

Civil Society and Freedom of Association Threatened?

A Critical Examination of Ethiopian Charities and Societies Law



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A Critical Examination of Ethiopian Charities and Societies
Law

Submitted by

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(Submitted in partial fulfillment of the requirement of Degree of Master of Philosophy in
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Acronyms

AI	Amnesty International
ACHPR	African Charter on Human and Peoples Rights
CSO	Civil Society Organization
CSP	Charities and Societies Proclamation 621/2009
CSR	Charities and Societies Regulation 168/2009
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EPRDF	Ethiopian Peoples Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
HRC	Human Rights Committee
HRW	Human Rights Watch
UDHR	Universal Declaration of Human Rights

1 Introduction

1.1 Background of the Study

Civil society is the totality of voluntary civic and social organizations that constitute the basis of a functioning society different from the state, the market and the family.¹ Civil society has been thriving in different forms and for diversified functions for long period. Gradually, its influence in society has grown large thereby competing, challenging and supplanting governments including in areas and services used to be government functions.²

In Ethiopia, civil society in its present form is a recent phenomenon though traditional and religious associations existed for long time. The sector has been largely limited to relief operations. It however underwent important transformation since the relative liberalization in the 1990s.³ The incorporation of civil and political rights in the country's 1995 Constitution and the ratification of important human rights instruments paved the way for the development. Article 31 of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) recognized the freedom of association while article 9 made international human rights instruments part of the law of the land. As a result, the voluntary sector mushroomed including international NGOs and transformed its intervention areas to development and rights advocacy.⁴ According to Ad-hoc CSO/NGO Task Force study, from about few hundred registered CSOs in 1990s it reached 2,305 by 2007 at the federal level alone.⁵ The growth of local CSOs was fast accounting 75% of CSOs. It also evolved and strengthened in membership and income, internal organization, network and role in the overall development of the nation. Between 2004 and 2008, the total NGO transfers amounted to around 2 billion USD, the annual breakdown greater than earnings from, coffee-first export item, allowing them to allocate huge budget for sustainable development

¹ Davi (2006) p.5

² Dekker (2005) p.256.

³ *Civil Societies at the Cross Roads: Prospects and Challenges in Ethiopia* (2008) p. vii.

⁴ *Ibid.*

⁵ Rahmato, Bantirgu and Endeshaw (2008) p.5. See same for the contribution of CSOs in the country.

activities.⁶ The transfers increased after the 2005 national election where donors choose to channel assistance through NGOs than through direct government aid.⁷ In addition, the partnership with international NGOs and Agencies boasted their human capability to engage actively in human rights promotion and policy advocacy programs.⁸

Nonetheless, CSOs have had little role to influence the promotion and protection of human rights and the democratization process in the country.⁹ But this was about to change. The ever-open and promising political atmosphere in the 2005 national election enabled CSOs to unleash its potential: CSOs were active in voters' education, arranging political debates, election observation and representation of candidates before court of law.¹⁰ Regrettably, the active role CSOs played during this period has not gone well with the Government and seems to cause a series of setback measures.¹¹ Besides the initial ban of CSOs coalitions to observe the election, prominent CSOs leaders were jailed after the election.¹² The largest CSOs umbrella organization, CRDA was told to redefine its objectives to get its license renewed, and Ethiopian Lawyers Association was dismissed as having no legal existence.¹³ Soon after the draft Charities and Societies Proclamation was introduced and enacted in to law, the Charities and Societies Proclamation (CSP or Proclamation No. 621/2009).

The law caused a flare of criticism from CSOs and international community as being contradictory to the country's human rights commitments.¹⁴ Some argue that the CSP law is a culmination of the unhealthy moves by the government towards independent CSOs. The Government does not consider CSOs/NGOs as partner or helpful in the development process of the country.¹⁵ Said to be modeled after Singapore's Societies law, the law puts a

⁶ *Ibid.*

⁷ Carmody (2007) p.148

⁸ Rahmato, Bantirgu and Endeshaw (2008) p.5.

⁹ Milkias (2006). For the development of civil society in the country see Assefa and Zewde (eds.) (2008)

¹⁰ Teshome (2009) p. 80.

¹¹ The Observatory for the Protection of Human Rights Defenders, Ethiopia: Human Rights Defenders under Pressure (2005) p.2.

¹² US State Department 2008 Country Report on Human Rights Practices – Ethiopia, (26 Feb 2009).

¹³ Aalen and Trovoll (2009) pp.17-18.

¹⁴ US Department of State, *2009 Human Rights Reports: Ethiopia* (March 11, 2010). HRW's Analysis of Ethiopian Draft Civil Society Law (2008). Amnesty International's Comments on Ethiopian Charities and Societies Proclamation (2008). Amnesty International: Ethiopia, Submission to the UN Universal Periodic Review (13 April 2009) p.3

¹⁵ In a debate on civil society in 2004 a government official declared that CSOs/NGOS have no or little contribution for development.

number of measures to control the activities of CSOs in the country. Some of the measures seem to restrict individuals' rights to freely form and participate in civil society organizations and actively participate in the socio-economic and political process of the country.

In this research, I will try to show the major pitfalls of the Charities and Societies law that contravenes international and national human rights instruments that guarantee freedom of association and other basic freedoms that are basis for individuals to associate and pursue a shared goal by forming civil society organizations.

1.2 Statement of the Problem

With the enactment of the Charities and Societies law the relative developments in the voluntary sector seems to have met a nip-in-the-bud as it effectively bars the majority of local and international CSOs from engagement in human rights promotion, sustainable development advocacy and strengthening of democracy.¹⁶ The law not only puts activism and mobilization beyond the reach of CSOs but also threatens the very existence of CSOs in the country by controlling and limiting their income source. It also makes functioning of an independent civil CSO a far cry.

One of the main criteria the Charities and Societies Law uses to prohibit CSOs to promote human rights, democracy and peace is the amount of money obtained from abroad by CSOs to run their activities.¹⁷ If they receive more than *ten percent* of their income from abroad, CSOs cannot participate in the above activities and are not recognized as Ethiopian CSO rather as "Ethiopian residents" or "foreign" CSOs.

In addition, to continue work, CSOs must undergo an arduous procedure of re-registration by fulfilling the hefty requirements of the law. It is now a fact that hundreds of civil society organizations were unable to re-register. Even those civil society organizations that manage to get license will be subjected to continuous and intrusive control mechanisms violation of which entails serious penalty on personnel and severe consequences on the association including extra-judicial dissolution without being able to appeal to a court.

¹⁶ Proclamation No. 621/2009 arts. 2 and 14(5).

¹⁷ *Ibid.*

These and many other measures under the law beg the question of compatibility with human rights standards. In this thesis attempt will be made to address this issue and the following particular questions:

- 1) Whether the CSP conforms to the fundamental freedom of association as enshrined in the Constitution and human rights instruments?
- 2) How does CSP affect civil society in the country in general, and human rights organizations in particular?
- 3) How does the CSP affect promotion of human rights and the democratization process in the country?

1.3 Objective and Scope of the Study

To this writer's knowledge, there is not a single legislation that attracted so much attention and has as many as four drafts than CSP. Obviously, this is not because of the vibrancy of the legislative organ but because of the high stake involved and the pressure "from above and below" on the government to adopt less restrictive legislation. In many ways, the law, many believe, represents regression to authoritarianism.¹⁸ For a citizen and human rights student it is motivating enough to examine such a law with massive consequences.

The study will thus have the following main objectives: analyzing the provisions and implications of the law in light of human rights principles and standards, and discern the below par standards adopted in the CSP and the threat it poses to the fundamental freedom of association, CSOs, human rights work and the democratization process in the country. Detailed discussion on the concept of civil society or of Ethiopian civil society is thus out of the scope of the research.

To achieve the objectives, the study is divided in to six chapters. The introductory chapter provides a brief background to the study, its objective, statement of the problem and methodology to be used. The second chapter provides a brief overview of the foundation of civil society with a focus on the fundamental freedoms necessary for their operation. Civil society as a concept, its *raison d'être* and function in society and its relation with

¹⁸ Aalen and Tronvol (2009).

state are also touched upon in the same chapter. By dealing with the social and legal foundations of civil society, the foundation for the latter chapters is intended to be laid in here. The third chapter deals with the operating environment for civil society in Ethiopia. Legal frameworks as well as political and ideological issues that may possibly explain legislative measures are dealt in here. The fourth and fifth chapters exclusively deal with the CSP. Analysis of the main limitations of the law *vis-à-vis* human rights standards is made in chapter four while its possible implications on CSOs, human rights promotion and the democratization process in the country are dealt in chapter five. Finally, in chapter six, concluding remarks are drawn from the findings of the study.

1.4 Methodology

The research is intended to be carried out mainly from a legal and political science perspectives. Both primary and secondary sources will be used in the study. Treaties, domestic laws, cases and interviews will be consulted as primary source materials. Books, journals, articles and other sources will be consulted as secondary materials. Moreover, experiences of other counties will also be resorted to whenever necessary.

2 The Foundation of Civil Society: An Overview

2.1 Concept and Definition

The concept of civil society is an age-old one and so is the debate on its boundary, function and meaning. For classical and medieval thinkers, civil society was synonymous with the state refereeing social conflict by applying rules that restrained individuals from harming each other.¹⁹ In this sense, the state represented “civil” form of society and “civility” described the requirements of “good citizenship”.²⁰ This line of thinking took shape in the face of social disorder that needed a benign force, civilized state, as a solution. For Enlightenment thinkers, who witnessed abusive power of the state, civil society was considered as separate from and “a defense against unwarranted intrusion by the state on newly realized individual rights and freedoms, organized through the medium of voluntary associations”.²¹ This theme was taken up by modern thinkers and is alive and kicking. It particularly gained prominence following the fall of socialism and the subsequent rush for democratization and institutionalization of public participation and inflow of western aid to newly independent states and developing countries.²²

The debate on civil society continues perhaps more vigorously. And, although, as Edwards notes, it is impossible to reach consensus on of civil society debate,²³ to see some definitions and defining elements of the concept serves clarity.

Realizing the danger posed to citizens by the powerful and encroaching modern state and relentless capitalism, Habermas envisage that:

¹⁹ Edwards (2009) p.6.

²⁰ Kaldor (2003) p. 17.

²¹ Edwards (2009) p.7.

²² *Ibid*, p. 7-17.

²³ *Ibid*, p. 5.

*... [civil society's] institutional core comprises those non-governmental and non-economic connections and voluntary associations that anchor the communication structures of the public sphere in the society component of the life-world. Civil society is composed of those more or less spontaneously emergent associations, organizations, and movements that, attuned to how social problems resonate in private life spheres, distil and transmit such reactions to the public sphere. The core of civil society comprises a network of associations that institutionalizes problem solving discourses of general interest inside the framework of organized public spheres.*²⁴

Accordingly, civil society is viewed as an answer to common, societal problems caused by the modern state and capitalism where individuals act independently and collectively to solve it democratically.

In a stark contrast, Kaldor, following the neoliberal line of thought defines civil society as “the realm between the state, the market and the family, it is a realm of stability rather than struggle, of service provision rather than advocacy, of trust and responsibility rather than emancipation”.²⁵ Here civil society is viewed as more passive, less as a check on the state and the market and more as a complement to or even as a substitute for the state and the market.²⁶

Skocpol and Fiorina defines civil society as “the network of ties and groups through which people connect to one another and get drawn in to community and political affairs”.²⁷ This is a broad definition that includes not only the formal groups that constitute the bulk of civil society but also informal ones through which people link and tie themselves ranging from social movements to various “publics” that engage in debates in the public sphere.²⁸ It also emphasizes on the activism and advocacy role of civil society.

²⁴ Habrems, quoted in Kaldor (2003), pp. 21-22.

²⁵ Kaldor (2003) p.22.

²⁶ *Ibid.*

²⁷ Skocpol and Fiorina (1999) p. 2.

²⁸ Armony (2004) p. 11.

The difference on the different definition of civil society seems to stem from the emphasis on the different elements and functions of civil society. The characteristic elements that define civil society are voluntariness, public benefit and separate identity. Voluntariness is a hallmark of civil society that differentiates it from force-backed institutions of the state and the family.²⁹ Scholars who emphasize on voluntariness consider all voluntarily formed associations including political and commercial associations as civil society. Others argue that civil society is further defined by its purpose, public benefit. It purports to benefit the public instead of garnering economic benefit or political power for itself and protects the helpless from the powerful and brutal forces of the state and the market through activism and organizing.³⁰ Accordingly, associations-for-profit and political associations that vie for wielding the “right to exercise control over public power and the state apparatus” are excluded from civil society domain.³¹ Finally, civil society is located in the “public sphere”, i.e., it is beyond the realm of individual conduct and family concerns of the domestic sphere. It refers to the places where citizens argue about the great questions of the day and negotiate on the ‘common’ or ‘public’ interest.³²

According to William and Robert Putnam, civil society is positioned “in a sphere that is equally detached from: the private concerns of autonomous individuals; the public sphere of political decision making and administrative action; and the forces of markets and labor relations.”³³ It is thus the “third sector” in the “tripartism” of the state and the market. However, the boundary between them is not always clear. London School of Economics Center for Civil Society working definition, which I found most appropriate, states:

Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies

²⁹ Dekker (2005) p.255.

³⁰ *Social Capital and Associations in European Democracies: A Comparative Analysis* (2007) p.57.

³¹ Linz and Stefan (1996) p.8.

³² Edwards (2005).

³³ *Social Capital and Associations in European Democracies: A Comparative Perspective* (2007) p. 55.

*are often populated by organisations such as registered charities, development non-governmental organisations, community groups, women's organisations, faith-based organisations, professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy group.*³⁴

2.2 Raison d'être and Function

Civil society is a dynamic notion constantly mutating and adapting to new realities, challenges and opportunities.³⁵ As we have seen above, it encompasses diversified entities created over time to address specific concerns in society. The nature and form they manifest differ significantly from society to society due to different socio-economic, political and legal realities. The common denominator however is that they are established and continue to exist due to “pressing social needs” and “dysfunction of the state.”³⁶

Historically, civil society served to maintain order in society and to defend rights and freedoms from abusive state intervention. The later function of civil society is still alive in modern times. Civil society as an organ of society adopts its cause for justice, equality and freedom and advocate for change. This function has been exemplified recently in the Anti-Apartheid struggle in South Africa, and “color revolutions” in Central and Eastern European countries.³⁷ Citizens’ exercise of their rights and activism through their civic associations served as bulwark against totalitarianism and transformed the nations to democracy, contributing to the renewed interest in civil society and their role in democratization.³⁸ Moreover, civil society plays an important role in fostering pluralism, advocating change, and criticizing the state when it does wrong. Human rights and advocacy CSOs in particular play an important role in this respect. They serve as whistleblowers and bring out the facts, contribute to the protection, promotion and enforcement of human rights norms.³⁹

³⁴ London School of Economics Center for Civil Society, (2004).

³⁵ Salole (2008) p. 14.

³⁶ *The State and NGOs* (2002) p. 2.

³⁷ Forbrig and Demes (2007) pp.9-16.

³⁸ *Ibid.*

³⁹ Steiner and Alston (2000) p. 938.

At social and economic level, the inability of people to lead a fulfilling life, for being left out both from the market and the state, forced society to respond, i.e., to provide vital social services through citizens' initiatives and civic associations.⁴⁰ Lack of means for life and exclusion is dire in developing countries due to lack of capacity or will on the part of the state to provide services for people unable to obtain resources by themselves. Civil society organizations try to fill this vacuum, and in the mean time, they become substantial contributors of development. They raise huge recourses which governments would not be able to do so.⁴¹ Thus, the need to address pressing societal needs which the state and the market would not always be able to do has remained one of the main *raison d'être* for the formation and continued existence of civil society in the modern times.

In general, the nature and function of CSOs in society is diverse depending on the realities of life and societal needs, which remains to be the factor for the establishment and existence of civil society. Civil society organizations are not thus luxuries but necessities in society to address its problems, shape its future through citizen participation.

2.3 Relationship with the State

The relationship between the state and CSOs has generally been uneasy. Many states consider the existence of (independent) CSOs as a threat and hence have no positive attitude towards their activities.⁴² Various reasons contribute to the tense relationship. The first is the overlapping of function between the state and CSOs. As we have seen above, CSOs compete with the state in service delivery and influence over the public. Second, CSOs give citizens the opportunity to organize and act together giving them power and influence⁴³, which is not liked particularly by non-democratic governments.

In western democracies, the attitude towards CSOs is generally positive though there are marked differences in the nature of the relationship.⁴⁴ In the Scandinavian social welfare democracies where the state provides extensive welfare services and respects human rights, the relation is smooth and complimentary; CSOs principally playing the role of pulling the

⁴⁰ *The State and NGOs* (2002) p.2.

⁴¹ Rahmato (2008).

⁴² *Freedom of Association in China and Europe* (2005) p.13.

⁴³ Armony (2004) p.xii.

⁴⁴ Salole (2008) p.11.

government to fill gaps. In Anglo-Saxon democracies CSOs serve as a “counterweight” to the state, critical of it and advocate for change but still healthy relationship.

By contrast, in developing countries where governments are often totalitarian and inhospitable to political pluralism and dissent the relationship with CSOs is tense.⁴⁵ CSOs are considered as opponents and governments try to control and silence them. CSOs Laws have been used as an instrument to control the sector.⁴⁶

2.4 Legal Foundation: Basic Freedoms for the Operation of CSOs

Besides the social foundation, the question of the legal basis of civil society is perhaps the crucial one. It has been argued by many, including Martin Scheinin, that the legal foundation of civil society is embedded in the core civil and political rights of the freedom of association, assembly and expression.⁴⁷ These freedom rights, which are recognized in human rights instruments and national laws, enable persons to organize around certain interests (form associations) and participate in them. Among them, freedom of association is the most essential in relation to CSOs. It would however be futile without freedom of assembly and expression. Although freedom of association is an individual right it can only be meaningfully exercised in association with others. Assemblage and expression are thus essential rights for the effective exercise of freedom of association and hence for the formation and functioning of associations (CSOs).

2.4.1 Freedom of Association

Freedom of association refers to “the right of individuals to interact and organize among themselves to collectively express, promote, pursue and defend common interests.”⁴⁸ It is a “core” or “basic personal liberty” which is an extension of the liberty of conscience.⁴⁹ Tocqueville maintains:

⁴⁵ *The State and NGOs* (2002) p.4.

⁴⁶ *Global Trends in NGO Law*, International Center for Not-for-Profit Law, vol.1, iss. 1 (2009) (herein after *Global Trends in NGO Law*). *Freedom of Association in China and Europe* (2005). *The State and NGOs* (2002).

³⁷ *The Universal Declaration of Human Rights: A Common Standard of Achievement* (1999) p.417.

⁴⁸ Jilani (2004) para.12.

⁴⁹ *The Universal Declaration of Human Rights: A Common Standard of Achievement* (1999) p.417.

*The most natural privilege of man, next to the right of acting himself, is that of combining his exertions with those of his fellow creatures and of acting in common with them. The right of association therefore appears to me almost as inalienable in its nature as the right of personal liberty. No legislator can attack it without impairing the foundation of society.*⁵⁰

Freedom of association is recognized as a fundamental freedom in international and regional human rights instruments.⁵¹ Article 22 (1) of the ICCPR states: “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interest.”

Freedom of association has an individual and collective dimension. The *individual dimension* of freedom of association refers to the “subjective right of the individual to found an association with those like-minded or to join an existing association.”⁵² The right to form or join an association is an inherent element of freedom of association “without which freedom of association would be deprived of any meaning”.⁵³ It allows individuals to establish or join various types of associations: religious, political, economic, social, cultural, sports, commercial, etc to act collectively in the field of mutual interest. As far as it is lawful there is no limitation regarding the purpose for which an association can be established.

The question of whether the protection of freedom of association includes from being forced to join an association or withdraw at will (negative freedom of association) is not explicitly settled in the ICCPR and the ECHR. However, the ECtHR has established jurisprudence in this regard. The decisions in *Young, James and Webster v. UK*, *Sigurdur A. Sigurjonsson v. Iceland*, *Chassagnou and others v. France* affirm that freedom of association includes protection from compulsory membership as well.⁵⁴ It is maintained that the notion of association presupposes a voluntary grouping for a common goal. There

⁵⁰ Tocqueville quoted in Brody (2002) p. 823.

⁵¹ UDHR art 20, ICCPR art 22, ACHPR art 10, ECHR art. 11.

⁵² Nowak (1993) p.385.

⁵³ *Sidropoulos and others v. Greece*, para. 40.

⁵⁴ *Young, James and Webster v. UK*, para.52. *Sigurdur A. Sigurjonsson v. Iceland*, para. 35. *Chassagnou and others v. France*, Para. 103.

is thus the element of choice every individual makes with whom to associate or not. Compulsory membership is a violation of freedom of conscience/choice and hence of freedom of association.⁵⁵

Although the ECtHR jurisprudence have no precedence outside of Europe, one can put strong argument for a similar interpretation of Article 22 given the language in the ICCPR is virtually identical with the ECHR. Moreover, Article 20(2) of the UDHR and Article 10(2) of the ACHPR affirm that “no one may be compelled” to join an association.

The *collective dimension* of freedom of association refers to “the right of an existing association to perform activities in pursuit of the common interest of its members.”⁵⁶ Although the provisions seem to be framed in a way protecting only natural persons, freedom of association also has implicit collective dimension, meaning the protection of freedom of association also extends to associations themselves.⁵⁷ It protects the right to carry out freely activities for which the association is established. Anne David calls this aspect of freedom of association as “freedoms of associations”.⁵⁸ Unlike earlier times where only natural persons were entitled to have freedoms, now associations also enjoy their own freedom. They have an identity separate from the creators and have their own rights and responsibilities. They are thus persons under the eyes of the law, albeit a fictitious or judicial one (legal personality). According to Alkema “the association itself is protected in its rights to carry out its activity through the rights granted to its members”.⁵⁹ Moreover, associations do not need to assume legal personality; de facto associations are equally protected, though some kind of institutional structure is required, even within de facto associations.⁶⁰

The freedom of associations mainly pertains to the organizational and operational independence to carry out the function they are established for. Associations should have the independence for self-administration and operation. Among others, access to funds is

⁵⁵ *Young, James and Webster v. UK*, para.52, and *Chassagnou and others v. France*, Para. 103.

⁵⁶ Nowak (1993) p. 385.

⁵⁷ Sekaggya (2009) para. 21.

⁵⁸ David (1994) p. 88.

⁵⁹ Alkema (1994) p.76.

⁶⁰ Sekaggya (2009) para. 21.

crucial for associations to operate and implement their objectives. The UN Special Rapporteur on Human Rights Defenders maintains that access to funding “is an inherent element of freedom of association”.⁶¹ Lack of it denies operational independence and cripples the association itself and the freedom of association.

The Declaration on Human Rights Defenders explicitly recognizes the right of associations, human rights defenders in particular, to have access to funding. Article 13 provides: “[e]veryone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means....”

Interference in organizational and operational independence of associations denies meaningful exercise and enjoyment of the freedom of association. In *Belyatsky et al* case, the Human Rights Committee (HRC) affirms that: “... the right to freedom of association relates not only to the right to form an association *but also guarantees the right of such an association freely to carry out its statutory activities....The protection afforded by article 22 extends to all activities of an association....*”⁶² [Emphasis added.] The ECtHR reached a similar conclusion in the *Turkish Communist Party case* that the freedom of association would be largely theoretical and illusory if it were limited to the founding of an association, since the government could immediately disband it, and that “the protection afforded by freedom of association lasts for an association's entire life”.⁶³

Although membership is an important concept in relation to freedom of association, the issue of disclosure of membership in an association seems mute in international instruments dealing with freedom of association. It is nonetheless topical due to anti-terrorism laws. The US Supreme Court held as early as 1959 in *NAACP v. Alabama*⁶⁴ that governments may not adopt policies which are designed overtly or covertly to discourage citizens from joining groups which the government may believe to be undesirable. It ruled that the governments’ desire to hinder formation and assemblage of groups which it deems

⁶¹ Sekaggy (2009) para. 91.

⁶² *Aleksander Belyatsky and others. v. Belarus*, Para. 7.2.

⁶³ *United Communist Party of Turkey and Others v. Turkey*, para. 33.

⁶⁴ Solter (1958-1959) pp. 654-55.

unsuitable is a violation of freedom of association. The ruling stemmed when the state of Alabama attempted to force NAACP (National Association for the Advancement of Colored People) to reveal the names and addresses of all its members in the state.

Disclosure of membership in an association is related to the protected right to privacy.⁶⁵ Article 11(2) of the Declaration of Fundamental Rights and Freedoms of the European Parliament (1989) states that: “No one shall in their private life be required to disclose their membership of any association which is not illegal.”

Freedom of association has a mixed feature. It has a feature of political rights⁶⁶ making it indispensable for the existence of a functioning democracy as political interests can be effectively promoted collectively. But it also has a characteristic of civil rights sanctioning the state and private parties from arbitrary interference with individuals’ right of association.⁶⁷

To summarize, freedom of association is one of the fundamental freedoms and legal basis for the establishment and running of all forms of associations including civil society organizations. It protects the independent formation and functioning of civil society organizations.

2.4.2 Freedom of Assembly

Freedom of assembly is the right to gather without fear of state repression or intrusion. It protects the right to prepare, conduct and participate in an assembly, and “the discussion or proclamation of information and ideas”.⁶⁸ Freedom of assembly is recognized in international and regional instruments.⁶⁹

Freedom of assembly is inextricably linked to the freedom of association to the extent that instruments like the UDHR treat them in a single provision. It entitles members of associations to hold assemblies for various reasons including protest, expression of views

⁶⁵ UDHR art. 12 , ICCPR art. 17 , ECHR art. 8.

⁶⁶ *Universal Declaration of Human Rights: A Common Standard of Achievement* (1999) p. 417.

⁶⁷ Nowak (1993) p.385.

⁶⁸ *Ibid*, p.372.

⁶⁹ ICCPR art. 21, UDHR art. 20(1), ECHR art. 11, ACHPR art. 11.

and defense of common interest or to promote and protect public interest and human rights; and it can be held in various forms including indoor meetings, public conferences, demonstrations, vigils, marches, picket lines and other kinds of assemblies.⁷⁰

Freedom of assembly is recognized as one of the foundations of a functioning democracy. It facilitates participation, dialogue and ensures all people in a society have the opportunity to express opinions they hold in common with others; as such, freedom of peaceful assembly constitutes a form of direct democracy.⁷¹

2.4.3 Freedom of Expression

The freedom of expression is one of the essential rights of persons. Unlike freedom of association, freedom of expression was recognized in earlier human rights instruments. The French Declaration, for instance, considers the free communication of ideas and opinions as “the most precious of the rights of man”.⁷² Today, freedom of expression is recognized both in international and regional human rights laws.⁷³

Freedom of expression harbors a multitude of rights including the right to seek, receive, impart and disseminate information and ideas of all sorts, through any media and without borders.⁷⁴ The protection of freedom of expression extends not just to the content of the expression but also to the forms or mediums of expression such as oral, written, in print communications or art forms.

Freedom of expression is closely linked to freedom of assembly and association but also to other rights, both civil and political, itself being in the overlapping zone. The UN Special Rapporteur on Freedom of Opinion and Expression notes:

...the exercise of the right to freedom of opinion and expression is a significant indicator of the level of protection and respect of all other human rights in a

⁷⁰ Nowak (1993) p.74 .

⁷¹ *Guidelines on Freedom of Peaceful Assembly* (2007) P.13.

⁷² The French Declaration of the Rights of Man and the Citizen (1789).

⁷³ See UDHR art. 19, ICCPR art. 19, ECHR art. 10, ACHR art. 13 and ACHPR art. 9.

⁷⁴ ICCPR art.19.

*given society. ...the exercise of the right to freedom of opinion and expression is one of the essential foundations of a democratic society.*⁷⁵

Freedoms of association, expression and assembly entitle persons to exercise their rights collectively. Group of like-minded or concerned individuals can express their opinions and ideas among themselves or to other people on various issues in society. They may gather and compile information on the state of the country's political, economic and human rights situation; document such developments, discuss the issues among themselves and share their concern with other people.

The freedom to seek information entitles associations to look for, investigate, acquire and study information. This right is particularly important for human rights and development NGOs. The freedom to impart information enables associations to communicate the result of their research and study with anyone. They may make public statements; prepare publications, etc on current and ongoing situations like human rights situations, election observation and comments. Airing views and comments on topical issues is thus a right guaranteed in the international human rights treaties, and such statements, if based on facts and truth, are lawful even if they are against government stand or policy.⁷⁶

In short, the right of individuals to associate and assemble is protected by the freedom of association and assembly, and the content of their discussion and expression of concern or view is protected by the freedom of opinion and expression. These freedoms are thus the basis for any grouping of individuals or civil society groups to come in to existence and undertake their role in society. The exercise of these rights is nonetheless subject to some limitations.

2.4.4 Legitimate Limitations on the Basic Freedoms

International instruments not only recognize the fundamental freedoms but also provide legitimate limitations to the exercise of such freedoms. The limitations on the fundamental freedoms emanate principally from the necessity to protect the rights and freedoms of others and the collective interest of the society/public. The law thus takes a delicate act of

⁷⁵ La Rue (2009) pp. 4-12.

⁷⁶ *Belyatesky et al v. Belarus*, para. 7.3.

balancing: it provides rights and freedoms to be exercised without interference by other individuals or the state but at the same time limits its exercise not to affect the rights of others.

However, for any limitation to be legitimate it should fulfill certain requirements provided in human rights instruments.⁷⁷ First, any limitation should be *prescribed by law*. Governments cannot legitimately impose any restriction without a law passed following the normal legislative procedure. Second, the limitations should be *necessary in a democratic society*. The measures taken must be in line with “the basic democratic values of pluralism, tolerance, broadmindedness, and peoples’ sovereignty”.⁷⁸ It must also be proportional to the objective sought to be achieved and severe restrictions like prohibition of formation or dissolution of an association would be disproportionate when milder actions are sufficient to avert the danger.⁷⁹ Measures of prohibition or dissolution can be legitimately taken only as a last resort. Third, the restrictions must be justified by the *legitimate purposes*: it should be in the “interests of national security or public safety, public order..., the protection of public health or morals or the protection of the rights and freedoms of others”.⁸⁰ Finally, these requirements must be fulfilled cumulatively to justify any limitation on freedom of association or other freedoms. The HRC in *Belyatsky case* opines:

*...the mere existence of reasonable and objective justifications for limiting the right to freedom of association is not sufficient. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose.*⁸¹

⁷⁷ See ICCPR arts.22 (2), 19(3) and 21; ECHR arts. 10(2) & 11 (2); ACHPR arts. 9, 10 (2) &11. The latter provides only claw back clauses, the right to be exercised within the law which may subject the exercise of rights to repressive laws.

⁷⁸ Nowak (1993) p.394.

⁷⁹ *Ibid*, p.394.

⁸⁰ ICCPR art. 22(2). See also arts. 19(3) and 21.

⁸¹ *Belyatsky et al v. Belarus*, para. 7.3.

The difficulty however is that the terms used to define the so called “legitimate purposes” lack specificity in scope and clarity in meaning which has often been exploited to impose restrictions that frustrate the fundamental freedoms. The limitations have been used by States as a means to prevent or discourage citizens from “joining undesirable groups” and to “restrict criticism and silence dissent”.⁸² “Anti-regime” critics and activists and alleged “subversive associations” usually are persecuted for the expression they made under the guise of protecting legitimate public interests.⁸³ So are “human rights defenders and unionists in retaliation for the exercise of their right to association, assembly and opinion and expression.”⁸⁴

2.4.5 State Obligation to Human Rights

State obligations principally emanate from the specific instrument laying down the rights. For instance, the ICCPR obliges states “to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized” in the “Covenant without distinction of any kind”, “to take necessary steps” “to give effect to the rights”, to ensure “effective remedy” in case of violation and “enforce such remedies when granted”.⁸⁵ Likewise, the Declaration on Human Rights Defenders in Article 2(1) declares:

Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

Generally, human rights impose three types or levels of obligations on states: the obligation to respect, protect and promote.⁸⁶ Primarily, States have the (negative) obligation not to interfere with the right to form or join an association and participate in

⁸² La Rue (2009) p. 12.

⁸³ Nowak (1993) pp.345-46.

⁸⁴ La Rue (2009) p. 5.

⁸⁵ ICCPR art.2.

⁸⁶ Eide and Rosas (2001) p.23. See also HRC General Comment No. 31 (2004).

associations (*vertical* effect). This also means states should refrain from interfere in the activities of associations (CSOs). If for example members of a certain minority ethnic group seek to advance interests of the group by forming an NGO, the first obligation of the state is not interfere in the formation of the intended NGO and in its activities. As a civil and political right many aspects of the obligation of the state *vis-à-vis* freedom of association (and of assembly and expression) can be observed at this level.⁸⁷ The problem is that states are intolerant to the activities of CSOs, especially those vocal and critical of the government. The opinions, expressions, views should be respected fully though they might be unwanted to the government.⁸⁸

A sensitive issue in this regard is whether favour and encouragement by government of pro government trade unions and CSOs violates freedom of association. It can be argued that favour and encouragement of one CSO over the other to the extent of affecting the free choice of individuals to join an association or the activities of CSOs contradicts with the duty of the state to refrain from interference in individuals' free choice and freedom of associations.⁸⁹

Second, states have (positive) obligation to protect the rights of individuals and groups to form, join or participate in CSOs from interference by third parties (*horizontal* effect).⁹⁰ The obligation to take positive measures to ensure the protection of the choice and freedom of action of individuals and groups is crucial to the enjoyment of freedom of association like other freedoms.⁹¹ Measures to prevent forced membership, unjustifiable expulsion or exclusion and interference in the work of CSOs must be taken.⁹² Meetings, demonstrations, assemblies of CSO must be protected from interference including from counter-demonstrators.⁹³

⁸⁷ Eide and Rosas(2001) p. 25.

⁸⁸ La Rue (2009) paras. 41-41. See also Declaration on Human Rights Defenders art. 6.

⁸⁹ *Young, James and Webster v. UK*, para.52. See also Observation of Committee of Experts on the Application of Conventions and Recommendations 2010 Report regarding Ethiopian practice on trade union freedoms.

⁹⁰ HRC General Comment No. 31 (2004) para. 8.

⁹¹ Eide and Rosas (2001) p. 24.

⁹² *Young, James and Webster v. UK*, para. 428.

⁹³ *Auli Kivenmaa v.Finland*.

Third, states have the obligation to fulfill the rights of individuals and groups by facilitating the formation and functioning of civil societies. This may take various forms. States may have to provide an enabling legal and policy environment for the exercise of freedom of association, assembly and expression and thereby for the thriving of CSOs.⁹⁴ The state may have to establish an efficient legal regime for a quick and easy system of registration for acquiring legal personality for CSOs; facilitate unhindered access to and communication with similar bodies, to solicit and receive financial contributions and to engage in the promotion and protection of fundamental freedoms and rights.⁹⁵

States have the obligation to ensure these rights to all persons “regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party”.⁹⁶ Moreover, national law cannot justify violation of these freedoms.⁹⁷ If violation occurs, states have the obligation to provide the necessary remedy including “re-registration” and “compensation” of dissolved associations, and “to take the necessary steps to prevent similar violations occurring in the future”.⁹⁸

⁹⁴ HRC General Comment No. 31, 2004, para. 8. Declaration on Human Rights Defenders art. 2(1). ICCPR art. 2.

⁹⁵ UN Declaration on Human Rights Defenders art.13. See also UDHR Preamble.

⁹⁶ HRC General Comment No. 31, 2004, para. 10.

⁹⁷ Vienna Convention on the Law of Treaties (1969) art. 27.

⁹⁸ *Belyatsky et al v. Belarus*, para 9.

3 Civil Society Operating Environment in Ethiopia

3.1 Ideology and Political Environment

The Ethiopian political landscape has been known to be rough with completely new ideologies surfacing following violent change of regimes: imperial monarchy, military Marxist-socialism and “Revolutionary Democracy”. The voluntary sector has been trying to sail through these violent terrains. Besides various impediments in its journey, it faced a total ban during the Socialist regime. CSOs were once again able to operate in the country following the transition to democracy in 1991 with relative favorable policies and operating environment.

The 1995 Constitution introduces an “important innovation in the history of the Ethiopian state” by providing for a “full liberal democratic structure of government”.⁹⁹ Multi-party electoral system, independent press and a range of civil and political rights are provided in the Constitution. But in practice, the Ethiopian democracy, often characterized as “pseudo democracy”, lacks features of genuine democracy.¹⁰⁰ It instead exhibits strong totalitarian characteristics the state having strong grip on the life of the society; political and civil space is tightly controlled.¹⁰¹ For some scholars, the turn to totalitarianism has been vivid particularly after the 2005 national election with a systematic and multi-pronged, including legislative, clampdown on political opposition, civil society, media and generally dissent.¹⁰² Moreover, a single party (and a single person) has been ruling the country for nearly a quarter a century.

⁹⁹ Vaughan and Tronvoll (2003) p. 132.

¹⁰⁰ Tronvoll (1997) p.17. See also Vaughan and Tronvoll (2003) pp. 132-35.

¹⁰¹ Human Rights Watch, “*One Hundred Ways of Putting Pressure*”: *Violations of Freedom of Expression and Association in Ethiopia*, March 2010 (herein after, HRW 2010 Report). Abbink (2009) p 22-23.

¹⁰² Aalen and Tronvol (2009). Teshome (2009).

Ideology wise, the Government considers liberal democracy non-workable to Ethiopian context. It rather follows a new brand of democracy, ‘‘Revolutionary Democracy’’, which advocates the establishment of ‘‘a democratic developmental state (government)’’ deemed imperative for the democratization, poverty reduction, peace and the very survival of the country.¹⁰³ In a way, it resembles the Lee thesis (after Lee Kuan, former Prime Minister of Singapore) which also hinges on the survival psychology of Singapore as a state-a new small island state with no natural resources and threat from its large neighbors and its ethnic diversity.¹⁰⁴ Although Revolutionary Democracy does not openly proclaim civil and political rights hamper development and are secondary in importance, the Lee thesis (also known as East Asian Model of development) does.¹⁰⁵ Countries like Singapore, China and South Korea have been known for strong suppression of freedom of association and expression.¹⁰⁶ The repeated utterance by the Ethiopian Government of its determination to imitate the development path of these countries may corroborate similar mind set up.

As has been observed in Singapore, whose law served as a benchmark for Ethiopian CSP, and in East Asia, competing with, and discrediting/criticizing acts, goals, etc. of a developmental state is highly undesirable.¹⁰⁷ Civil and political life is controlled and channeled along the preferred government policy.¹⁰⁸ As we have seen above, the Ethiopian state has been showing most, if not all, of the above symptoms.

Besides ideological inconsistency with independent and assertive civil society, the government has other concerns too: flow of foreign aid through NGOs (particularly after 2005), NGO corruption, personnel competition from NGOs and lack of NGO commitment to social transformation, involvement in harmful activities like intelligence gathering by international NGOs, lack of indigenous character, etc that needed to be fixed.¹⁰⁹ At the same time, the government has been eager to work with NGOs with resources to be

¹⁰³ Report by Council of EPRDF to the 6th Organizational Congress (2006) p.1.

¹⁰⁴ Tanaka (2002).

¹⁰⁵ Sen (1999) pp. 15-17,146-159. Sen rebuts the Lee thesis as having ‘‘little imperial support’’ and ‘‘economic growth is more a matter of friendlier economic climate than of a harsher political system’’.

¹⁰⁶ Tanaka (2002) pp. 200-222. See Sen (1999) p.150.

¹⁰⁷ Tanaka (2002).

¹⁰⁸ Tanaka (2002). Singapore has been ruled by a single party, The PAP, and three Prime Ministers, Lee Kuan himself, his son-the current PM and Goh Chok, since 1959.

¹⁰⁹ Vaughan and Tronvoll (2003) p. 64. Ministry of Foreign Affairs of Ethiopia, *Ethiopia’s Relations with Non Governmental Organizations*.

http://www.mfa.gov.et/Foreign_Policy_And_Relation/Multilateral.php?Page=Multilateral_11.htm

utilized for the economic and social development of the country as far as they work within the defined parameters.¹¹⁰ It is fair to say that Developmental Democracy, which appears to be inconsistent with liberal and republican tones of the Constitution,¹¹¹ aspires CSOs to be partners in the social and economic development of the country, at least temporarily, but does not entertain them much as an expression of peoples freedom.

3.2 Regulatory Framework

3.2.1 The Constitution

The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE) recognizes the freedom of association thereby providing the basis for civil society organizations in the country. As per Article 31 “[e]very person has the right to the freedom of association for any cause or purpose”. The freedom of association is guaranteed to everyone without any qualification as to colour, race, religion, opinion (political or otherwise), place of residence, etc. Every person is entitled to form or join associations for any reason or purpose including the advancement of the rights and interests of members, rights and interests of other people, or any other personal conviction; so far as it is lawful there is no restriction as to the purpose for which an association may be established and carry out.

The Constitution also provides two permissible grounds for interference in the freedom of association. Formation of an association in “violation of appropriate laws”, or involvement “to illegally subvert the constitutional order” justify prohibition of an association. The second ground of interference can fall under the legitimate purposes specified in the ICCPR. But the first permissible ground, i.e., formation in “violation of appropriate laws”, will undoubtedly raise questions of conformity with Article 22(2) of the ICCPR.¹¹² The term is vague and broad thereby allowing subjective and intrusive interference.¹¹³ The ICCPR puts a high standard of three cumulative conditions to justify restrictions: measures must be put by law and are necessary in a democratic society to protect legitimate aims (protection of national security or public safety, public order, public health or moral, or the rights and interests of others). Any measure short of these standards

¹¹⁰ Report by Council of EPRDF to the 6th Organizational Congress (2006) pp.47-48.

¹¹¹ Abbink(2009) pp. 3 and 6-7.

¹¹² See *Infra* notes 117-120 and 221-224 for possible interpretation. Ethiopia has not ratified the First Optional Protocol to the ICCPR. See *Supra* notes 79-86 for discussions on the ICCPR.

¹¹³ Hailegebriel (2010) p.9.

is not permissible limitation on freedom of association. Accordingly, the mere violation of law of incorporation is insufficient ground to justify prohibition of an association.¹¹⁴

Freedom of expression and assembly are also recognized in Articles 29 and 30 of the Constitution. There is much resemblance with the ICCPR provisions in particular and in some cases, these provisions contain clear protection than the ICCPR and the UDHR counter parts. For instance, Article 29(5) provides protection from homogeneous state propaganda by state financed or controlled media by requiring entertaining diversity in the expression of opinion.

Moreover, the Constitution under Article 9(4) makes treaties ratified by the country part of the law of the land further entrenching the legal basis of civil society in the country. Nonetheless, the applicability of different legal regimes, domestic and international, in one jurisdiction gives rise to tensions as to status.

3.2.2 Status of Human Rights Instruments

Ethiopia has adopted major international and regional human rights treaties including the ICCPR and ICESCR that serve as a legally binding text of the UDHR, ACHPR and other agreements.¹¹⁵ By virtue of Article 9(4) of the Constitution, these instruments form part of the law of the land, and hence part of the regulatory framework of CSOs. Nonetheless, which prevails in case of inconsistency or inconformity between the Constitution and human rights instruments has been a contentious issue due to two articles in the Constitution that give rise to seemingly different positions.

One line of argument espoused is based on the supremacy clause, Article 9(1), that it puts the Constitution in a superior hierarchy than any law of the land including international instruments that are made part of the law of the land pursuant to Article 9(4). This conservative position is further supported by the hierarchy of the makers of the Constitution, Constitutional Assembly, which is a higher body than the adopting/ratifying

¹¹⁴ *Belyatsky et al v. Belarus*, para 7.3.

¹¹⁵ See Office the United Nations High Commissioner on Human Rights, Status by Country, Ethiopia.

<http://www.unhchr.ch/tbs/doc.nsf/newhvstatusbycountry?OpenView&Start=1&Count=250&Expand=59#59>

bodies of international instruments—the executive organ and the parliament. Furthermore, there is no need for interpretation when the constitutional provisions are clear.

Another line of argument is that human rights instruments are superior because of article 13(2) of the Constitution, which made interpretation of the Constitution to conform to “the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia”. This position is best explained as an exception to the principle of supremacy of the Constitution. In principle, the Constitution is superior to any agreement or law. For instance, no agreement or practice can change the state structure or Federal-Regional government power allocation. Nevertheless, the supremacy clause is qualified by article 13(2) with respect to fundamental human rights and freedoms section of the Constitution that they are subjected to conform to the principles enshrined in international instruments. Hence, human rights instruments prevail over chapter three of the Constitution or are at least equal in status.

The latter line of argument is more plausible to this writer for the following reasons. First, to say rights and freedoms shall be *interpreted in a manner conforming to the principles* enshrined in international instruments, clearly tantamount to saying the fundamental rights and freedoms should be *understood in line with* the principles of human rights instruments. If its provisions are narrow in scope and less protective, one cannot say the Constitution conforms to principles of human rights instruments. Hence, when better protection is provided by international instruments to which the country is a party the constitutional principles on fundamental rights and freedoms are to be interpreted accordingly. If, for instance, the scope of protection of freedom of association is narrow under the Constitution, then pursuant to Article 13(2), it should be interpreted to conform to the wider scope of freedom of association as enshrined in international instruments like the ICCPR, UDHR or ACHPR. Second, the Constitution is made, by the makers of the Constitution themselves-the higher body-to be subjected to the principles of international human rights instruments by inserting Article 13(2). Third, interpretation of constitutional provisions is necessary, even if they are clear, when there is discrepancy between two applicable legal regimes. Hence, human rights instruments are superior to or at least as

equal as the Constitution. This line of argument would also give better protection to human rights and freedoms, and meaning to entering in to agreements and ratifying treaties.¹¹⁶

In practice, human rights instruments have no or little application,¹¹⁷ as ratified treaties are not published in the official government gazette to be cited by courts as law and as courts lack power to interpret the Constitution.¹¹⁸

3.2.3 The Charities and Societies Law

Until recently there was no comprehensive CSOs legislation in the country. The Civil Code of 1960 and the Association Registration Regulation of 1966 used to be the main legal documents in this regard. Nonetheless, with the coming in to force of the Charities and Societies Proclamation in February 2009 and the Charities and Societies Regulation (Regulation) in November 2009 previous legal regimes were repealed.¹¹⁹

The new law introduces many new developments to the voluntary sector. The classification of CSOs, area of operation, financial matters, supervisory activities, etc. seem fresh and baffling to the sector. The law introduces a bit complex system of classification of CSOs. Broadly CSOs are classified as Charities and Societies. A Charity is “an institution which is established exclusively for charitable purposes and gives benefit to the public.”¹²⁰ Public benefit is deemed to exist where the “purposes of the Charity can generate an identifiable benefit to the public”, “does not create a situation wherein its benefits exclude those in need” and generates private benefits only incidentally.¹²¹ The law gives illustrative list of charitable purposes under Article 14(2). Charities can be incorporated in one of the four forms: charitable endowments, charitable institutions, charitable trusts and charitable societies.¹²²

A Society is “an association of persons organized on non-profit making and voluntary basis for the promotion of the rights and interests of its members and to undertake other

¹¹⁶ For a different position, see Enyew (2008) pp. 40-41.

¹¹⁷ Messele (2002) p.39.

¹¹⁸ FDRE Constitution art. 62(1). The House of Federation, a chamber of the parliament has the power to interpret the Constitution.

¹¹⁹ Proclamation No. 621/2009 art.110 and Regulation No168/2009 art.35.

¹²⁰ *Ibid*, art. 14.

¹²¹ *Ibid*, art. 14(3).

¹²² *Ibid*, art. 15(1).

similar lawful purposes as well as to coordinate with institutions of similar objectives.’’¹²³ Societies are membership-based organizations established to promote rights and interests of its members and undertake similar purposes. A category of societies are “mass-based societies” which includes “professional associations, women’s associations, youth associations and other similar Ethiopian Societies’’.¹²⁴ Charitable Societies have a mixed feature: they are membership based like societies and carry out charitable purposes like charities.¹²⁵

Although the definition of societies may not exclude organizations like trade unions and teachers associations, they are out of the ambit of the law for special laws like the labour law and public service laws regulate them. Cultural and religious associations like *Edir* and *Equb* are also excluded.¹²⁶

Charities and Societies are further classified in to:¹²⁷

- 1) “Ethiopian Charities or Societies’’, those “formed under the laws of Ethiopia, all of whose members are Ethiopians, generate income from Ethiopia [or ‘use not more than ten percent of their funds which is received from foreign sources’] and wholly controlled by Ethiopians’’;
- 2) “Ethiopian Residents Charities or Societies’’, those “formed under the laws of Ethiopia and which consist of members who reside in Ethiopia and who receive more than 10% of their funds from foreign sources’’¹²⁸; and
- 3) “Foreign Charities’’, those “Charities formed under the laws of foreign countries or which consist of members who are foreign nationals or are controlled by foreign nationals or receive funds from foreign sources’’.

The law makes the above classification based on source of income, residence and nationality of members, law of incorporation and control. The criteria have varying weight. If a Charity or Society uses more than ten percent its funds from abroad, it becomes

¹²³ *Ibid*, art. 55(1).

¹²⁴ *Ibid*, art. 2(5).

¹²⁵ *Ibid*, art. 46(1).

¹²⁶ *Ibid*, art. 3(2).

¹²⁷ *Ibid*, art. 2(2-4).

¹²⁸ *Ibid*, art. 2(3). The controlling Amharic version uses the term “all of its members reside in Ethiopia’’. This form was not introduced in the original draft.

Ethiopian Residents Charity or Society even if all of its members are Ethiopian, incorporated in Ethiopia and is controlled by Ethiopians. Likewise, if a Charity has a foreign national member, it becomes Foreign Charity irrespective law of incorporation, source of income and control. Thus, the law heavily relies on source (percentage) of income and residence and nationality of members in classifying CSOs. Practically, there is no difference between Foreign and Ethiopian Residents CSOs and both can conveniently be called “foreign” CSOs¹²⁹. Furthermore, the law does not recognize foreign societies.

The classification has marked consequence on the areas CSOs can intervene. Foreign and Ethiopian Residents CSOs cannot take part in the advancement of human rights, efficiency of the justice and law enforcement services and conflict resolution.¹³⁰ These are areas reserved to Ethiopian CSOs. Though implausible, foreign organizations that operate in the country by virtue of an agreement with the government may still operate in those areas as the CSP is not applicable to them.¹³¹ There is no such a possibility for local, Ethiopian Residents, CSOs that receive funds from abroad.

The other new feature is the establishment of an administrative organ, the Charities and Societies Agency (Agency) that supervises and administers CSOs.¹³² The Agency has a General Director as a chief executive and a Charities and Societies Board (Board) as a higher body of the Agency. The Agency has extensive power to register, license, supervise and take any decision regarding CSOs including refusing registration, suspending and removing of CSOs officers, calling of general assembly and attending every general assembly meeting of CSOs, instituting inquiries, suspension and dissolution of CSOs and giving order it deems necessary.¹³³ The law also provides for a Sector Administrator, a specialized executive organ assigned by the Minister of Justice to supervise and control operational activities of CSOs in its specialty area, and support the Agency.¹³⁴ The Agency

¹²⁹ Center for International Human Rights Northwestern University School of Law, *Sounding the Horn: Ethiopia's Civil Society Law Threatens Human Rights Defenders* (2009)(herein after *Sounding the Horn*) pp. 5-6. See also Human Rights Watch, “*Ethiopia: New Law Ratchets Up Repression*,” news release, January 8, 2009.

¹³⁰ Proclamation No. 621/2009 art. 14 (5).

¹³¹ *Ibid*, art. 3(2) (b).

¹³² *Ibid*, arts. 4-11.

¹³³ *Ibid*, arts. 4-6, 69, 76, 84, 86, 91, 92-93.

¹³⁴ *Ibid*, art. 2(12), 66-67. See also *Mabrarya* (Explanation) by the Ministry of Justice to the Draft Charities and Societies Proclamation (2008) p. 25. (Herein after *Mabrarya/Explanation*) NB.: the *Mabrarya* was

is accountable to the Ministry of Justice that gives directives and policy guidelines for the Administration of CSOs.¹³⁵ The law thus establishes a complex system of administration.

CSOs views the law as not enabling, cuts huge resource CSOs used to mobilize for marginalized and disadvantage millions, curbs positive development efforts, and violates citizens' freedom of association. 136

However, the Government has been defending its virtue.¹³⁷ It believes the law is imperative to ensure the realization of citizens' right to association, the transparency and accountability of CSOs, the legality of CSOs operation and provide measures to be taken against them in case of fault; to facilitate the role of CSOs in the overall development of Ethiopian peoples, to help CSOs understand their rights and obligations and promote indigenous organizations.¹³⁸

written on the Third Draft and caution is made when reference is made to the changes made in the final version.

¹³⁵ Proclamation No. 621/2009 art 11(1).

¹³⁶ Comments of Ethiopian Civil Society Organizations on the Draft Charities and Societies Proclamation (16 November 2008). Ethiopian CSOs Ad-hoc Taskforce Commentaries and Recommendations on the Latest Draft Charities and Societies Proclamation (Addis Ababa October 2008).

¹³⁷ Since recently the Government has been strongly rebutting in writing human rights groups and US State Department reports. See Government's response to HRW 2010 report entitled "No amount of external pressure can force Ethiopia to abandon its independent path of Democracy and Development". <http://www.eprdf.org.et/EPRDFE/document/Response%20to%20HRW%20English.pdf>

See also the Government's response to US State Department 2009 Annual Human Rights Report: "The US State Department Report on the Human Rights Situation in Ethiopia: Lies and Hypocrisy." <http://www.docstoc.com/docs/10897950/Ethiopias-Response-to-the-US-State-Department-Report-on>

¹³⁸ Preamble of the CSP, *Mabrary*/Explanation and Report by Council of EPRDF to the 6th Organizational Congress (2006) p.37. The Government believes that "the principal source of their [CSOs] finance should be membership contribution or other domestic sources".

4 Main Limitations of the Charities and Societies Law

4.1 Formation Requirements

The CSP sets minimum requirements for the formation of CSOs of which legal nature, membership and capital requirements deserve treatment.

Legal nature is the type or form by which civil societies can be lawfully established. As we have seen in the previous chapter, CSOs can be established as Ethiopian Charities or Societies, Ethiopian Residents Charities or Societies, or Foreign Charities principally based on Ethiopian residence, nationality and raising at least 90% of income locally. The legal form of CSOs and its effects like for instance, the activities the different types of CSOs can engage in and their source of income subtly determines with whom citizens can associate or not. For instance, it prohibits citizens to associate with Ethiopian nationals living abroad or foreign nationals to carry out human rights activities. It thus violates an important component of freedom of association: the free choice of individuals to decide with whom they want to associate.¹³⁹

The law does not also recognize foreign societies. The Government reasons that as societies are established to protect the rights and interests of its members' only citizens can form them.¹⁴⁰ In other words, non-nationals cannot exercise the freedom of association and form an association to protect their interests and rights. This is a clear contradiction to the country's commitments under UDHR art 20, ICCPR arts 2 and 22, ICESCR arts 8 and 2, ACHPR art 2 and 10, the Declaration on Human Rights Defenders and CERD art 5(d) ix) that guarantees the freedom of association to every human being without distinction of any sort including nationality or race. Art 2(1) of the ICCPR states:

¹³⁹ See *Supra* notes 51-54

¹⁴⁰ *Mabrarya/Explanation* p.23.

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [Emphasis added]

The restriction on Ethiopian-resident nationals to associate with those in the Diaspora may be attributed to political opinion of the latter, which is also a protected right. Thus, the requirement for the formation of CSOs is discriminatory and inconsistent with the freedom of association as enshrined in various international instruments to which the country is a party.

Minimum membership is another standard usually specified for the lawful establishment of civil societies. The minimum number required in democratic governance of associations is two though practically a higher number may be needed for an association to have proper institutional organization.¹⁴¹ Although the CSP is, for the most part, congruent with this international standard it has one problematic requirement, *minimum representative membership*, with respect to nationwide CSOs. Charities and Societies with federal character or nomenclature are required to have representative membership from or work place in at least five (of the total nine) regional states.¹⁴² If for example a charity or society bears the name “Ethiopian” or purports to work at national level then it must have members from or work places in at least five regions. This requirement begs several questions. What characterizes CSOs as federal? Why representation from or work place in two regional states is not enough? Is it not the federal character of CSOs that gives the federal government power/jurisdiction?

Under the Constitution residual power, power not specifically granted to the Federal Government alone or concurrently with states, is granted to Regional States.¹⁴³ In the list

¹⁴¹ Freedom of Association: The Question of NGO Registration, OSCE Human Dimension Implementation Meeting October 1998, Background Paper 5 (Warsaw, Poland: OSCE/ODIHR, 1998) paras. 6.1.1 and X.

¹⁴² Proclamation No.621/2009 arts. 57(6) and 69(5). The English version of Article 57(6) uses the conjunction “and” while the prevailing Amharic version uses “or” thereby making the requirements alternative.

¹⁴³ FDRE Constitution art. 52(1).

of federal powers in Article 51 and 55, jurisdiction over CSOs that consist of members from two or more states or that operate in two or more regional states is not mentioned. For that matter, specific power over *all matters that involve more than one state or those that involve individuals from more than one state* is not granted to the Federal Government. Federal jurisdiction over interstate: commerce, transport and communication, rivers and highways as well as power to enact civil laws which are deemed “necessary to establish and sustain one economic community”,¹⁴⁴ do not grant federal jurisdiction over all matters involving more than one state or individuals from more than one state. And it is hard to justify how civil society law falls in any of these clauses.¹⁴⁵ Doing so may tantamount to saying marriage between individuals from two states is a federal matter, which is clearly not.¹⁴⁶

The Federal Government assumed such power anyway and exercises power over matters of “federal character”. For instance, Federal Courts Proclamation No. 25/1996 as amended by Proclamation No.138/1998 granted federal courts jurisdiction over disputes between individuals from different states. Likewise, the Federal Government enacted the CSP to regulate CSOs because, *inter alia*, they operate in more than one regional state or its members are from more than one regional state, which suggests such CSOs have federal character.¹⁴⁷ CSOs formed by members from one region and operate only in one region lack federal character, and are out of the ambit of the CSP and the jurisdiction of the Federal Government. The CSP departs from law and practice by introducing the requirements of representation from or involvement in at least five regional states for CSOs to be considered federal in character.¹⁴⁸ This requirement defeats the essence of federal nature and redefines it in a way that would also defeat the basis of the law to regulate CSOs by the federal Government. It is a poor legal formulation, and arbitrary and harsh limitation on the rights of citizens to form and participate in nationwide CSOs. With the financial constraint Ethiopian CSOs have and the requirement to allocate only up 30%

¹⁴⁴ FDRE Constitution arts. 55(2)(b-c) and (6).

¹⁴⁵ See also Hailegebriel (2009) p. 9.

¹⁴⁶ See Preamble of the Revised Family Code Proclamation No.213/2000.

¹⁴⁷ Proclamation No. 621/2009 art. 3(1). More bizarrely, the Federal Government assumes jurisdiction over CSOs that receive more than 10% of their income from abroad though all of its members are from one region and work only in one region. A Gurage Society that works in Gurage Zone becomes under the Federal Jurisdiction just for receiving more than 10% of its income from abroad. Same is true for CSOs that operate in two or more regions although all of its members are from one region.

¹⁴⁸ What is meant by “federal character” and its practical implication is not entirely clear.

of their expenses for administrative purposes, requiring them to have offices and necessary staff in five regions at the time of formation poses insurmountable challenge. CSOs that aspire to work nationwide when income and membership base allow doing so cannot be formed. These types of CSOs will be forced to change their purpose and/or name under the pain of cessation or deregistration.¹⁴⁹

There seems a different requirement (a twist?) under the Regulation regarding CSOs with federal nomenclature where such CSOs shall change their name irrespective of representation or work places. Name of a CSO must be changed if it is “likely to give the impression” the CSO is connected in some way with the Government when it is not so connected or “is likely to mislead the public as to the true nature of the purposes [it] carries on.”¹⁵⁰ Thus, for instance, the name “‘*Ethiopian*’ Human Rights Council” has the same effect and should be changed.

The CSP also specifies *limits on capital* CSOs may collect during formation stage and amount they should have at the end of their financial year. CSOs are restricted not raise funds of more than 50,000 Ethiopian Birr in the formation stage.¹⁵¹ This hinders acquiring necessary funds particularly given the requirement that charities need to have more than 50,000 in total asset at the end of the financial year. Failure to raise such an amount gives discretionary power to the Agency to transfer or divide its entire asset to other charities.¹⁵² The law does not state the effect of such decision on the charity. Nonetheless, it can plausibly be argued that the effect of transfer and division of assets is pretty much the same as dissolution the effect of which is also liquidation of property.¹⁵³ This interferes with individuals’ right to form and participate in associations of their own no matter how big or small it might be. The size of a CSO cannot be a justification to divide its asset and eventually dissolve it. The measure cannot be justified by policy reasons, as there is no prohibition for a charity to continue with total assets of less than 50,000 birr.

¹⁴⁹ Proclamation No. 621/2009 arts. 65(4) and 69(5), and Charities and Societies Council of Ministers Regulation No. 168/2009 (“Regulation No. 168/2009” herein after). art. 9.

¹⁵⁰ Regulation No. 168/2009 art.5 (2-3).

¹⁵¹ Proclamation No. 621/2009 art. 65(2).

¹⁵² Proclamation No. 621/2009 art. 97(1)(a-c) and (4).

¹⁵³ *Ibid.*, art. 94.

4.2 Mandatory Registration

In many liberal democracies, only declaration or notification is enough for CSOs to lawfully operate and acquire legal personality.¹⁵⁴ By contrast, registration and licensing is required in non-democratic or “illiberal democracies” for civil society organizations to lawfully operate and acquire legal personality. The purpose of such a system is purported to be supervision of lawfulness of CSOs activities. Some scholars argue that the introduction of the system of registration may not necessarily be inconsistent with freedom of association.¹⁵⁵ While others like Sekaggya opines that mandatory registration undermines the freedom of association and is a common feature of many laws that restrict freedom of association.¹⁵⁶ A common consequence of laws that require registration and prior authorization is criminalization of non-registered entities.¹⁵⁷ At any rate if registration is required, it should strike the balance between individuals’ freedom of association and the necessity of supervision, and it should not serve as administrative hurdle to deny freedom of association.

The CSP introduces mandatory registration system where all charities and societies shall apply for registration and license within three months of formation.¹⁵⁸ Merely formed CSOs lack legal capacity and personality to perform any lawful activity beyond those necessary for their formation, and most notably they cannot perform charitable purposes and cannot raise funds in excess of 50, 000 Birr (approximately \$4, 000), nor perform activities in the interest of their members.¹⁵⁹

Applicant CSOs are required to fulfill cumbersome registration requirements.¹⁶⁰ Among others, CSOs must submit list of regions they intend to operate; names, addresses, ages, educational status, and nationalities of founders, officers, and members of CSOs and any relevant information required by the Agency. Some of these details especially about members are more than the necessary “basic facts” needed for supervision and hence indulges in the privacy of individuals.

¹⁵⁴ Jilani (2004) p.14.

¹⁵⁵ Nowak (1993) p. 395.

¹⁵⁶ Sekaggya (2009) p.16.

¹⁵⁷ Jilani (2004) p.14.

¹⁵⁸ Proclamation No. 621/2009 arts. 15(2) and 64(2).

¹⁵⁹ *Ibid.*, arts 65 and 15(2).

¹⁶⁰ *Ibid.*, art. 68 and Regulation No. 168/2009 arts 3-7.

Foreign Charities are required to present additional documents including authenticated certificate of registration from their country of origin, letter of recommendation from Ethiopian Ministry of Foreign Affairs and letter of recommendation from the Embassy of their country of origin in Ethiopia, the absence of any of which is a cause for denial of license to operate in the country.¹⁶¹ Not only some of these requirements are really unnecessary and bureaucratic but also gives leverage to filter out some ‘unwanted’ and ‘vocal’ international NGOs.

The Agency has broad discretionary power to refuse registration. As per Article 69 an application for registration shall be refused if:

1. *the rules of the proposed charity or Society do not comply with the necessary conditions set by the Proclamation;*
2. *the proposed Charity or Society is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare, or good order in Ethiopia;*
3. *the application for registration does not comply with the provisions of the law and any regulations made hereunder;*
4. *the name under which the proposed Charity or Society is to be registered resembles the name of another Charity or Society, or any other institution, or is contrary to public morality, or is illegal;*
5. *the nomenclature of the Charity or Society is countrywide and the composition of its members or its work place does not show the representation of at least five Regional States.*

Thus, registration can be refused even on frivolous grounds like irregularities in application and name resemblance and on vague and sinister grounds of lack of representation of five regional states for federal character or nomenclature CSOs or of likelihood of being used for unlawful proposes. The latter is one of the very broad and vague grounds of refusal. The phrase “... is likely to be used...” does not provide a clear measurement and gives too much room for subjective judgment and discretion to refuse registration even on unfounded and groundless assumptions. Moreover, unlike other cases,

¹⁶¹ *Ibid*, art. 68(4).

there is no possibility of subsequent registration of CSOs denied registration under this ground.

Failure to register and refusal of registration results in the dissolution of the formed association. However, the decision of the Agency to refuse registration is not appealable to courts. Undertaking charitable activities and activities in the interest of members without registration and license is a violation of the CSP, which is criminalized under Article 102(1).¹⁶² Therefore, mandatory registration system, cumbersome registration requirements and discretionary power of the registering authority to refuse registration severely threatens the free formation of CSOs and the free exercise of freedom of association.

4.3 Restriction on Human Rights Advocacy

One of the most controversial aspects of the CSP is its restriction on human rights advocacy. The law allows human rights activities only to Ethiopian CSOs as opposed to Foreign and Ethiopian Residents CSOs. These activities include:

- j) the advancement of human and democratic rights;*
- k) the promotion of equality of nations, nationalities and peoples and that of gender and religion;*
- l) the promotion of the rights of the disabled and children's rights;*
- m) the promotion of conflict resolution or reconciliation;*
- n) the promotion of the efficiency of the justice and law enforcement services.¹⁶³*

In the *Mabrarya* to the draft law, the Government provides three reasons to justify the restriction.¹⁶⁴ First, these activities are political or related to politics to be carried out only by the government and citizens. Second, the restriction is necessitated to protect the harmony between nations, nationalities and peoples, which might be destabilized, knowingly or unknowingly, by Ethiopian Residents and Foreign CSOs. Third, it is not just to give equal rights to such CSOs with homegrown ones.

¹⁶² *Ibid*, arts. 64(2) and 15(2). Unlike earlier drafts the law criminalizes unregistered CSOs by putting a general provision in article 102 which does not specify the sanction.

¹⁶³ Regulation No. 168/2009 art. 14 (2) (j-n) and 14(5).

¹⁶⁴ *Mabrarya/Explanation* p. 16.

This restriction (and its justifications) raises several questions of compatibility with freedom of association and other rights and principles. To begin with, the labeling of human rights advocacy as political is troubling. There are economic and social rights that are distinct from political rights. The adoption of separate international covenants in 1966 is one proof of the distinction. Besides, Article 25 of the ICCPR provides distinct political rights, usually referred to as democratic rights. The FDRE Constitution also follows similar approach while stipulating political rights and uses the term “every Ethiopian national...” while it uses terms like “everyone” in other cases.¹⁶⁵ These rights mainly relates to the right to elect and be elected, and participate in government administration. Because of their nature, only citizens may exercise the latter types of rights while civil rights are universal. There are of course some freedom rights that fall in the gray zone between political and civil rights like the freedom of association, assembly and expression.¹⁶⁶ Although these freedom rights have important role in the exercise of political rights they are also civil rights exercised by individuals protected from state interference.¹⁶⁷ Moreover, as discussed in chapter two, these freedom rights are recognized as universal rights in human rights instruments.

True, increased awareness of citizens about their rights and freedoms will undoubtedly have significant impact on their behavior and in the exercise of their rights and freedoms.¹⁶⁸ The more citizens become aware of their rights the more demanding and protective they become.¹⁶⁹ Nonetheless, neither the effect of human rights advocacy in raising awareness of citizens’ rights nor the effect of increased awareness of citizens’ human rights on their behavior and in the exercise of their rights equates them to be political. The interrelatedness and interdependence of human rights has long been espoused; it does not however mean socio-economic rights and civil rights become political *per se*. To consider human rights activities as political blurs the distinction, is unscientific and will not serve good cause.

¹⁶⁵ FDRE Constitution art 38.

¹⁶⁶ Nowak (1993) pp.338,385-388.

¹⁶⁷ *Ibid.*

¹⁶⁸ Vaughan and Tronvoll (2003) p. 70.

¹⁶⁹ Sen (1999).

Furthermore, the restriction on advocacy on human rights and democracy is contrary to various human rights instruments. To mention a few, it contradicts Articles 5 and 6 of the Declaration on Human Rights Defenders that recognize the right of everyone, individually or in group at national or international level, to promote and protect human rights. It is also against the UDHR, which in its preamble declares the right of “...*every individual and every organ of society, [...to] strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance....*” (Emphasis added). The restriction is also contrary to the country’s commitment under the Cotonou Agreement, which considers civil society organizations as “partner” and “supplementary” to the state in the development process including in the political dimension where good governance, democracy and human rights constitute core components.¹⁷⁰ To restrict human rights activities is thus a violation of human rights standards that entitle all individuals and civil society organizations (local and international), as an organ of society, to engage in the promotion and protection of human rights.

The other issue is the equation of local CSOs that receive more than 10% of their income from abroad, and CSOs that consist of foreign resident Ethiopian nationals as “foreign”. Why not raising for example 89% or 70% of their income locally is not enough to make them Ethiopian when they exclusively consist of and controlled by Ethiopians, and incorporated under Ethiopian law? Although there might be conditions attached to foreign grants the mere receiving of such grants let alone as small as 11% cannot change their nationality. Nor is citizens’ foreign residence a just cause for discrimination. This is simply subtle restriction on the right of citizens to exercise freely and fully the right of association. It unjustly restricts citizens’ right to freely form and participate in independent CSOs to pursue their rights and convictions, i.e., promotion of human rights, justice and equality in their country.

The arbitrariness looms large when seen together with Article 57 which singles out Ethiopian mass-based Societies as having “...the right to actively participate in the process of strengthening democratization and election, particularly in the process of conducting

¹⁷⁰ Cotonou Agreement arts. 2, 4, 8-10.

educational seminars on current affairs, understanding the platforms of candidates, observing the electoral process and cooperating with electoral organs”. The purpose of this article is vague given Article 14(2&5) which allows advancement of human and democratic rights to Ethiopian CSOs, and seems to imply that other CSOs may not involve in those processes.

4.4 Control of Funding

Although access to fund is an important aspect of freedom of association, countries especially in the developing world have been increasingly controlling access to foreign funding with the purported rationale of curbing foreign influence. Of course, CSOs are not immune from manipulation. Edwards argues that countries like Russia have been using civil society to destabilize non-loyal former Soviet Satellite states.¹⁷¹ Besides, the donor influences the agenda and the activities of CSOs. Governments thus have the right and responsibility to safeguard public interest from the adverse effects of “bad civil society”.¹⁷² However, control on foreign funding has been used for sinister purposes, to “starve civil society out of resources”.¹⁷³ As CSOs in these countries cannot raise sufficient fund locally to run their activities denial of access to foreign funding denies their financial independence and eventually forces them to cease operation.¹⁷⁴

The CSP does not altogether ban soliciting and receiving foreign funding. It rather restricts its use. Foreign funds obtained by CSOs in excess of 10% of their annual income cannot be used to promote human rights and democracy. In other words, CSOs that receive more than 10% of their income from abroad cannot engage in the above types of activities. If the source of the fund is foreign, whether from Ethiopian nationals or international agencies, it cannot be used to support democracy and human rights activities.¹⁷⁵

Under the CSP, control of access to funding is not limited to foreign sources; access to local funds is also strictly controlled. CSOs can conduct public collection only with the

¹⁷¹ Edwards (2009) p.xi.

¹⁷² Chambers and Kopstein (2001).

¹⁷³ *Global Trends in NGO Law*, p. 9.

¹⁷⁴ *Ibid.*

¹⁷⁵ Proclamation No.621/2009 arts. 2(15) and 14(2)(5).

permission of the Agency and in accordance with its strict conditions.¹⁷⁶ The Agency has a wide power to refuse permission or revoke one.¹⁷⁷ Moreover, the CSP does not provide financial benefits or tax exemptions.

Denial of access to fund effectively curtails free and full exercise of freedom of association by rendering it to an exercise in the formation of associations without protecting its continued existence.¹⁷⁸ It denies CSOs financial security and operational independence forcing them to close down. It thus constrains freedom of association in the gravest of cases. In a poor country like Ethiopia where it is not possible to raise meaningful amount of fund locally, the restriction on foreign funds means human rights organizations faces closure of offices and staff layoffs, if they do not cease operation. Lack of fund denies citizens right to organize in a perpetual way to influence positively the human rights and democratic process in their country. In addition, the restriction is a violation of Article 13 of the Declaration on Human Rights Defenders which recognizes “the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means”.

The 10% cap on foreign funding is not only an arbitrary restriction, it is also unreasonable and paradoxical for a government that gets 30% of its annual budget from foreign donation.¹⁷⁹ The strict regulation of public collection, which undoubtedly is going to be very important source of income for Ethiopian CSOs could serve to starve “unsuitable” CSOs out of resources threatening freedom of association and the freedom of associations. Furthermore, the obligation to disclose members and source of any income opens the door for intimidation of donors to and fee-paying members of, especially “unwanted”, CSOs, further drying local financial sources.

¹⁷⁶ *Ibid*, art. 98 (2) and Regulation No.168/2009 art. 15 (1)(b).

¹⁷⁷ Proclamation No 621/2009 arts. 48(3) cum 69(2), arts. 100 (1-3) and 70(1-5).

¹⁷⁸ See *Supra* note 57-66.

¹⁷⁹ Development Assistance Group (DAG) to Ethiopia.

<http://www.dagethiopia.org/Pages/DagCommon.aspx?MenuCaption=ODA%20to%20Ethiopia>.

Abbink muses the 24 billion USD EPRDF Government received in development aid between 1991 and 2008 brought no observable development. Abbink (2009) p.19.

4.5 Strict and Invasive Supervision

The law provides various mechanisms of supervision of CSOs and very broad power for supervising authorities some of which are not subject to judicial review. The principal mechanisms include reporting and disclosure, inquiry, licensing, and suspension and removal of officers. As we will see in the following sections, these measures can be deeply intrusive on the organizational and operational independence of CSOs.

4.5.1 Reporting and Disclosure

The law imposes multiple reporting obligations on CSOs. They are required to submit to the Agency annual activity report accompanied by relevant information regarding the CSO,¹⁸⁰ annual statement of accounts¹⁸¹ and annual report of bank accounts with necessary particulars.¹⁸² The Agency has also power to request any of the above reports any time for any special reason. In addition, Societies have the responsibility to notify the Agency in writing the time and place of any meeting of the general assembly at least seven days before the meeting.¹⁸³

CSOs as well as officers and employees also have the duty to disclose and provide any information or document required by the Agency be it about members, officers, employees, donors, or even about any other CSO.¹⁸⁴ Reporting and disclosure has thus passed what is necessary for administration purposes and seems to serve other purposes, “intelligence” gathering, as used in some other countries thereby creating unnecessary burden in the free exercise of freedom of association besides violating privacy.¹⁸⁵

4.5.2 Inquiry

The law grants the Agency sweeping investigative power. It can institute inquiries and inspect any time any CSOs or class of CSOs, ether generally or for particular purposes.¹⁸⁶ For the purpose of the inquiry, the Agency has the power to order any CSO or officer or employee to furnish accounts and statements, copies and original documents, attend in

¹⁸⁰ Proclamation No. 621/2009 art. 80(1-3).

¹⁸¹ *Ibid*, art. 78(1).

¹⁸² *Ibid*, art. 83.

¹⁸³ *Ibid*, art. 86.

¹⁸⁴ *Ibid*, arts. 85(1) and 63.

¹⁸⁵ Segaggya (2009) p.23.

¹⁸⁶ Proclamation No. 621/2009 art. 84(1).

person, give evidence and produce documents.¹⁸⁷ The Agency can also use any source of information for the purpose of the inquiry.

The law, however, provides no procedural protection though the result of the inquiry may lead to dissolution of CSOs and administrative sanctions for officers and employees. The evidence collected is also admissible for any criminal proceedings.¹⁸⁸ The absence of notice, hearing and representation by a lawyer coupled with the absence of judicial recourse for most CSOs negates the established principle of due process and gives unchecked power to the executive.

4.5.3 Renewal of License

To operate lawfully, CSOs should obtain license which should be renewed every three years.¹⁸⁹ The Agency renews license after evaluating performance and audit reports of CSOs and obedience to the laws, directives and orders of the Agency. If CSOs default on any of these requirements, the Agency has power not to renew the license, which, as we will see later, results in the dissolution of the CSO.

Denial of license to cease the operation of an association for not observing the order of the Agency is an abject contradiction to the freedom of association, which can only be limited in accordance with law made to protect national security, public safety, morality, and rights and freedoms of others that is necessary in a democratic society.¹⁹⁰ The same goes for poor performance and errors in reports and so on. The broad discretionary power of licensing is thus menacing, which can be abused to deny license to independent and strong CSOs for being vocal and critical of government.¹⁹¹

4.5.4 Intrusive Orders

The power of the Agency is so vast that it can give any order and take measures on CSOs and personnel it deems necessary. It can order a CSO to improve its system of operation and suspend and remove its officers when it finds misconduct or mismanagement of

¹⁸⁷ *Ibid*, art. 84(2).

¹⁸⁸ *Ibid*, arts. 105(2) and 71(2).

¹⁸⁹ *Ibid*, art. 76.

¹⁹⁰ *Belyatsky et al v. Belarus*, para 7.3.

¹⁹¹ See Aalen and Tronvoll (2009) pp. 13-19 regarding government practice in this respect.

property of the CSO, prevent such CSOs from undertaking obligations and payments, and assign an auditor to examine accounts of CSOs.¹⁹² It has also the power to order the removal and replacement of officers that are incapable for the position as per Article 70 that includes absence from Ethiopia.¹⁹³ Moreover, the Agency may, upon the request of any member or officer of the Society order the chairperson to convene the meeting of the General Assembly or convene by its own and conduct the meeting by nominating chairperson of the meeting who has a casting vote in case of a tie.¹⁹⁴

These powers of the Agency call for interference on the internal management and governance of CSOs.¹⁹⁵ It compromises the independence of CSOs to run their affairs free from government hand. In some cases, just like in public offices, the government has power to give direct orders on how the CSO should be administered and who should be in office, etc.

4.6 Disproportionate and Extra Judicial Sanctions

The CSP specifies various sanctions on CSOs and persons who violate the provisions of the law. The sanctions range from fine to dissolution of CSOs and imprisonment of individuals which raises questions of proportionality and necessity and conformity with the requirements under Art.22 (2) of the ICCPR) as well as the Constitution.

4.6.1 Suspension and Dissolution of CSOs

Suspension is one of the many sanctions the Agency can take on any CSO which it thinks has not complied with the provision of the CSP, the Regulation, directives or order of the Agency or even the CSOs own rules. It is a temporary measure taken until a CSO complies, corrects faults and provides any information required by the Agency.¹⁹⁶ Non-compliance to rectify the faults within the time set by the Agency constitutes a ground for cancellation of license or non-issuance for newly formed CSOs.¹⁹⁷ License shall also be

¹⁹² Proclamation No. 621/2009 arts. 90 and 87(3) and Regulation No.168/2009 art. 29(3).

¹⁹³ Proclamation No. 621/2009 art. 91.

¹⁹⁴ *Ibid*, art. 61.

¹⁹⁵ Hailegebrail (2009).

¹⁹⁶ Proclamation No. 621/2009 arts. 92(1) (a) and 92(1) (a-d).

¹⁹⁷ *Ibid*, art. 92(2)(c).

cancelled if registration is procured by fraud, or misrepresentation, the CSO has been used for unlawful or prejudicial purposes or commits criminal acts.¹⁹⁸

The ultimate consequence of cancellation of license is dissolution, the most serious measure applicable against legal persons. The CSP provides dissolution as an executive measure that can be taken against “defaulting” CSOs. A CSO can be dissolved if:

- i) its registration has been obtained by fraud or misrepresentation;¹⁹⁹
- ii) it has been used for unlawful purposes or purposes prejudicial to public peace, welfare or security;²⁰⁰
- iii) it could not rectify: its rules that do not comply with the necessary conditions of the CSP; the application for registration that does not comply with the CSP or any Regulation; its name that resembles with any CSO, public institution, is immoral or illegal; or a nationwide CSO could not have representative membership from or work place in five regional states;²⁰¹
- iv) its license is not renewed due to poor performance and inaccurate and incomplete audit reports, violation of the provisions of the CSP, the Regulations or directives or orders of the Agency or the CSO own rules;²⁰² or
- v) commits a crime in violation of the Criminal Code.²⁰³

The Regulation adds further grounds for dissolution. See for instance Articles 7(4) (registering in a form not applicable to it), 22(3) (failure to operate in two years), 23(3) (utilizing the proceeds of any income generating activities for purposes other than its objectives), 24 (failure to notify meetings for more than once), 26(8) (failure to provide detailed information about officers and members) and 28 (failure to display certificate). In case of violation of the some of the above articles, the Agency may give warning but only once, meaning the CSO will be dissolved the next time even for not fulfilling the orders of the Agency within the time it sets. Thus, Articles 92 and 93 of the CSP read together with

¹⁹⁸ *Ibid*, art. 92(2) (a-e).

¹⁹⁹ *Ibid*, arts. 92(2) (a) and 93(1) (b).

²⁰⁰ *Ibid*, arts. 92(2) (b) and 93(1) (b).

²⁰¹ *Ibid*, arts. 69(1, 3-5) and 93(2) (c) and 93(1) (b).

²⁰² *Ibid*, arts. 92(2) (d) and 93(1) (b).

²⁰³ *Ibid*, art. 92(2) (e) and 93(1) (b).

the Regulation makes violation of virtually all provisions of the CSP a ground for cancellation of license and eventual dissolution of CSOs.

Many of the grounds for dissolution of charities and societies are incongruent with legitimate grounds for limitation of freedom of association under the Constitution and International instruments, particularly the ICCPR. The Constitution allows dissolution of CSOs if formed in violation of the appropriate laws or is involved to illegally subvert the constitutional order. On the contrary, the CSP prescribe dissolution of any charity or society on frivolous grounds like poor performance, submission of faulty reports, non-compliance with the orders of the Agency (which may relate to anything) or the provisions of the CSP and Regulation or any directives of the Agency, etc. Certainly, these grounds are not related to involvement to illegally subvert the constitutional order²⁰⁴, and hence are contrary to the constitutionally guaranteed right to freedom of association. Establishing and participating in associations is the constitutional right of individuals irrespective of, for instance, how efficient the Society is.

Many of the grounds of dissolution do not also fall under the legitimate grounds of limitation of freedom of association in Article 22(2) of the ICCPR. The only ground of dissolution in the CSP that may conform to the ICCPR Article 22(2) is the use of the CSO for “purposes prejudicial to public peace, welfare or security”. There are however some cases where dissolution may be justified under the Constitution but not under the ICCPR. Take for instance a nationwide CSO formed without representation from or work place in five regional states. This is clearly a CSO formed in violation of Article 69(5) of CSP and hence can be dissolved without violating the constitutional freedom of association. The same is true if an Ethiopian Charity is registered under immediate registration procedures of Article 7 of the Regulation or without accepting the model rules of the Agency. The question is do dissolution measures against such CSOs conform to Ethiopia’s obligation under the ICCPR.

As we have seen in chapter two, to qualify as a legitimate limitation under the ICCPR, the limitation must be taken for violation of laws enacted to safeguard public safety, security,

²⁰⁴ See *Supra* note 102 on conformity of this requirement with the ICCPR art. 22(2).

order, health, moral and rights and interests of others, and the measures must be necessary in a democratic society. Prohibiting establishing a nationwide CSO with members from four regions or dissolving an Ethiopian Charity for registering under immediate registration procedure has nothing to do with any of the above grounds and mere violation of law is not sufficient ground to justify dissolution.²⁰⁵ Nor is it necessary or proportional to dissolve such CSOs.

The requirement of necessity is not (at least not expressly) stated in the Constitution. It is however one of the three cumulative requirements under the ICCPR. Restriction on freedom of association must be in line with hallmarks of democracy such as tolerance and pluralism. Moreover, when taking measure is necessary, it must be proportional: dissolution should not be ordered when milder sanctions are enough in the circumstances of the case. But under the CSP dissolution is possible even for minor causes like not displaying a certificate, poor performance or non-compliance with orders of the Agency, etc. A lot less threatening measures would be enough in many of these cases. Therefore, as we have seen in section 3.3.2, the narrow scope of freedom of association under Article 31 of the Constitution must be interpreted to conform to Article 22(2) of the ICCPR as per Article 13(2) of the Constitution for the country to abide by its obligation.

It is worth restating here the Views of the HRC in *Belyatesky case* where it discussed at length the issue of dissolution of human rights NGO, “Viasna”, by Belarus for alleged repeated violation of electoral law and procedure and concluded:

...even if “Viasna”’s perceived violations of electoral laws were to fall in the category of the ‘repeated commission of gross breaches of the law’, the State party has not advanced a plausible argument as to whether the grounds on which “Viasna” was dissolved were compatible with any of the criteria listed in article 22, paragraph 2, of the Covenant. As stated by the Supreme Court, the violations of electoral laws consisted of “Viasna”’s non-compliance with the established procedure of sending its observers to the meetings of the electoral commission and to the polling stations; and offering to pay third persons, not being members

²⁰⁵ See *Infra* note 206.

of “Viasna”, for their services as observers.... Taking into account the severe consequences of the dissolution of “Viasna” for the exercise of the author’s and his co-authors’ right to freedom of association, as well as the unlawfulness of the operation of unregistered associations in Belarus, the Committee concludes that the dissolution of the association is disproportionate and does not meet the requirements of article 22, paragraph 2. The authors’ rights under article 22, paragraph 1 have thus been violated.²⁰⁶

The other issue is the CSP provides sanctions of suspension, cancellation and dissolution as extra-judicial measures, to be taken by the Agency. Only the dissolution of Ethiopian CSOs is effected by the order of the Federal High Court. Thus, the majority of CSOs can be suspended or dissolved without involving the judicial process. In a parliamentary system like Ethiopia with a dominant ruling party and a weak “upper house”, the exclusion of the judicial process means that in effect the laws that restrict freedom of association are made, applied and executed by the executive organ, which constitutes a serious breach of constitutionalism, separation of powers and due process.

Therefore, given its serious consequence on CSOs (liquidation and non-existence) and individuals’ freedom of association, dissolution should have been provided as a judicial measure. Moreover, it should be prescribed as a measure of last resort when no milder measures are sufficient to avert the danger to national security or public safety, public order, public health or public moral or the protection of the rights and freedoms of others.

4.6.2 Administrative and Criminal Sanctions

The CSP also stipulates administrative and criminal sanctions in Article 103(2&3). Administrative sanctions (fines) are applicable on CSOs that fails to keep accounting records, to submit statements of accounts and activity report and to allocate 70% its budget for operational purposes. Such acts are punishable with fine up to 100,000 birr. Participation in the above-mentioned criminal acts by employees is punishable with fine up to 20,000 birr. As per Article 102(1), contravention of the CSP by any CSO or person also entails punishment as provided in the Criminal Code.

²⁰⁶ *Belatesky and etal v. Belarus*, Para 7.5.

In addition, CSOs personnel may face imprisonment under the Criminal Code. But the law fails to specify the offence and punishment under which these individuals will be prosecuted. This opens the possibility of prosecuting individuals under severe criminal provisions without observing the criminal law principle of giving proper notice of offences and punishments.²⁰⁷

Unlike the usual criminal procedure,²⁰⁸ the Agency investigates crimes committed by CSOs or personnel. Per Article 105(2), the Agency collects and organizes any evidence necessary for the criminal prosecution and submits it to the appropriate organ. In essence, the police may involve in the investigation process principally when there is a need for more evidence.

4.7 Denial of Access to Court and the Right to Appeal

As we have seen above, the Agency determines measures for violation of the CSP. Any decision of the Agency on majority of CSOs, Ethiopian Residents and Foreign, is not appealable to courts. With the exception of Ethiopian CSOs, CSOs have the right only to administrative review by the Board.²⁰⁹ The Government reasons that non-Ethiopian CSOs operate in the country because of government permission, and action taken for violating condition of the permit should not be litigated before courts as they do not have right in the first place.²¹⁰ We have seen before how flawed this argument is.²¹¹

The right to access to court and appeal is recognized in the Constitution and human rights instruments. Art 20(6) of the FDRE Constitution states: “[a]ll persons have the right of appeal to the competent court against an order or a judgment of the court which first heard the case.” This provision seems to presuppose that a court should first hear the case from whose decision appeal can be lodged; and as the Agency (not a court) suspends and dissolves CSOs there is no court decision to appeal to a court. On the contrary, Article 37 of the Constitution declares “everyone”, “any association” and “any group” has the “right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of

²⁰⁷ *Sounding the Horn*, p. 6.

²⁰⁸ See Criminal Procedure Code Proclamation, *Negarit Gazeta*, (1961) arts. 8-18.

²⁰⁹ Proclamation No. 621/2009 art. 104.

²¹⁰ *Mabraria/Explanation* p.39-40.

²¹¹ See *Supra* note 165-171.

law or any other competent body with judicial power”. And as per Article 79(1) “[j]udicial powers are vested...in the courts”. Clearly, actions that limit one’s freedom are “justiciable”. Hence, it is a constitutional right to bring actions that affect freedom of association to a court of law. Ousting of courts to hear “justiciable matters” at least by way of review is thus unconstitutional.

Article 7(1) of the ACHPR also recognizes the right to access to courts and appeal succinctly:

Every individual shall have the right to have his case heard. This comprises: a) the right to an appeal to competent national organs acts violating his fundamental rights as recognized and guaranteed by conventions, law, regulations and customs in force.

The African Commission on Human and Peoples Rights applied this principle in numerous cases involving Nigeria where it found out that the ouster of courts, by decrees, to review acts of the executive organ is a violation of the right to have access to courts and the right to judicial appeal under Articles 7(1) and 26 of the ACHPR. In *Civil Liberties Organization case*, the Commission held:

*The ousting of jurisdiction of the courts ... constitutes an attack of incalculable proportions on Article 7... An attack of this sort on the jurisdiction of the courts is especially invidious, because while it is a violation of human rights in itself, it permits other violations of rights to go unredressed.*²¹²

Thus, denying access to court or appeal is a violation of the country’s commitment under the ACHPR. In addition, the adjudication system under the CSP contradicts “the right of every one to have his case heard and determined by an independent, competent and impartial tribunal”.²¹³ The Board, being a higher body of the Agency, whose members may not have legal background and are all nominated by the Government,²¹⁴ it can hardly

²¹² *Civil Liberties Organization v. Nigeria*, para. 14. See also *The Constitutional Rights Project v. Nigeria*.

²¹³ ICCPR art. 14(1).

²¹⁴ Proclamation No. 621/2009 arts. 9, 8(1-2)

be independent, impartial and competent. An organ of the executive branch, the Agency, suspends or dissolves CSOs said to contravene its directives or orders, or Regulations enacted by the Council of Ministers-also an executive organ-or even the Proclamation itself, which is enacted by a parliament dominated by members of the ruling party. Thus, when practically one organ enacts the law, applies and enforces it with no judicial involvement the process cannot be fair and impartial and the remedy cannot be adequate and effective.²¹⁵

Hence, prohibition of access to courts and judicial review of administrative decisions seriously challenges the principles of due process, constitutionalism and separation of power which protect individuals' rights and freedoms from arbitrary interference by the state by putting a check and balance on the powers of the government. The law also discriminates individuals on irrelevant grounds.

²¹⁵ ICCPR arts. 2(3)(a) and 14(1).

5 The Wider Implications of the Charities and Societies Law

5.1 Enforced Changes on Civil Society Organizations

More than a year after the CSP entered in to force, some of its effects on CSOs are already discernible. The stringent requirements of the law on membership, funding, types of activities, etc. meant CSOs had to undergo massive transformations to survive. CSOs had to reregister in one of the legally defined forms: Ethiopian Charities or Societies, Ethiopian Residents Charities or Societies, or Foreign Charities. Unfortunately, operating in any of these forms entails a relinquishment of one or another of what they use to be.²¹⁶ Foreign and Ethiopian Residents CSOs have the advantage to access foreign fund. But such CSOs have to engage in limited activities considered by the government non-political.

Perhaps registering as Ethiopian CSO is more constraining. Although Ethiopian CSOs can engage in all types of lawful activities, in practice, the limitation on funding on such CSOs prevents them from engaging in a meaningful way in any activity. The country being one of the most impoverished nations in the world with poor philanthropic culture-where at least 95% of CSOs are almost totally dependent on foreign funding-raising sufficient amount of income locally to run their activities is near to impossibility.²¹⁷ The funding restriction forces Ethiopian CSOs to cease operation altogether or drastically downsize themselves (reduce staff, offices, budget and activities). Besides, surviving CSOs are required to undergo several other changes including name, mandate, membership and nationality and work place. The effect of the law is particularly serious on human rights NGOs. Some of the changes CSOs were forced to make are illustrated with case studies of two CSOs, EHRCO and CRDA, registered in the different forms.

²¹⁶ *Sounding the Horn* p. 6.

²¹⁷ UPR Submission by Ethiopian Human Rights Council (EHRCO) April 2009, para. 7. See also Mahder Paulos, Director of the Ethiopian Women Lawyers' Association interview with BBC: <http://news.bbc.co.uk/2/hi/africa/7814145.stm>; Yousef Mulugeta, Secretary General of Ethiopian Human Rights Council, interview with the BBC: <http://news.bbc.co.uk/2/hi/africa/7736417.stm>

One of the CSOs that faced alteration of every proportion is the Ethiopian Human Rights Council (EHRCO), a prominent local human rights organization established in 1991 by Ethiopians with the objective of promoting human rights, rule of law and democracy.²¹⁸ EHRCO has been one of the few independent human rights NGOs that monitors human rights situation in the country.²¹⁹ EHRCO used to get at least 95% of its funds from abroad.²²⁰ Unsurprisingly, its relation with the government has been rough since its formation.²²¹ The government has been considering EHRCO as “a fox in the skin of a ship”-a political organization in the name of human rights organization, its work “politically motivated” and unprofessional.²²²

To continue as a human rights organization under the CSP regime, EHRCO had to register as Ethiopian Charity as other forms do not allow carrying out human rights activities. As a result, EHRCO lost at least 95% of its income source and its members (nationals residing abroad and foreigners). The lack of income forced EHRCO to close 8 (out of 11) of its offices and to lay off large portion (44) of its permanent staff. The fact that it has offices in only three regions meant it failed to fulfill the requirement of having offices in five regional states to continue with its federal nomenclature or character and hence had to drop the prefix “Ethiopian” from its name and become only “Human Rights Council” (HRCO).²²³ Simply, the funding restriction sets a chain of drastic changes.

In addition, the Agency froze EHRCO’s bank accounts. Director General of the Agency, Ato Ali Siraj, justifies the order under Article 14(2 & 5) of the CSP that human rights activities should be undertaken by local resources and EHRCO cannot transfer and use the funds it secured from abroad before re-registration.²²⁴ Eventually, EHRCO become slim and financially insecure, its work undercut and susceptible to incisive and recurrent supervisory actions by the Agency.

²¹⁸ EHRCO,

http://www.ehrco.org/index.php?option=com_content&view=section&layout=blog&id=19&Itemid=22&lang=en

²¹⁹ Tronvoll (1997) at note 2. See also EHRCO website, *Ibid*.

²²⁰ McLure (2009).

²²¹ Human Rights Watch, Ethiopia: Targeting Human Rights Defenders (2001).

²²² Human Rights Watch, *Human Rights Curtailed in Ethiopia*, December 1997.

²²³ The other reason can be resemblance with the government established Ethiopian Human Rights Commission though EHRCO was established much earlier.

²²⁴ Siraj interview with VOA Amharic service on 24 March 2010.

Christian Relief and Development Association (CRDA) is the largest umbrella organization in the country with 351 NGO members, both local and international, that used to engage in multitude of activities including development, capacity building and rights advocacy. To accommodate the interest of its members under the CSP regime, CRDA had to register as a Consortium of Ethiopian Residents and Foreign Charities with an amended name “Consortium of Christian Relief and Development Association (CCRDA).²²⁵ Besides ceding its human rights and good governance advocacy objectives and “change of nationality” of some of its members (from “Ethiopian” to “Ethiopian Residents” which has the same status as foreign CSOs), 60 of its member NGOs were unable to re-register.²²⁶

In general, the need to secure the much needed foreign fund forced many civil society organizations to re-register as Ethiopian residents CSOs or foreign charity thereby changing their status as local CSOs and alienating participation in the human rights and democratic process of the country. The very few CSOs registered as Ethiopian CSOs continue to suffer from lack of funds.

5.2 Rectification

Rectification is a process of purging socially or politically unwanted CSOs. It has been used in some countries like China since 1989 where large numbers of NGOs were forced to cease operation.²²⁷ Although the CSO law does not specifically provide for such a measure, the re-registration and licensing requirements and standards set by the Agency effectively served the purpose of rectification. CSOs unable to submit audit reports, statement of accounts, and annual activity reports were abolished. CSOs that have not been in operation for the last two years or were not doing “tangible things” also ceased operation. The process has resulted in the abolishment or deregistration of 60% of CSOs that have been registered since 1960s. According to Ato Siraj, only 1527, out of 3800 CSOs, are registered by 6 February 2010.²²⁸

²²⁵ See CCRDA Certificate of Registration.

<http://www.crdaethiopia.org/Documents/Certificate%20CCRDA.pdf>

²²⁶ See also Meshesha, President of CRDA interview with VOA Amharic service, 24 March 2009.

²²⁷ *Freedom of Association in China and Europe* (2005) pp.61-63.

²²⁸ See also Tsige (2010).

Equally menacing is its prospect. Such measure can be taken on any surviving CSO or group of CSOs considered “unwanted”. It thus institutionalizes harassment on CSOs.

5.3 Implications on Human Rights Work and the Democratic Process

Ethiopia seems to have joined the club of electoral authoritarian states where civil society and other democratic institutions are successfully controlled or manipulated.²²⁹ Ethiopian CSP like other countries in the club prohibits democracy assistance particularly to independent civil society. The law does this by prohibiting local NGOs funded by foreign resources and international NGOs from working in human rights and democracy issues. Under Ethiopian context, it means that there will be very few small sized NGOs working in these areas due to lack of funds. And international NGOs like HRW and AI will not investigate and report on human rights violations in the country. Moreover, the broad discretionary power of the Agency creates a climate of fear and uncertainty on CSOs even to work on these areas let alone challenge and hold the government accountable. In effect, human rights violations will go unreported and uninvestigated, democracy advocacy will be off-limits and civil society will surely shift in to non-prohibited or government favoured areas like environment, culture, emergency aid, etc.

As has been experienced elsewhere and early developments suggest government affiliated organizations will take charge of these areas. An important illustration is voters’ education and election observation where independent CSOs were active during the 2005 election. It is clear that foreign and Ethiopian residents CSOs cannot participate in those processes. Article 57 of the CSP and developments so far in relation to upcoming May election suggest even Ethiopian CSOs are not allowed to participate in democratization and election processes. Only mass-based societies seem to be allowed to participate in these areas. So far, no independent CSO or coalition participates in voters’ education, arranging debates or declares to observe the election. The National Political Parties’ Council arranges debates,²³⁰ the role played by an NGO, Inter Africa Group, in the 2005 election. And recently a coalition of ten trade union associations is forged and licensed to observe the

²²⁹ Lovise and Tronvoll (2008). Gershman and Allen (2006) p.37.

²³⁰ Electoral law of Ethiopia Amendment Proclamation No. 532/2007 (Proclamation No. 532/2007 herein after) art. 92(1).

2010 election.²³¹ The Coalition has as president the President of Employers Confederation, as vice president the President of Employees Confederation and as secretary President of Teachers Association. These organizations have long been branded as government appendages and the government has been criticized for interference in independent trade unions: harassing union leaders and members, dissolving and replacing trade unions with government controlled unions, etc.²³² Women and youth associations are also flourishing under government policy of democratic mass participation and creating a ‘‘vanguard force’’.²³³ The mass-movement ideology emerged in the country following the 1950s and 60s student movement, hijacked and used to a greater extent by the socialist regime for political support, seems to get redemption again in the era of Revolutionary Democracy.²³⁴

Moreover, the 2007 Amended Electoral Law which regulates election observation and voters education entrusts the National Election Board the sole responsibility of civic and voters’ education with absolute discretion to license or contract organizations to offer civic and voters’ education.²³⁵ Thus, independent CSOs cannot participate in civic and voters education as of right as it is given to the Election Board by a special law. Election observation is also subjected to a special regime of licensing by the Board. Newly formed CSOs cannot be licensed and only local CSOs can observe elections, if licensed.

Eventually, human rights activities will be left to government-established institutions: the Ethiopian Human Rights Commission and Office of the Ombudsman, both barely have a proactive role, independence and capacity to hold the executive organ accountable to the constitutional and human rights principles.²³⁶ And government sponsored and mass based associations will replace independent civil society organizations. The depletion of independent civil society organizations is thus a threat to human rights and the democratization process in the country.

²³¹ Fanta (2010).

²³² Report of the Committee of Experts on the Application of the Applications of [ILO] Conventions and Recommendations, International Labour Conference, 97th Session, 2008, pp.123-126. HRW 2010 Report, p.36. US State Department 2008 Human Rights Report: Ethiopia (2009) and US State Department 2009 Human Rights Report: Ethiopia (2010).

²³³ Report by the General Counsel of EPRDF to the 7th EPRDF Congress (September 2008) paras. 2.2, 9.4, 10.1. See also the Report of EPRDF Council to the 6th Congress.

²³⁴ Lovise and Tronvoll (2008) pp.115-16.

²³⁵ Proclamation No. 532/2007 art 89(1-3).

²³⁶ See the Report by the Counsel of EPRDF to the 6th EPRDF Congress (September 2006) p. 27.

6 Conclusion

Despite a full liberal constitution that recognizes a range of rights and freedoms, a multi-party democracy, independent press and other democratic institutions, Ethiopia's human rights and democratic record is at a dismal level. The country's reputation in this regard has deteriorated particularly after the 2005 national election where the government, among others, embarked on enactment of a series of a new breed of legislations heavily criticized for contradicting the Constitution and the country's commitment under human rights instruments. One of such laws that show a reduced commitment to human rights and democracy is the Charities and Societies Proclamation. As discussed in the previous chapters, the law prescribes stringent establishment and operational requirements for CSOs and provides pervasive supervisory powers that contravene the freedom of association and other principles. The most serious of such measures are the prohibition of advocacy on human rights and democracy by Ethiopian Residents CSOs and Foreign Charities, the 10% limit on external funding of Ethiopian CSOs, the requirement of representation from or offices in five regional states to form nationwide CSOs, the wide discretionary power of the Agency to refuse registration and renewal of license and take any action on CSOs and personnel including suspension and dissolution of CSOs and removal and replacement of CSOs officers.

Formation, operational and funding limitations in the law curtail the freedom of citizens to choose with whom to associate. They cannot associate with foreign resident Ethiopian nationals or foreigners that may have the resource and knowledge to promote and protect human rights and advocate democracy although promotion and protection of human rights and freedoms at national or international level is the right of everyone. It discriminates citizens based on status as foreign resident, and discriminatorily prohibits foreign nationals to form Societies to protect their rights and interests and advance human rights and freedoms.

Forming and participating in nationwide CSOs is also unjustly hampered. The prohibition of formation of CSOs with federal character or nomenclature unless they have representative membership from or work places in five out of nine regions of the country is not only unreasonable restriction that contradicts the freedom of association as enshrined in the ICCPR and other instruments to which the country is a member, but also threatens the legal basis for the Federal Government to regulate other forms of CSOs.

Moreover, the unfettered power of the Agency to refuse registration and renewal of license even for minor causes, and to take sweeping action on CSOs or personnel like suspension and dissolution of CSOs and strict control of access to funding, removal and replacement of CSOs personnel and administration of hefty fines severely impairs the formation, operational independence and continued existence of CSOs and hence poses a serious threat to freedom of association. Forcing CSOs to cease operation by starving out of resources through tight control of foreign as well as local financial sources and extra judicial suspension and dissolution of associations for broad, vague and minor grounds violate the freedom of association in the gravest of cases.

Under the CSP regime, independent and assertive civil society action would be impossible. The Agency has many tools to cripple such CSOs and such measures are not subject to judicial review with the exception of “Ethiopian” CSOs. Citizens who receive foreign funds or associate with non-residents are denied access to court and right to appeal any decision the Agency may take regarding their associations. The existence of such power and absence of judicial recourse for remedy creates an environment of fear and uncertainty. CSOs that survived the first wave of rectification and transformation that saw the dissolution of hundreds of CSOs would be docile at best towards human rights and democratic activism in particular as the intolerance of the government is on these areas; violations and injustices would go unreported let alone remedied. Government organizations like the Ethiopian Human Rights Commission and Office of the Ombudsman are not intended and equipped to challenge and hold the Government accountable for the cause of human rights and justice. Civic participation outside of government sponsored mass associations like the women and youth associations and trade unions would be peripheral, or at best would shift to insensitive and government favoured areas like emergency relief. In effect, CSOs will be confined to addressing the effects of societal

problems and poverty instead of addressing the causes of deprivations. Respect for human rights and democratization in the country in the absence of independent civil society is thus bleak.

To sum, the Ethiopian state has failed to fulfill its obligation under international human rights instruments and the Constitution to respect, protect and fulfill the freedom of association and other basic freedoms by specifying deeply intrusive measures in the Charities and Societies law. Hence, the restrictive provisions of the CSP that violates the Constitutional and international human rights principles need to be revised, to the minimum.

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