the Proclamation's part on registration.

2.8.2. Article 38(2): Name

The name of a juridical person should, in addition to administrative protection, also enjoy judicial protection.

2.8.3. Article 39: Capacity

This article refers to the effects of the acquisition of legal personality as the result of registration. It should therefore be transposed together with the provisions of Article 37 to the Section dealing with registration.

2.8.4. Article 40: Extra-contractual Liability

All juridical persons come under the Civil Code relating to extra-contractual liability and unlawful enrichment. There is therefore no compelling need to include this article in this Proclamation.

If needed at all, this article should be transposed to the section dealing with registration of associations as it relates to the effect of registration of an association as a juridical person.

2.8.5. Article 41: Properties of the Organization

The intent of this article's two provisions is not clear. Equipment and vehicles put at the disposal of a community or beneficiaries are to be treated in accordance with the project agreement and an association's right to use its other equipment and vehicles wherever it wishes to use them should not be restricted. No compelling reason is obvious for retaining this article in this proclamation and it should therefore be deleted.

2.9. Supervision and Report

Articles 42 to 53 determine the Ministry's relationships with NGOs. Read together, these articles constitute the raison d'être of this Proclamation and they have for this reason to be scrutinized in terms of the policy and legal underpinnings set out in the foregoing parts of this memorandum.

In terms of policy the following should be recalled:

- (a) A democratic government such as ours has the obligation to Proactively facilitate the exercise of freedom of association;*
- (b) To that end, it has to create an enabling environment by making the registration of associations as simple as possible to the point of making it an automatic process; and NGOs'*

reporting obligations and license renewal should not be bureaucratic and time consuming;

- (c) Under the Proclamation, the Ministry's responsibility should be limited to oversight and regulation rather than extend it to control, and to accomplish this task, the Ministry's registration office should be endowed with the requisite professional and administrative staff;*
- (d) In discharging this responsibility the Ministry should be guided by the objective of protecting the rights of third parties and beneficiaries;*
- (e) Laws regulating NGOs should approach their objective from the premise of non-regulation and encouraging self-regulation.*

In terms of legal principles the following should underpin the Proclamation:

- a) NGOs should be free to operate in an environment that assumes that they are operating lawfully;*
- b) Regulatory constraint should come only into force after they have violated the law and should therefore be punitive rather than overly regulatory or preventive before the facts;*
- c) NGOs should have the same rights, privileges, powers and immunities generally applicable to legal persons; and the same*

should apply with respect to civil and criminal law prohibitions and sanctions;

d) The Ministry's decision not to register or terminate the registration of an association should be appealable administratively and, finally, to an independent court.

The provisions of each article are assessed against the standards outlined above.

2.9.1. Article 42: Powers and Duties of the Ministry

Article 42(1) stipulates that the Ministry “shall follow up, evaluate and supervise work accomplishments of any organization; and take necessary measures;”

As now framed, the powers that this provision gives to the Ministry are so broad and sweeping that they allow the Ministry to intrude into all aspects of an association's management thereby destroying all semblance of its autonomy. For example what is meant “follow up” and “supervise” and “evaluate work accomplishments” of associations? Do these powers imply that the Ministry can send its own personnel to each association to ascertain what it is doing or to evaluate its activities and pass judgments? Or is the Ministry to exercise the functions those powers give it by examining an association's annual reports or by undertaking unannounced periodic forays?

None of those powers can be said to be regulatory or are calculated to proactively provide an enabling legal framework for exercising freedom of association. On the contrary, if implemented, they would constrain the exercise of this freedom by imposing unbounded intrusive governmental intrusion. One is also justified to ask whether the Ministry would have the requisite professional and administrative staff and financial resources to enable it exercise that kind of ongoing, close supervision, inspection, and evaluation.

It is recommended that Article 42 should be reframed to reflect the policy and legal considerations set forth above.

2.9.2. Article 43: Reporting

Article 43(1) refers to the balance sheet of the association, as if it were a business organization. Such report should be limited to an account of the association's income and expenditure and what is provided in sub-article 2 of this article is sufficient for that purpose.

An association is expected to submit reports to its donors in the event that it is an implementer of a project in accordance with the project agreement. It should not be required by the Ministry to also submit report to any organ of government which has given it recommendations or to other organs the Ministry might designate. The Ministry can always circulate the association's report to any organ that it deems appropriate.

2.9.3. Article 45: Opening Bank Accounts

The Ministry receives annual audit reports and it can always ascertain from those reports what accounts the association holds. How each association keeps its funds—whether it has one account or several accounts if required by donors or for purposes of keeping track of the expenses of separate projects is an internal management problem and there is no compelling need for imposing such obligation. What this article aims to accomplish is therefore not clear.

2.9.4. Article 46: Investigation of an Organization

The provisions therein relate to the powers of the Ministry as provided for in Article 42 and they thus constitute significant additions to those powers.

This article also raises an additional constitutional principle, i.e., the right of citizens to due process of law protected by the Constitution. Apart from those considerations, the article suffers from serious drafting defect.

Sub-article 1 provides that the Ministry upon request of half or 10 percent of an association's membership can order, "any activity of the organization to be audited." First, it has to be either half or 10 percent of the membership—and not both. Second, it is not clear what it to be audited: the association's financial records, or any and all matters pertaining to the association's management? This lack of specificity gives the Ministry an unbounded power of intrusion.

Sub-article 2 does not seem to be organically linked to the preceding provision. Is the Ministry to suspend "an elected or employed personnel" as a result of investigation provided for by sub-article 1 or is it as a result of a separate investigation initiated by it? If what is involved is the first alternative, it should be so stated. If, on the other

hand, what is intended to refer to is the second alternative, it raises the question of defining a probable cause that would justify the Ministry initiating an investigation.

These sub-articles deal both with the suspension of an association's personnel as well as the association itself. A better drafting alternative would be to separate the two. First, the suspension of personnel should be made contingent upon the degree of gravity of the legal infractions, and the rights to due process of law of those who face investigation should be protected. Second, an association need not necessarily be suspended on account of legal infractions committed by one or more of its staff or officers; the association can continue after some of its personnel or officials are removed as a result of such an investigation. Sub-articles 3 and 4 provide for such continuation of an association, which implies that there is no need for a suspension provision.

2.9.5. Article 47: Inspectors and Auditors

The following observations are called for: (a) In order to justify the Ministry to undertake investigations, sudden or otherwise, there must be a sufficient probable cause; and (b) the elements of such a sufficient probable cause should be laid down in the Proclamation.

Without such guarantees, the Ministry will be given an unbounded power that contains a potential for abuse.

2.10. Dissolution and Cancellation

It should be accepted in principle that, in addition to members having the right to dissolve their own association, the Ministry can have the power of dissolution under certain specific circumstances. However, those circumstances should be clearly stated. As framed, the article suffers from serious lack of precision.

Sub-article 1 of Article 48(1) for example permits dissolution by the Ministry if the association "carries out activities not related to those for which it is established or mentioned in its memorandum." How is the degree of unrelatedness to be determined? Why can't the association continue to operate if those activities are not unlawful? Couldn't the Ministry in those cases simply require the concerned association to amend its memorandum of association rather than dissolve it?

Sub articles 2 and 3 of Article 48(1) raise the question of gravity of infraction of the Proclamation or criminal offences committed by the association's officials.

2.10.1. Article 49: Suspension

It is not very clear how the suspension of an association is related to Article 48, to which reference is made under Article 49(1). It has already been observed that if Article 46 is read as a whole no suspension of the organization would occur since the Ministry would have immediately conducted a new election or would have appointed a provisional board to allow the continuation of the association. However, this article provides the suspension of the association's permit for not more than three months before canceling it in accordance with Article 48. Why is a transitional period of three months needed when, as earlier indicated, the law provides for the uninterrupted continuation of the association? If the intent of this provision is to provide a time limit for the Ministry to conduct election or appoint a new board, that should be stated under Article 46.

Further to the observations made on Articles 42 to 53 and specifically with respect to Articles 48 and 49 of the Proclamation which deal with suspension and dissolution respectively, the following redrafting of those articles is suggested to reflect the rationales underlying the observations.

Article 48: Suspension and Dissolution

- (1) The Minister shall take the following sanction measures against an Organization which violates Articles 43 and 44 of this Proclamation: give it in writing warning, or, depending on the gravity of the violations, reprimand, or impose fines which shall not in any event exceed two thousand Birr.
- (2) If, despite the measures taken under (1) above the organization persists in its violations or fails to respond to the Minister's directive to comply, the Minister may suspend the Organization in accordance with Sub-article (4) below.
- (3) The Minister may also suspend an Organization:
 - (a) If in the examination of its annual reports or audited financial statements or information revealed by the media or complaints made by its members, there is sufficient evidence that the Organization has committed grave criminal offences as defined under Article 107 of the Penal Code; or
 - (b) If the Organization, in addition to suspending or expelling its Executive Committee or Board members or employees when it has reason to believe that they have committed criminal offence in connection with the Organization's activities, fails to initiate criminal proceedings against them where the offence is punishable upon complaint.

- (4) The Minister shall, within 48 hours from his decision to suspend the Organization, submit to the Federal High Court a request to dissolve the Organization or to approve a proposal for the appointment of a provisional Board or an Executive Committee until new Board or Executive Committee members are elected in accordance with Article 46(4) of this Proclamation.
- (5) If the Minister's proposal for the appointment of provisional Board or Executive Committee members is approved by the Federal High Court, a provisional Board or an Executive Committee shall be established in accordance with Article 46(4) of this Proclamation.
- (6) If the Federal High Court approves the Minister's request for dissolution, the Organization shall be dissolved and its assets liquidated in accordance with Article 50 of this Proclamation.

2.10.2. Article 50: Liquidation of Accounts

It would suffice to provide under this provision that liquidation would be undertaken in accordance with the relevant provisions of the Civil Code dealing with liquidation of associations.

2.10.2.1. Article 50(3)

The intent of this provision is not clear. If an association is in the process of liquidation, it cannot hold meetings unrelated to the liquidation process.

2.10.3. Article 52: Powers and Duties of a Liquidator

Determination of precedence of payment to third parties should not be left to the liquidator under Article 52(1)(1). It is recommended that the relevant provisions of the Commercial Code should be replicated and included therein.

2.11. Rights and Interests

2.11.1. Article 55: Income Generating Activities

The fact that the draft Proclamation recognizes the need and provides for an association to engage in income generating activities with a view to ploughing back the income generated to expand the activities envisaged in its memorandum of association is commendable and a welcomed change. However, in order to avoid abuse and market distortions, the practice in this regard of many countries is to limit the amount of income that can be generated by such activities. Normally the amount permitted does not exceed one-third of the total income of the concerned association. It is recommended that the amount permitted should be fixed after wide consultation with NGOs.

The extent of application of Article 55(3) is undefined—is it limited to tax laws, or does it extend to the specific requirements of the Commercial Code such as the requirement to register as a trader and others?

2.11.2. Article 56: Income Tax

It should be noted that what is provided for under this article is a welcome change to the existing laws and practice.

2.11.3. Article 58: Rights of Beneficiaries

2.11.3.1. Article 58(1)

Upon an association's registration, its memorandum of association should be deposited at the Ministry of Justice and should be open for public access. Likewise its audit reports should be kept open for public reference.

2.11.3.2. Article 58(2)

NGOs should be encouraged to enlist the participation of the public, and where appropriate of specific beneficiaries when they are engaged in development activities. This objective should be pursued as a matter of policy rather than being imposed as an obligation.

2.12. Appeal

2.12.1. Article 59

It is particularly relevant to recall that recourse to judicial appeal from an administrative decision is one of the basic precepts of democracy. (Please refer to Paragraphs 4.4. and 4.5. of Part I on this point).

2.12.2. Investigating Committee (Articles 60-63)

The procedures and the mode of consultation provided for under Articles 60-63 are likely to constitute a cumbersome and time-consuming process, which undermines the Ministry's obligation to proactively facilitate the exercise of the freedom of association. Please refer to Paragraphs 4.4 and 4.5 of Part I for detailed observations on the investigating committee.

2.13. Advisory Board (Articles 64-67)

There is no compelling need to establish a permanent advisory structure, which comprises high level officials of different ministries. While it may be useful for the Ministry to evaluate periodically the operational experiences of NGOs in order to distill instructive lessons that may help to improve the overall policy and legal environment in which they operate, this objective can best be accomplished by empowering the Minister to create periodic advisory groups that could undertake studies and make recommendations.

2.14. Miscellaneous

2.14.1. Article 68

The language of the English version of sub articles 1 and 2 is defective and requires improvement.

There is no need under Article 68(3) to require the designation and the functions of the auditor to be determined by a regulation. At the most, the Minister's directive could be sufficient for that.

2.14.2. Article 69 (Prohibitions on Persons Related by consanguinity or Affinity from Membership in NGO Boards)

It should be noted in connection with this article that Board or Executive Committee members of NGOs are volunteers who are not normally compensated. In addition, close relatives or members of a family may establish an NGO by committing part of their property or money for its operation. Since it would be improper to prohibit relatives by affinity or consanguinity from working as auditors, Executive Committee or Board members of an NGO, this article should be deleted.

2.14.3. Article 74: Penalties

2.14.3.1. Article 74(1)

The formulation of this provision is so broad to include all cases of infraction of this Proclamation, which may not necessarily constitute criminal offence. It is thus necessary to make for penalty purposes specific references to the provisions of the Penal Code on specific crimes such as perjury, breach of trust, embezzlement of funds and the like. In addition to that, the Ministry could give warnings or impose reasonable fines prescribed by a directive or a regulation for minor contraventions of this Proclamation such as failure to meet reporting date or to communicate information.

2.14.3.2. Article 74(2)

It is a breach of fundamental legal principles and unconscionable to require the imposition of severe and more onerous penalty than what is prescribed for similar Penal Code violations. For example, a government official who may commit similar crimes is not subjected to penalties comparable to those prescribed under this Article. Why is it necessary to prescribe the penalties envisaged in this draft Proclamation? (the special criminal law adopted by the Derg regime, which had provided for penalties that are more onerous than those prescribed by the Penal Code, is presumably repealed because of its incompatibility with the present Constitution which provides for equal treatment of citizens under the law).