
amnesty international

Ethiopia: ***Comments on Draft Charities and Societies Proclamation***



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Amnesty International's comments on Ethiopian Draft Charities and Societies Proclamation

1. Introduction

Amnesty International is deeply concerned by the repressive Draft Charities and Societies Proclamation, which clearly aims not only to undermine and frustrate the work of independent civil society organizations in Ethiopia but also to bar foreign non-governmental organizations (NGOs) such as Amnesty International from operating in the country. The Draft Proclamation demonstrates the government's increasing intolerance of the work of human rights defenders and civil society organizations, and would seem to be a ploy by the government to conceal human rights violations and prevent public protest and criticism of its actions. If passed into law, the Draft Proclamation will certainly have a negative impact on the human rights of citizens throughout Ethiopia.

Amnesty International is also seriously concerned that the provisions of the Draft Proclamation violate international and regional human rights treaties to which Ethiopia is a party and may thereby lead to an increase in human rights violations. The Draft Proclamation also violates the provisions of the Ethiopian Constitution, especially Article 31, which provides that "Everyone shall have the right to form associations for whatever purpose."

Amnesty International considers the Draft Proclamation to be a serious violation of citizens' human rights to freedom of expression, association and assembly, which would prevent them from freely forming organizations, meeting together and criticizing government policy. If passed into law, the Draft Proclamation will open the floodgate for individuals and members of independent civil society organizations to be arbitrarily arrested and detained, assaulted and harassed by state agents. Under the Draft Proclamation, human rights NGOs would face intrusive and unwarranted state surveillance of their operations.

Furthermore, if enacted and enforced, the Draft Proclamation would ban international human rights NGOs from operating in Ethiopia, and could be used to prohibit local NGOs from accessing or accepting foreign funding. Given the limited funding opportunities in Ethiopia, it is difficult to see how local civil society organizations can function effectively without funding from outside Ethiopia.

This brief Comment looks at some of the most repressive provisions of the Draft Proclamation in light of the obligations and commitments of Ethiopia under international and regional human rights treaties to which the country is a state party. Amnesty International urges the Government of Ethiopia not to pass the Draft Proclamation into law, as to do so would violate the internationally recognized human rights of Ethiopian citizens and undermine the work of human rights defenders, and independent civil society organizations.

2. Context of the Draft Proclamation

This Draft Proclamation should be read in the context of the Ethiopian government's ongoing conflict with and repression of NGOs and humanitarian organizations. Amnesty International has documented numerous instances where human rights defenders and civil society activists have faced persecution and intimidation by security forces in Ethiopia.

These have included the detention and torture of the leadership of the Ethiopian Teachers Association (ETA), and the creation of a rival pro-government union which appropriated the name of the ETA, and the harassment and persecution of staff of the Ethiopian Human Rights

Council (ERCHO). Two illustrative examples of instances where the Ethiopian government has sought to repress NGOs active in Ethiopia are outlined in more detail below.

The prosecution of Daniel Bekele and Netsanet Demissie

Daniel Bekele is the policy manager of ActionAid in Ethiopia. Netsanet Demissie is the founder and director of the Organization for Social Justice in Ethiopia. Both are prominent human rights lawyers. In November 2005, they were both arrested during major political unrest following the national elections of May 2005. There were demonstrations in Addis Ababa in June and November 2005 protesting alleged election fraud. The demonstrations were violently dispersed and security forces shot dead 187 people. Six police officers were also killed.

Both men were held and tried along with leaders of the opposition Coalition for Unity and Democracy party and a number of Ethiopian journalists. They chose to enter a defence, unlike their co-accused, during a trial process that ran for over two years. In December 2007, they were convicted by a majority verdict of the Ethiopian Federal High Court of provoking and preparing "outrages against the Constitution" and were sentenced to 30 months imprisonment. Amnesty International believes they were prisoners of conscience, detained and convicted solely for their peaceful work as human rights defenders. On 28 March 2008, both were pardoned, after signing a letter apologizing for their actions.

Their detention and prosecution demonstrates the risks and obstacles facing human rights defenders who carry out legitimate activities in Ethiopia. The prolonged detention and conviction of two prominent human rights defenders in Ethiopia, Daniel Bekele and Netsanet Demissie, were not only grave violations of their fundamental human rights, but have had an intimidating effect on other human rights defenders working in Ethiopia.

The expulsion of humanitarian agencies from the Somali region

On 26 July 2007, the International Committee of the Red Cross (ICRC) confirmed that it had been ordered by the Ethiopian Government to leave the Somali region of Ethiopia, also known as the Ogaden, and was given only 7 days to pull out, after 12 years of presence in the region.

The ICRC has a strict policy of independence and impartiality and before the expulsion order was supplying medical supplies and running water and sanitation projects in the region, as well as visiting detention facilities and monitoring the treatment of detainees. As of 3 June 2008, the ICRC had not been allowed to return to the Somali region.

In August 2007, two sections of Medecins sans Frontieres (MSF) reported that they were being repeatedly denied access to their programs in the Somali region, in spite of a signed agreement with the government and a presence in Ethiopia since 1984.

A spokesperson of the Ethiopian Government was quoted by Integrated Regional Information Networks (IRIN) as rejecting the accusation and claiming that the Ethiopian government had "never blocked any NGO" from the region. The spokesperson also accused MSF of making "political statements," reporting "fabricated stories" and "have an agenda of blackmailing the Ethiopian government."

These incidents are only two of a number of instances where the Ethiopian government has sought to repress NGOs active in Ethiopia. Amnesty International fears that these instances demonstrate that the motivation of the Ethiopian government in drafting the Draft Proclamation is an attempt to create a legal framework to enable repression of and state control over NGOs, particularly those that may criticize government policy, or expose human rights abuses perpetrated by Ethiopian security forces.

3. Comments on key provisions in the Draft Proclamation

The Draft Proclamation provisions and objectives are inconsistent and incompatible with Ethiopia's international and national human rights obligations

According to its preamble, the Charities and Societies Draft Proclamation purports to address perceived inadequacies in the existing legal regime and to “provide for the proper administration and regulation of charities and societies.” It also claims to “ensure the realization of citizens’ right to association enshrined in the Constitution.” However, the substantive provisions of the Draft Proclamation do exactly the opposite, and contain extraordinary measures that would thwart the work of individuals and independent civil society organizations, and which are aimed at putting the operation of non-governmental organizations directly under the control of the government. The Draft Proclamation characterizes legitimate human rights work as “illegal acts and illegal activities” in a bid to clamp down on any NGOs that are deemed too critical of government policies. It would require existing and duly registered civil society organizations to re-register under a new law. Given the broad grounds upon which registration could be refused, and the wide discretionary powers of a government-controlled agency (the Charities and Societies Agency) to be created under the Proclamation, and the history of government repression of NGOs outlined above, it is very unlikely that ‘unfriendly’ civil society organizations would be re-registered. Amnesty International fears that if enacted the Proclamation would be used to disband remaining independent NGOs throughout the country.

These draft provisions raise doubts about the willingness of the government of Ethiopia to uphold its good faith obligations to its citizens, including under the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights, both of which the government has ratified.

Article 123 of the Proclamation sweepingly declares that “Any laws and practices contrary to this Proclamation are hereby repealed.” In addition to undermining Ethiopia’s own Constitutional provisions, this article is a breach of Ethiopia’s international human rights obligations and commitments. A State Party may not invoke the provisions of its national law as justification for its failure to implement an international treaty.¹ In this sense, States Parties are obliged to repeal or amend domestic laws to ensure that they are consistent with international treaties, and to adopt measures to ensure the implementation of the obligations contained in the treaties to which they are party.

The Draft Proclamation directly impinges international standards by prohibiting or restricting access of domestic human rights NGOs to foreign funding and by excluding the work of ‘non Ethiopian or Foreign Organizations’

Under the Draft Proclamation, local human rights NGOs or “Ethiopian Charities and Societies” are prohibited from receiving “more than 10% of their funding from foreign sources.” The membership of these organizations must be fully “Ethiopians,” and the organizations must be “funded or controlled by Ethiopians.” (See Articles 2(3); 2(4).)

These provisions have several grave implications for human rights defenders and for victims of human rights violations throughout Ethiopia. The level of funding which NGOs need to operate and function effectively is not available in Ethiopia, particularly given the current economic

¹ See articles 26 and 27 of the Vienna Convention on the Law of Treaties (1969). Article 26 refers to the principle of *pacta sunt servanda* stating that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith is recognized as a rule of customary international law.”

climate in the country. Most local human rights NGOs in Ethiopia are therefore heavily dependent on "foreign" donations and support.

These provisions also clearly amount to interference in and restriction of the work of independent human rights NGOs in Ethiopia. They also directly violate the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) adopted by the General Assembly in 1999.² This Declaration sets down a series of principles and standards aimed at ensuring that states fully support the efforts of human rights defenders and ensure that they are free to conduct their activities for the promotion, protection and effective realization of human rights without hindrance or fear of reprisals. Specifically, Articles 13 and 14 of the Declaration guarantees to everyone the right to: solicit, receive and utilize resources for the express purpose of promoting and protecting human rights through peaceful means. The individuals and NGOs who defend human rights obviously need to have material and financial resources in order to carry out their work. Human rights defenders and NGOs cannot rely on being paid for the services they provide; the victims of human rights violations and the other people whom they represent or assist are almost invariably without means to ensure payment.

Prohibiting human rights NGOs from raising necessary foreign funds for their work in a country where such support is lacking or unavailable is to make these organizations ineffective. It could be expected to force many NGOs to close their offices entirely. This would in turn directly impinge the rights to freedom of expression, association and assembly, which are fundamental to the work of human rights defenders and NGOs. These rights are enshrined in the Constitution of Ethiopia, the International Covenant on Civil and Political Rights (ICCPR) (Articles 19, 21 and 22) and the African Charter on Human and Peoples' Rights (Articles 9, 10 and 11). While the rights to freedom of expression, association and assembly are not unlimited, international human rights law prevents governments from arbitrarily restricting these rights. In respect of the rights contained in the ICCPR, the UN Human Rights Committee has stated:

*"States Parties must refrain from violation of the rights recognized by the Covenant and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right."*³

The African Commission on Human and Peoples' Rights (the African Commission) has repeatedly affirmed the rights to freedom of expression, association and assembly. The African Commission's Declaration of Principles on Freedom of Expression in Africa, adopted at the 32nd Session of the African Commission held in October 2002 in Gambia, reaffirms the fundamental importance of freedom of expression as a means of ensuring respect for all human rights, stating that freedom of expression is a fundamental human right and an indispensable component of democracy.⁴ The declaration makes clear that any restrictions on freedom of expression should

² A/RES/53/144, 8 March 1999.

³ General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.1, para. 6.

⁴ African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression in Africa, I (1), October 2002, Gambia.

be prescribed by law, serve a legitimate interest and be necessary and in a democratic society. This echoes the language of the ICCPR which states:

*"No restrictions may be placed on the exercise of [the right to freedom of association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."*⁵

The African Commission Resolution on the Right to Freedom of Association also makes specific reference to the limits of any restriction on the right to freedom of association:

- 1. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standards;*
- 2. In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom;*
- 3. The regulation of the exercise of the right to freedom of association should be consistent with State's obligations under the African Charter on Human and Peoples' Rights.*⁶

The African Union (and the Organization of African Unity before it) has repeatedly affirmed the importance of the work of human rights defenders and NGOs. The AU/OAU Ministerial Conference on Human Rights at Grand Bay, Mauritius in April 1999, called on "African governments to take appropriate steps to implement the UN Declaration on Human Rights in Africa."⁷ In 2004 the African Commission on Human and Peoples' Rights appointed a Special Rapporteur for Human Rights Defenders in Africa. In its resolution, the African Commission on Human and Peoples' Rights called on member states:

*"to promote and give full effect to the UN Declaration on Human Rights Defenders, to take all necessary measures to ensure the protection of human rights defenders and to include information on measures taken to protect human rights defenders in their periodic reports."*⁸

Amnesty International believes that the Draft Proclamation fails to comply with the above directives by the AU and the African Commission on Human and Peoples' Rights and directly contravenes international law on the rights to freedom of expression, association and assembly, in particular because it places unreasonable limitations on the enjoyment of these freedoms. For a country hosting the Headquarters of the AU, the Draft Proclamation stands in sharp contrast to the human rights objectives of the pan-African institution, and is a direct affront to its authority and mandate.

Further, under Article 16 of the Proclamation, foreign NGOs are inexplicably barred from taking part in activities concerning: citizenship and community development; human and democratic rights; conflict resolution or reconciliation; equality and diversity among nations, nationalities and

⁵ ICCPR, Article 22 (2).

⁶ African Commission on Human and Peoples' Rights, Resolution on the Right to Freedom of Association, Tunis, March, 1992.

⁷ Organization of African Unity, Grand Bay (Mauritius) Declaration and Plan Of Action, adopted at Grand Bay, Mauritius on 16 April 1999, para 19.

⁸ African Commission, Resolution on Protection of Human Rights Defenders in Africa, 35th Ordinary Session, Banjul, the Gambia, June 2004. See also, Amnesty International, "Towards the Promotion and Protection of the Rights of Human Rights Defenders in Africa. Amnesty International's recommendations to the Focal Point on Human Rights Defenders of the African Commission on Human and Peoples' Rights," 19 March 2004, AI Index: IOR 63/004/2004.

peoples or different religious groups; sustainable development of nations, and justice and law enforcement services. The Proclamation would not however apply to foreign NGOs operating in Ethiopia “by virtue of an agreement with the Government of Ethiopia.” (Article 3(2).)

Amnesty International fears that the Draft Proclamation would be used to prevent foreign human rights NGOs and human rights defenders from carrying out practically any human rights work in Ethiopia. In fact, the Draft explicitly forbids foreign civil society organizations from doing any human rights related work in the country. (See Section Three, Article 16 of the Draft.) Such provisions mean that several foreign human rights NGOs would no longer be able to legally operate in Ethiopia. Amnesty International views these restrictions on foreign NGO operations as a violation of the right to freedom of association and contrary to the UN Declaration on Human Rights Defenders, which affirms the right of everyone to, individually and in association with others, promote and strive for the protection and realization of human rights at the national and international levels. As the observance of human rights is a matter of universal concern, the right to defend them must not be subjected to geographical restrictions. It should be possible for everyone to exercise this right on the international as well as the national level.

The Draft Proclamation allows for strict government control and interference in the operation and management of civil society organizations

Under the Draft Proclamation, a government-appointed and government-controlled Charities and Societies Agencies (CSA) would oversee the operation and management of all civil society organizations in Ethiopia. (See Section Two, Article 4-15.) The CSA, which would only be accountable to the Minister of Justice, under the draft is given very broad discretionary powers to regulate NGO activities, including to refuse to accord legal recognition to NGOs and to disband existing and fully registered NGOs. The CSA would have “full and free access to all buildings, places, books, documents, papers of a charity or society.” (See Articles 102;104.)

If the Draft Proclamation becomes law, NGOs would be forced to register with the CSA, but registration could be refused on flimsy grounds, such as where the CSA considers “that it is unlikely that the proposed society will achieve its purposes by virtue of its rules, insufficiency of funds.” The CSA could also refuse registration “if the proposed society or charity is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Ethiopia. Registration could also be refused simply for “any other reason.” (See Section Five, Article 74.) Registered NGOs might be de-registered for example when “the CSA or any Sector Administrator has determined that the continued registration of the institution is contrary to the public or national interest.” (See Section Eight, Article 105.) Also, the Proclamation would require civil society organizations to establish “a General Assembly,” which must inform the CSA of its meetings. Representatives of the CSA or police officers could also attend such meetings. (See Section Eight, Article 97.) Civil society organizations would be required to first seek and obtain the written approval of the CSA before establishing a branch office, changing its name or place of business, amending its rules, using any kind of symbol or flag. (See Section Five, Articles 78-80.) Any NGO which does not renew its license yearly with the CSA would be sanctioned, and its activities declared “unlawful.”

According to the Draft Proclamation, anyone who participates in the management of any “unlawful” or unregistered NGO would face up to five years imprisonment and receive heavy fines. (See Article 82.) It would be a criminal offence, punishable by up to two years in prison and fines of 5,000 birr, for any person to attend a meeting of an “unlawful” NGO. (See Article 82.) It would also be a criminal offence, punishable by up to two years and fines, for anyone to print, disseminate or display information “in the interests of an unlawful charity.” It would be the

government-controlled CSA alone that determines the “unlawfulness” of any charity or NGO, or what is “contrary to the public or national interest.” (See Article 85.)

Together, the above highlighted provisions of the Draft Proclamation amount to an unjust and unlawful attack on the human rights of defenders and NGOs to: develop and discuss new human rights ideas and principles and advocate their acceptance; have effective access, on a non-discriminatory basis, to participation in the government of their country and in the conduct of public affairs; and to lawfully participate in peaceful activities against violations of human rights⁹.

Amnesty International believes these provisions would impose unacceptable restrictions on the activities of independent civil society organizations and are inconsistent with international law and standards on, *inter alia*, the rights to freedom of expression, association and assembly. Amnesty International believes that the CSA would not offer the necessary guarantees of independence and impartiality and could be used to prevent the registration of any organization perceived to be critical of the government, or to interfere unduly with the activities of such organizations.

The UN Declaration on Human Rights Defenders states that human rights defenders, whether individuals or organizations, “shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”¹⁰ Amnesty International believes that the above highlighted provisions are wholly inconsistent with the UN Declaration of Human Rights Defenders and would very likely be used by the Government of Ethiopia as tools to intimidate and harass those organizations that are critical of the government.

Article 3 of the UN Declaration on Human Rights Defenders provides that domestic law, consistent with states’ international human rights obligations, shall form the juridical framework for the enjoyment of human rights, and for carrying out human rights activities. Article 4 provides that nothing in the Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or the provisions of international and regional instruments relevant to the promotion and protection of the rights of defenders. Both Articles 5 and 6 reaffirm the human rights of everyone to, individually or in association with others: meet or assemble peacefully; form, join and participate in NGOs, associations or groups; and communicate with NGOs or intergovernmental organizations. These Articles also guarantee the right to: know, seek, obtain, receive and hold information about human rights; freely publish, impart or disseminate to others views, information and knowledge on human rights; and study, discuss, form and hold opinions on the observance, both in law and in practice, of human rights.

Ensuring that people are well informed about their rights and about the safeguards that states must implement to protect them is an important factor in the prevention of human rights violations. This right to know and to make known to others what rights they possess, how they should be protected and who ensures this protection should thus be exercised without interference. Exercising the right to be informed about human rights means being able to freely seek, receive and impart information and ideas. It is therefore of absolute importance that human rights defenders and NGOs have direct and unhindered access to information on human rights without fear of imprisonment or fine, contemplated under the Draft Proclamation.

⁹ Towards the Promotion and Protection of the Human Rights of Human Rights Defenders in Africa (AI Index: IOR 63/004/2004 19 March 2004

¹⁰ Article 17 of the UN Declaration on Human Rights Defenders.

The Draft Proclamation directly violates international standards of fairness

Though the Draft Proclamation establishes several 'criminal offences' to punish those legitimately engaged in human rights work, it also creates a situation of 'double jeopardy' for human rights defenders and members of independent NGOs by completely removing any avenues of fair trial, except a limited administrative review process, which would also be prone to political manipulation. No foreign NGOs would be able to challenge the actions of the CSA or its director before a competent, independent and impartial court. As Article 118 of the Proclamation provides, only the "Ethiopian charity or society or Ethiopians aggrieved by the decision of the minister may appeal to the federal high court on questions of law within 15 days from the date of his decision." But the Proclamation contains no provision for appeal to a higher tribunal according to law. Also, Ethiopian NGOs designated as 'foreign NGOs' because they receive "more than 10% of their funding from foreign sources" (Article 2(3)) may be denied the right to fair trial. Amnesty International is deeply concerned that human rights defenders and members of independent NGOs would be at risk of being denied their right to a fair trial once they are cited for violating the provisions of the Proclamation. This is entirely inconsistent and incompatible with Ethiopia's international human rights obligations. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." Article 14(5) provides that "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

4. Amnesty International's Recommendations to the Government of Ethiopia

In light of the above highlighted shortcomings of the Draft Proclamation and the cases of attacks against human rights defenders and members of independent civil society groups, Amnesty International calls on the Government of Ethiopia to:

Withdraw the Draft Proclamation; passing it into law would violate internationally recognized human rights of Ethiopian citizens and undermine the work of human rights defenders and independent civil society organizations

Repeal or amend all national legislation which is incompatible with international human rights law and standards including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights

Ensure that the principles contained in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms are incorporated into national law and fully implemented. Authorities at all levels of government should explicitly commit themselves to promoting respect, protection and fulfilment for human rights, and to the protection of human rights defenders.

Incorporate international human rights law and standards into national law and ensure all provisions are fully implemented.

As Ethiopia has ratified, *inter alia* the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, national legislation must be brought into line with the fundamental rights and freedoms contained in these legal standards, recognizing and impartially enforcing them.