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- e) the advancement of amateur sports and the welfare of the youth;
- h) the relief of those in need by reason of age, disability, financial hardship or other disadvantage;
- i) the advancement of capacity building on the basis of the country's long-term development directions;
- j) the advancement of human and democratic rights;
- k) the promotion of equality of 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 and reconciliation;
- n) the promotion of the efficiency of the justice and law enforcement services; and
- o) any other purposes as may be prescribed by the Agency.

STIFLING HUMAN RIGHTS WORK

THE IMPACT OF CIVIL SOCIETY LEGISLATION IN ETHIOPIA

AMNESTY INTERNATIONAL



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Cover photo: Articles contained in the Charities and Societies Proclamation of 2009 place significant restrictions on the funding and activities of human rights organizations in Ethiopia.

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INTRODUCTION

“The Charities and Societies law is debilitating us”

Human rights organization staff member

In January 2009 the Ethiopian parliament passed into law the Charities and Societies Proclamation (No.621/2009). The law regulates non-governmental organizations, mass-membership based societies, charitable trusts and foundations. The new legislation required every charity and society in the country to re-register under a newly created Charities and Societies Agency, and contains provisions on the composition and funding of organizations. The sector needed better regulation. However, the law that came into force places excessive restrictions on the work of human rights non-governmental organizations (NGOs). The law provides the Charities and Societies Agency with substantial powers to interfere in the running, administration and planning of organizations, which, among other concerns, jeopardises the security of victims of human rights violations. The law restricts the rights of freedom of expression and association of human rights defenders, and of the Ethiopian public, in violation of the Ethiopian government's obligations under national and international law. Infringements of the law's provisions could lead to heavy fines or imprisonment for NGO staff.

In practice, the law has had a devastating impact on human rights work in Ethiopia. Since the law was passed human rights organizations have decreased in number, many have changed the focus of their mandate, and those human rights organizations who have 'survived' have significantly scaled down their activities due to the major impact of funding restrictions. Offices have been closed, and large numbers of staff have lost their jobs. Development organizations have abandoned the 'rights-based approach' to development.

In restricting human rights organizations from doing their legitimate and essential work, the law has significantly affected the promotion and protection of the rights of the Ethiopian people. Civil society organizations are essential to upholding human rights, equality and justice at all levels of society, and to holding governments to account for their performance and adherence to national and international human rights commitments.

In this context, the government of Ethiopia continues to be responsible for widespread human rights violations, whilst their actions are subject to ever-decreasing scrutiny. The

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Charities and Societies Proclamation is one of three laws introduced since 2008¹ which significantly curtail citizens' freedom of expression and association, and particularly, restrict individuals' and organizations' ability to freely criticise their government.

The underlying impact of the Charities and Societies Proclamation has been to entrench still further, and even to institutionalise, the climate of fear pervading the work of human rights defenders in Ethiopia. A number of human rights defenders fled the country as soon as the law was passed. Organizations now significantly self-censor in their activities for fear of violating the law's provisions. The significant majority of human rights defenders are too scared to speak out, or to have the experiences of their organization discussed or publicised.

The pervasiveness of this climate of fear also affects attempts to assess the impact of the legislation, including by Amnesty International, because the majority of human rights organizations in Ethiopia are too afraid to talk to international organizations or to criticise the actions of the government. It is for this reason that information and quotes from human rights defenders in this report are anonymous.

¹ Along with the Freedom of the Mass Media and Access to Information Proclamation (590/2008) and the Anti-Terrorism Proclamation (652/2009)

LEGAL RESTRICTIONS ON HUMAN RIGHTS WORK, VIOLATIONS OF INTERNATIONAL LAW

The Charities and Societies Proclamation (CSP or ‘the law’) prohibits organizations which receive more than ten per cent of their funding from foreign sources from working on a number of human rights issues. The law requires organizations to be registered as one of three categories: Ethiopian Charities or Societies, Ethiopian Residents Charities or Societies, or Foreign Charities. Only Ethiopian Charities and Societies may work on human rights issues specified as: the advancement of human and democratic rights; the promotion of equality of nations, nationalities and peoples and that of gender and religion; the promotion of the rights of the disabled and children’s rights; the promotion of conflict resolution or reconciliation; the promotion of the efficiency of the justice and law enforcement services.”² Organizations registered as Ethiopian Charities or Societies may receive not more than ten percent of their funds from foreign sources.³ Ethiopian Residents Charities and Societies and international organizations are prohibited from working on human rights issues in Ethiopia.⁴ In contrast, development agencies may choose to register as Ethiopian Residents Charities or Societies and may be fully funded from foreign sources, provided that their work contains no human rights elements.

Further, organizations are not permitted to spend more than 30 per cent of their budget on ‘administrative costs.’⁵ At least 70 percent must be spent on ‘the implementation of its [the organization’s] purposes.’ The definition of ‘administrative costs’ is not clear, meaning that the provision could be read to include, *inter alia*, the associated costs of investigating and documenting human rights abuses, the provision of free legal aid, advocacy activities, and other essential activities conducted by human rights organizations in the promotion and protection of human rights. In some human rights organizations all budgeted expenses could be interpreted by

² Article 14 (2(j-n)), Charities and Societies Proclamation, (No. 621/2009).

³ Article 2(2), Charities and Societies Proclamation (No. 621/2009)

⁴ Article 2(3), Charities and Societies Proclamation, (No. 621/2009), “‘Ethiopian Residents Charities’ or ‘Ethiopian Residents Societies’ shall mean those Charities or Societies that are 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”; Article 2(4), “‘Foreign Charities’ shall mean those Charities that are 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”, in conjunction with Article 14(5) “Those who can take part in activities that fall under Sub-article 2 (j), (k), (l), (m) and (n) of this Article shall be only Ethiopian Charities and societies.”

⁵ Article 88(1), Charities and Societies Proclamation, (No. 621/2009).

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the Agency as 'administrative costs' under the definition contained in the law.⁶

Infringements of the law's provisions could lead to heavy fines or imprisonment for NGO staff. The vague definition of administrative costs is therefore creating an environment of self-censorship – organizations must use a broad interpretation of the term to avoid incurring severe punishments. In practice this means human rights organizations are forced to categorise key areas of their work as 'administrative costs' for the purposes of budget and programme planning which is subject to scrutiny by the CSA.

The law also established a Charities and Societies Agency (CSA or the Agency) with broad discretionary powers over non-governmental organizations, including surveillance and direct involvement in the management and operations of organizations, which could amount to undue interference.

Article 85 of the Law enables the CSA to demand the disclosure, at any time, of any information or documents in a charity or society's possession. This article violates the right to privacy as protected in the International Covenant on Civil and Political Rights.⁷ Further, it contravenes the principle of confidentiality which is essential to the conduct of most human rights work, and could seriously jeopardise the security of victims and witnesses of human rights violations. For example, the provision confers the CSA with the power to order a human rights NGO to disclose the testimony of a victim of a human rights violation, which could include incidents where the violation reported involves a member of the authorities. Such disclosure would not only breach confidentiality, but would also potentially put the victim at risk of repercussions at the hands of the authorities. The inability of human rights monitoring and documenting organizations to guarantee the confidentiality of testimonies they receive would certainly act as a deterrent to victims of violations wishing to report a violation to a human rights NGO. This constrains the ability of victims to access redress, and the ability of human rights organizations to fully document incidents and patterns of violations.

The law places further obstacles on the funding of human rights organizations by stipulating that organizations must have written approval from the Charities and Societies Agency for all income-generating activities they undertake,⁸ and must gain a permit from the Agency to conduct public collections.⁹ The provision does not stipulate a time period in which the CSA must respond or make a decision on a fund-raising proposal or on an application for a public collection permit. The parameters for fund-raising activities are not stipulated, which leaves the article open to inconsistent interpretation of what are considered acceptable fund-raising activities, or to arbitrary implementation, and could be used to delay or reject a fund-raising proposal.

⁶ Article 2 (14), "'Administrative costs' shall mean those costs incurred for emoluments, allowances, benefits, purchasing goods and services, travelling and entertainments necessary for the administrative activities of a Charity or Society."

⁷ Article 17, International Covenant on Civil and Political Rights, <http://www2.ohchr.org/english/law/ccpr.htm>

⁸ Article 103(1), Charities and Societies Proclamation (621/2009)

⁹ Article 98(1-3), Charities and Societies Proclamation (621/2009)

The Law prohibits charities and societies from receiving any anonymous donations,¹⁰ and all accounting records, including full details of donations received, must be disclosed and explained at any time upon request by the Agency.¹¹ In a climate where the authorities have shown clear hostility to human rights organizations, this provision could act as a significant deterrent to individuals donating money, due to fear of repercussions from the disclosure of their financial support of a human rights organization.

The Agency also has the power to suspend or cancel the licence of an organization, and further, has the power to order that all assets belonging to the organization are confiscated and transferred to a charity or society “with a similar purpose.”¹² Transfer of assets to another organization can take place where a charity has conducted a public collection of funds without a permit granted by the Agency; where the dissolution of a charity (effected by a decision from the Federal High Court after a charity’s licence has been cancelled), or where a charity has collected either not enough money or too much money for its stated purpose.¹³ This ability of the Agency to transfer assets illustrates the arbitrary nature of the application of the law; for example, the Agency can decide that it is not permissible for one human rights organization to use funds it had collected from foreign sources for its work, but a “similar” organization hand-picked by the CSA would be permitted to use the same money, – from foreign sources, for a similar purpose – that is, human rights work. In practise this means that the Agency can arbitrarily decide which organizations are permitted to use funds from foreign sources for human rights work.

In addition to the specific powers of intervention and interference explicitly granted to the Agency in the law, Article 6(1(I)) grants the Agency the power to “carry out such other activities necessary for the attainment of its objectives.” The broadness of this provision enables the Agency to adopt the widest possible interpretation of its powers – that it is legally sanctioned to take *any* measure it devises or chooses. The provision is therefore open to significant misuse, including targeting, silencing or punishing organizations.

While granting significant powers to the Charities and Societies Agency, the law on the other hand imposes restrictions on NGOs’ right to appeal. All organizations may appeal to the Board of the Agency against a decision of the Director General of the Agency. Those organizations registered as Ethiopian Charities or Societies may further appeal to the Federal High Court against a decision of the Board.¹⁴ However, Ethiopian residents charities and societies and foreign charities have no recourse to appeal outside the Agency. This restricts their right to appeal, which is a key principle of legality, and restricts organizations’ ability to challenge the use against them of the wide-reaching powers of the CSA.

Provisions of the Charities and Societies Proclamation violate rights guaranteed in Ethiopian law and violate Ethiopia’s obligations under international law. The right to work for a human

¹⁰ Article 77(3), Charities and Societies Proclamation (621/2009)

¹¹ Article 77(1), Charities and Societies Proclamation (621/2009)

¹² Article 94 (1), Charities and Societies Proclamation (621/2009)

¹³ Articles 98(1-3), 94(1(b)), 52(2) and 53(1) respectively, Charities and Societies Proclamation (621/2009).

¹⁴ Article 104 (1-3), Charities and Societies Proclamation (621/2009)

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rights organization and the right to form or join human rights organizations are essential aspects of freedom of association, which is guaranteed under article 31 of the Ethiopian Constitution¹⁵ and under article 22 of the International Covenant on Civil and Political Rights (ICCPR). The Ethiopian government is obliged under article 22 of the ICCPR to create an enabling environment for non-governmental organizations. However, the Charities and Societies Proclamation places a direct legislative impediment on the realisation of this right.

The Charities and Societies Proclamation also places major restrictions on the collection, collation and distribution of human rights information.¹⁶ The law therefore significantly impinges on the right of staff members of human rights organizations and of the Ethiopian people to “seek, receive and impart information and ideas of all kinds” in violation of the right to freedom of expression enshrined in article 19(2) of the ICCPR and in article 29 of the Ethiopian Constitution.¹⁷

Placing excessive restrictions on the activities of human rights organizations is also in violation of the United Nations 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).¹⁸ Article one of the declaration states “[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”

The Declaration on Human Rights Defenders not only enshrines the right of human rights defenders to freedom of expression and association, but also explicitly protects the right to access funding, stating that “[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.”¹⁹ The UN Special Rapporteur on the situation of Human Rights Defenders expanded on this right in her July 2011 report to the UN General Assembly, saying that “States are under an obligation to permit individuals and organizations to seek, receive and utilize funding. The Declaration requires States to adopt legislative, administrative or other measures to facilitate or, at a minimum, not to hinder the effective exercise of the right to access funding.”²⁰

Civil society organizations, particularly non-governmental organizations working on human

¹⁵ “Every person has the right to freedom of association for any cause or purpose.” Art. 31, Ethiopian Constitution

¹⁶ The law both restricts who (which organizations) can do this work, and as this work could be interpreted as ‘administrative costs’ it is further restricted as explained above.

¹⁷ The two documents use the same wording

¹⁸ ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’, Resolution 53/144 adopted by the UN General Assembly, 1999,

<http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>. While the Declaration is not legally binding, it was adopted by consensus by the General Assembly and therefore represents a very strong commitment by States to its implementation. Many of the principles and rights contained within it are enshrined in other international instruments and are, therefore, legally binding.

¹⁹ Article 13, UN Declaration on Human Rights Defenders, <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

²⁰ Para 68, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/435/29/PDF/N1143529.pdf?OpenElement> (July 2011)

rights issues, are essential to upholding human rights, equality and justice at all levels of society. The Charities and Societies Proclamation undermines the promotion and protection of all rights enshrined within the ICCPR and other international human rights treaties, in placing restrictions on essential human rights work including monitoring and documenting violations by state and non-state actors, and holding the government to account for their performance and adherence to national and international human rights commitments.

The Ethiopian government asserts that the legislation does not contravene its international commitments. However, many of the UN human rights Committees, which oversee the implementation of international human rights law at country level, have expressed serious concern over the Charities and Societies Proclamation. In July 2011 the UN Committee on Human Rights²¹ concluded that the law “impedes the realisation of the freedom of association and assembly” as protected in articles 21 and 22 of the ICCPR. It further expressed concern about the provisions that prohibit NGOs from obtaining more than 10 percent of their funding from foreign donors and prohibit NGOs considered by the government to be ‘foreign’ from engaging in human rights and democracy related activities. The Committee concluded that the government of Ethiopia must amend the legislation.

“The state party should revise its legislation to ensure that any limitations on the right to freedom of association and assembly are in strict compliance with articles 21 and 22 of the [ICCPR], and in particular it should reconsider the funding restrictions on local NGOs in the light of the [ICCPR] and it should authorize all NGOs to work in the field of human rights. The State party should not discriminate against NGOs that have some members who reside outside of its borders.”²²

Further, the Committee on the Elimination of Discrimination against Women, the Committee Against Torture and the Committee on the Elimination of Racial Discrimination have all officially expressed concern about the legislation, and have called on the government of Ethiopia to consider revising the law and to acknowledge and safeguard the crucial role played by human rights defenders in preventing and documenting human rights violations, in assisting victims of violations, and in assisting governments to fulfil their obligations under international law. In 2009 Ethiopia underwent the scrutiny of the UN Human Rights Council’s Universal Periodic Review process. During the process many countries recommended that the CSP should be amended or repealed.²³

²¹ The Committee that monitors the implementation of the International Covenant on Civil and Political Rights

²² Concluding Observations of the Human Rights Committee: Ethiopia, 25 July 2011, <http://daccess-ods.un.org/TMP/4400946.7959404.html>

²³ Concluding Observations of the Committee on the Elimination of Discrimination against Women: Ethiopia, July 2011, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ETH-CO-7.pdf>; Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ethiopia, Sept 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/448/34/PDF/G0944834.pdf?OpenElement>; Concluding Observations of the Committee Against Torture: Ethiopia, Jan 2011, <http://www2.ohchr.org/english/bodies/cat/cats45.htm>, Report of the Working Group on the Universal Periodic Review: Ethiopia, Jan 2010, <http://daccess-ods.un.org/TMP/9098610.28194427.html>

IMPACT OF THE LAW ON HUMAN RIGHTS ORGANIZATIONS²⁴

Since the law came into force, it has had a devastating impact on human rights organizations in Ethiopia, and therefore also on the promotion and protection of the rights of the Ethiopian people.

Human rights organizations have decreased in number, many have changed the focus of their mandate, and those human rights organizations who have 'survived' have significantly scaled down their activities due to the major impact of the funding restrictions. Offices have been closed, and large numbers of staff have lost their jobs. Organizations are significantly self-censoring for fear of violating the law's provisions, and development organizations have abandoned the 'rights-based approach' to development.

FINANCIAL IMPACT OF THE LAW

The law requires that all charities and societies re-register under the Charities and Societies Agency (CSA).²⁵ In doing so, human rights organizations have had to make the decision whether to register as an 'Ethiopian Charity' and attempt to survive with 90 percent of their budget coming from local sources, or whether to register as an 'Ethiopian Residents Charity', receive funding from abroad, but renounce work on human rights.

A tradition of philanthropy does not exist in Ethiopia, partly because a large proportion of the population lacks disposable income to make donations to charities. Ethiopia is the second poorest country in the world, according to a 2010 UN poverty index.²⁶ After the law was passed, one leading human rights organization conducted an assessment of the potential for domestic funding of the organization. The assessment found conclusively that collecting funding from local sources to continue as a human rights organization was not viable. As a result, the organization changed its mandate and no longer works on human rights issues.

At least seventeen organizations reportedly changed their focus from human rights to development work during the re-registration process under the law. These included two of the most prominent human rights organizations, Action Professionals Association for the People (APAP) and the Organization for Social Justice in Ethiopia (OSJE). These organizations were

²⁴ Whilst the Charities and Societies Proclamation applies to both development and human rights organizations, the law treats the two entities differently, as already mentioned in this document. The main restrictions on human rights work in the legislation, namely the funding restrictions, do not apply to development work. As the law particularly places restrictions on human rights work, the purpose of the research undertaken for this report was to assess the impact on human rights organizations.

²⁵ Charities and societies were previously registered under the Ministry of Justice

²⁶ Multidimensional Poverty Index, Oxford University and the United Nations, www.ophi.org.uk/wp-content/uploads/OPHI-MPI-Brief.pdf

two members of a coalition of four of the leading human rights organizations in the country, which submitted a parallel report to the UN Universal Periodic Review process in 2009 (details below). Both organizations concluded that under the provisions of the law they could not survive financially as human rights organizations and therefore were forced to change their mandates to work on development issues. Due to this change in mandate OSJE had to change its name to Organization for Social Development. Numerous other organizations have also had to change their names to reflect their change in focus. For example, the Research Centre for Conflict and Human Rights Education was changed to Research Centre for Capacity and Development in Ethiopia.

The two remaining members of the 2009 UPR report coalition chose to retain their human rights mandate. These were the Ethiopian Human Rights Council (now the Human Rights Council)²⁷ and the Ethiopian Women Lawyers Association.²⁸ Before the law was passed, the Ethiopian Human Rights Council (EHRCO, now HRCO), the country's oldest human rights organization, established in 1991, was undertaking high quality monitoring and documentation of violations through twelve branch offices across the country. EHRCO was the only organization in Ethiopia monitoring and reporting on human rights abuses through extensive field investigations.²⁹ The Ethiopian Women Lawyers Association (EWLA), established in 1995, was the only major organization focussing exclusively on women's rights advocacy at the national level. EWLA conducted vital work in the field of women and justice, advocating gender equity in draft national legislation, providing free legal aid for women, and research and publication on issues of law and gender.

The impact of the legislation on the budgets of these two organizations has been enormous. HRCO have been forced to close nine of their twelve branch offices and have cut 85 per cent of their staff (around 50 people). In 2008 HRCO had an annual budget of 6 million Ethiopian Birr (US \$351,000). In 2011, the organization's budget for the year was 450,000 Birr (US \$26,300). EWLA have cut 70 per cent of their staff and during 2010 and 2011 had effectively ceased to function, with the exception of a small amount of free legal aid being provided to women by volunteers.³⁰

FREEZING OF THE BANK ACCOUNTS OF EWLA AND HRCO

EWLA and HRCO were both eventually permitted to re-register under the Charities and Societies Proclamation. However, both organizations subsequently learned that their bank accounts had been frozen. In December 2009 the CSA issued letters to the relevant banks ordering them to freeze all the accounts belonging to the two organizations. HRCO reports that although the letter was dated three days before the CSA issued the organization's

²⁷ The reason for the name change is explained below

²⁸ See later in this report for case studies on the work of these two organizations

²⁹ HRCO continues to conduct field research, but on a significantly reduced scale

³⁰ Find below more detailed case studies of the impact of these reductions in funding and staff on the work of each organization

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license, it was not received by the organization until six days later – three days after they successfully re-registered. The CSA’s letter to the banks stated “a charity cannot change into an Ethiopian charity while still in possession of the funds, assets and property it has acquired from external sources.” Both HRCO and EWLA were told by CSA officials that under the new law they could not keep operating with funds previously collected from abroad, signifying a retroactive application of the law to funds received before the law was passed.

The freezing of the bank accounts have cost HRCO 9.5 million Birr (approximately US\$566,000) and EWLA 10 million Birr (approximately US\$595,000) in frozen funds. HRCO states that this was contingency money the organization had been saving throughout their 20 year existence.

As specified in the law, the decisions of the Director of the CSA can be appealed to the Board of the Agency. Both organizations appealed the freezing of funds to the Board.

HRCO argued to the Board that the law allowed a one year grace period before implementation. The Council of Ministers Regulation for the Registration and Administration of Charities and Societies (the Regulation) – issued in November 2009 to detail certain provisions of the law – provides that “the effects of re-registration shall commence only a year after the effective date of the CSO Proclamation and not immediately after re-registration.”³¹ Further, HRCO stated that they continued to collect funds during 2009 because they were encouraged to do so by representatives of the government on several occasions. During 2009, after the law had passed, various government officials assured the NGO community that organizations would be able to operate unencumbered during the one year transition period, and before the establishment of the CSA. One example of this is a circular which was issued by the Ministry of Justice in March 2009, announcing that NGOs could “continue to work as they did in the past” during the period in which the Charities and Societies Agency was being established (See appendices 1 and 2). HRCO also argued that the audit report that they had submitted to the CSA during the re-registration process detailed distinctly funds procured from foreign and local sources. But when the accounts were frozen, no distinction was made between foreign funds collected after the coming into force of the proclamation and the funds collected from HRCO’s members and other local sources since its establishment in 1991.

EWLA also appealed to the Board on the basis that the law allowed a one year grace period during which the organization tried to use its assets and properties. EWLA reportedly also appealed for consideration of the fact that the organization intended to spend 8.6 million Birr (approximately US\$496,000) of the funds to purchase a building in order to be in a position to provide free services to women.

The Board took six months to reach a decision in HRCO’s case and around five months in EWLA’s case, after which the Board upheld the decisions of the Agency’s Director sanctioning the freezing of the accounts. Although the decision of the Board was announced

³¹ Article 10(2), The Council of Ministers Regulation for the Registration and Administration of Charities and Societies (Regulation No. 168/2009)

in an Addis Ababa newspaper in February 2011,³² HRCO reports that the decision was only officially communicated to the organization in April 2011.

The letter to HRCO announcing the decision of the Board said that the frozen funds were collected by HRCO after the law was passed – during 2009. The CSA informed both HRCO and EWLA that by collecting funds from foreign sources in 2009 they had contravened the spirit of the Regulation which provided the transition period only so that the re-registration process and restructuring could take place. As abovementioned, the Regulation was issued in November 2009 – at the end of the year in which the disputed funds collections had taken place.

The Board informed HRCO that the CSA had the power to freeze the accounts under Article 6(1(I)) of the law which states that the Agency shall have the power to “carry out such other activities necessary for the attainment of its objectives.” The broadness of this provision essentially sanctions the CSA to take any measure it devises against civil society organizations. In HRCO and EWLA’s case it appears that this broad provision is being used to justify the deprivation of the significant amassed funds of those organizations.

During appeals to the CSA over the freezing, the CSA also threatened to confiscate and transfer the frozen assets of HRCO to another organization, stating that the law gave them the right to do so.

The law confers on the Agency the power to confiscate the assets of an organization and transfer them to another organization in situations where a charity has conducted a public collection of funds without a permit granted by the Agency; where a charity has been dissolved (effected by a decision from the Federal High Court); and where a charity has collected either not enough money or too much money for its stated purpose.³³ None of these circumstances applied in HRCO’s case. The Regulation does provide that any foreign charity or Ethiopian residents charity or society that converts into an Ethiopian charity or society “shall...transfer its assets from foreign sources to a foreign charity or Ethiopian residents charity or society with similar purposes.”³⁴ The threats by the CSA suggested that this provision could be applied to HRCO’s case, signifying the retroactive application of the law. HRCO collected the frozen funds before it was illegal to do so and before the classifications of Ethiopian charity or Ethiopian residents charity existed.

In their appeals, HRCO and EWLA both individually made the case that if their organization could not use the funds, the money should be returned to the donors. The Board of the CSA ruled in its decisions that this suggestion was not ‘legally or practically viable.’ Instead, during 2010 the Board decided that HRCO would be permitted to access 10 percent of the funds in their accounts (around 800,000 Birr, which is approximately US\$46,000) as an

³² http://www.addisfortune.com/Vol_10_No_562_Archive/Board%20Upholds%20Revocation%20of%20NGOs,%20Licences,%20Accounts%20Freeze.htm

³³ Articles 98(1-3), 94(1(b)), 52(2) and 53(1) respectively, Charities and Societies Proclamation (621/2009).

³⁴ Article 18(3), The Council of Ministers Regulation for the Registration and Administration of Charities and Societies (Regulation No. 168/2009)

emergency budget infusion. The Agency also allowed EWLA to access 1.5million Birr (approximately US\$86,000) from their frozen accounts to pay salaries and meet outstanding commitments. Subsequently, the Board further decided that if both HRCO and EWLA could demonstrate that they had raised money locally to fund 90 percent of their annual budgeted expenditure, the remaining 10 percent would be released from the frozen accounts of both organizations.

HRCO took the opportunity offered by the decision of the Board to access 10 percent of the funds in their frozen accounts. However, the 10 percent they were able to access was subsequently frozen for a second time. On this occasion, according to HRCO, the organization did not receive any written notification of the freezing. The organization was later unofficially told that the re-freezing of the assets for a second time was because they had not accessed the frozen funds correctly.

HRCO and EWLA subsequently appealed the decision of the CSA Board to the Federal High Court in April and June 2011 respectively. The court upheld the decision of the Board regarding HRCO and EWLA's accounts on 24 October 2011 and 28 October 2011 respectively. The court found that the freezing of the accounts was lawful because of the specification in the law that a foreign charity or Ethiopian residents charity or society that converts to an Ethiopian charity or society shall not transfer assets to the converted charity or society. The High Court upheld a retroactive application of the law, contravening a basic principle of legality. The court also found that the transition period did not allow the continued operation according to the previous legal framework, although this had been promoted by the Ministry of Justice in its circular of March 2009. Further, the Court found that HRCO and EWLA's soliciting of foreign funds after the law came into force was tantamount to misconduct and therefore the CSA was justified in taking preventative measures according to Article 90 of the law which deals with Protection of Property.

Article 90 confers on the CSA the power to freeze bank accounts.³⁵ However, this action may be taken *after* the Agency has detected misconduct and has suspended the officer responsible and/or ordered the charity or society to improve its system of operation.³⁶ Freezing of accounts and other measures may be ordered "*until* the Charity or Society acts upon the Agency's orders" [emphasis added].³⁷ No orders were given to HRCO or EWLA, upon which account freezing is contingent according to the law. Further, the order to freeze the accounts was given before HRCO and EWLA had even successfully re-registered under the new law.

Both organizations are appealing the High Court's decisions to the Supreme Court, on the basis that an error of law was committed by the High Court. The Supreme Court must first

³⁵ "The Agency may take the following measures... order any person who holds any property on behalf of the Charity or Society ... not to part with the property... without the approval of the Agency..." Article 90, Charities and Societies Proclamation (621/2009)

³⁶ Article 90(1-2), Charities and Societies Proclamation (621/2009)

³⁷ Article 90(2), Charities and Societies Proclamation (621/2009)

decide whether to accept an appeal on this basis before hearing the merits of the case. On 27 February 2012 the Supreme Court ruled to admit HRCO's case for consideration. The Court has yet to rule on whether it will admit EWLA's appeal for consideration. Both cases are ongoing at time of writing.

HRCO and EWLA's bank accounts remain frozen to date. The freezing of the bank accounts of the two organizations, and the significant lengths the two organizations have had to go to in an attempt to reclaim their funds are illustrative of the crisis into which the law has plunged human rights organizations, by creating extraordinary obstacles for human rights organizations conducting their vital work.

FUND-RAISING IN THE CONTEXT OF THE CHARITIES AND SOCIETIES PROCLAMATION

Efforts have been made by those organizations that re-registered as human rights organizations to collect funds locally, particularly through organising events such as film screenings or music evenings. These efforts have reportedly had limited success, raising minimal amounts of money.

The provision in the law demanding that organizations provide full details of all donors, in conjunction with the hostility which the government has illustrated towards human rights organizations, creates a significant risk that people will hesitate to make donations to a human rights organization, due to fear of repercussions. One human rights organization explained that this provision has had a huge impact on their ability to fundraise because the perceived risk of repercussions has deterred individuals from financially supporting them.

"Every person who contributes financially to the organization has to be listed and the list presented to the CSA. The climate of fear pervading everything is an obstacle for us to get any assistance (funding) from local sources."

Staff member, human rights NGO

"People are not ready to give because they are afraid of the consequences"

Human rights activist

It has been reported to Amnesty International that some efforts to obtain the requisite written permission for proposed fund-raising activities from the CSA have met with significant and un-explained delays, causing the cancellation of planned fund-raising events and opportunities being missed by human rights organizations. In general the decisions of the CSA, including decisions on appeals from organizations, are very slow, particularly in the case of human rights organizations. The Board has taken up to six months to decide on appeals made by some organizations.

During 2011, EWLA and HRCO, as well as two other organizations, signed an agreement with the National Human Rights Commission (NHRC) to receive funding for legal aid work. While this development is welcome, it must be noted that the provision of legal aid was only one part of the work these organizations did before the law was passed. Further, although the

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agreement was signed, the NHRC appear reluctant to grant HRCO any funds in practise. HRCO has been told by the NHRC to make five different sets of changes to their funding proposal, incurring months of delays. Some of the requested changes have conflicted with earlier requirements, including being told to triple their proposed budget, and on a subsequent occasion being told to reduce it back to the original amount.

RE-REGISTRATION AND THE POWERS OF THE CSA

Human rights organizations experienced a number of obstacles in their efforts to re-register. It has been reported that most organizations who registered to work on human rights and advocacy were asked to make changes to their statutes by officers of the CSA. Some were asked up to five times to make (five different) changes to their statutes before successfully registering.

HRCO was required to strike election monitoring from its mandate. The organization had conducted significant amounts of work around previous elections, including voter education and observing elections. During the 2005 national elections (while it was still called EHRCO) the organization deployed 1,550 observers across the country. Between 2003 and 2006 EHRCO provided civic and voter education to over half a million people in 195 centres.³⁸ HRCO reports that during the re-registration process the Charities and Societies Agency removed election observation and voter education programmes from its statute.

During re-registration EHRCO was also required to drop the 'Ethiopian' from their name. The law states that a Charity or Society must show the representation of at least five regional states in its composition and location, in order to have 'federal nomenclature.' In light of the impact of the law on their funding, the Ethiopian Human Rights Council, so called since its establishment in 1991, was unable to fund the requisite number of branches, and therefore had to remove "Ethiopian" from their title.

Many people reported that the lack of clear definition in relation to the 30 per cent budget requirement on administrative costs has been highly problematic during the registration process. The provision is vague to the point that, according to reports, it has even been differently interpreted by officers of the CSA when registering organizations. Yet a violation of the provision could result in a term of imprisonment for an employee of an organization. Therefore, the provision has led to extreme caution and self-censorship being exercised on the part of organizations when writing their registration documents and organizational plans, fearing the repercussions of an unfavourable interpretation. The vagueness of the provision means it is open to misuse by officials wishing to silence or punish a certain organization.

The power of the CSA to confiscate the assets of an organization and transfer them to a charity or society "with a similar purpose," has been applied to at least one organization

³⁸ Human Rights Council, The Impact of the CSO Proclamation on the Human Rights Council, July 2011, p13

since the establishment of the CSA. The organization International Islamic Relief was not permitted to re-register under the CSA. According to the CSA, this was because of the organization's failure to separate charitable and religious activities in their mandate, and a failure to produce necessary documents for registration. The organization's assets were confiscated and given to another one deemed to be similar by the CSA – the Ethiopian Islamic Council.

This power to confiscate and transfer assets can be significantly misused by the authorities. A precedent was already set in Ethiopia when, in February 2008, the Supreme Court upheld a decision to dissolve the independent Ethiopian Teachers Association (ETA) and hand over its significant assets, including the association's premises, to a rival union formed by the government, which had also been granted the name 'Ethiopian Teachers Association.' The original ETA pre-dated the pro-government rival union by some 40 years. The action to dissolve the original ETA and confiscate its assets followed years of harassment, detention and torture of union members. The union had been in sustained conflict with the government, for reasons including criticism of government education policy and resistance to government interference in the association's affairs.

The Charities and Societies Proclamation has now entrenched this precedent in legislation, creating significant risk that other organizations will share the same fate as the original ETA.

Indeed, during re-registration, the long-standing and respected Ethiopian Bar Association (EBA) was suspended by the CSA until it agreed to change its name. The Agency stated that the EBA failed to produce convincing evidence of previous registration of the name. Further, according to the Agency, the name was not an equivalent translation of the Amharic name³⁹ of the association, and therefore EBA were required to come up with a new name. The organization was re-registered as the Ethiopian Lawyers Association. A different organization was registered as the Ethiopian Bar Association. The original Ethiopian Bar Association had been operating under that name for over forty years.

ELECTION MONITORING

The removal of election monitoring from HRCO's mandate left a void, as no major national human rights organization is now engaged in election monitoring and work on associated human rights issues. Amnesty International requested statistics from the Charities and Societies Agency on how many organizations currently had election-monitoring in their mandates, but the CSA did not provide information on this. The law states that "Ethiopian mass-based organizations may actively participate in the process of strengthening democratization and election, particularly in the process of conducting educational seminars on current affairs, understanding the platforms of candidates, observing the electoral process

³⁹ Ethiopia's national language

and co-operating with electoral organs.”⁴⁰ The wording of this provision suggests that other entities may not engage in those areas of work. This provision restricts the freedoms of expression and association of human rights organizations wishing to engage in election-related work. It is further cause for concern as the main ‘mass-based organizations’⁴¹ in the country – the youth federation, the women’s federation, leading trade unions, including the Ethiopian Teachers’ Association discussed above, and others, are closely aligned with the ruling party. In this context, the ruling party announced victory with 99.6 percent of the vote in the national elections held in 2010. The EU Election Observation Mission stated that the elections fell short of international commitments in a number of ways. A wide range of human rights violations were reported around the election period, particularly manipulation and harassment of voters. In contrast, a coalition of mass-based societies undertook election monitoring, and found the elections to be free and fair, participatory, democratic, and peaceful. The most prominent mass based society in the coalition, according to the EU Election Observation Report, was the Ethiopian Teachers’ Association.

The Preliminary Statement of the EU Election Observation Mission raised concerns about the impact of the Charities and Societies Proclamation in both its impact on the participation of citizens in the democratic process, and on the participation of civil society in monitoring the democratic process.

“The protection of political rights and respect for fundamental freedoms are essential conditions for holding democratic elections...However, a number of recent laws, including the Anti-Terrorism Law, the Freedom of the Mass Media and Access to Information Law, as well as the Charities and Societies Law raise concerns as to the effective exercise of these fundamental freedoms... The new Ethiopian Charities and Societies Law limits the role that civil society organizations could play in the electoral process, and more generally in the context of human rights advocacy.”⁴²

INTERNATIONAL HUMAN RIGHTS REPORTING

In 2009 five prominent human rights organizations formed the Ethiopian CSO⁴³ Coalition on Human Rights Reporting with the intention of submitting parallel reports to the UN Human Rights Council’s Universal Periodic Review process and to four UN human rights treaty bodies: the Human Rights Committee (monitoring the implementation of the International Covenant on Civil and Political Rights), the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of All Forms of Discrimination Against Women, and the Committee on the Elimination of Racial Discrimination. All five bodies were due to consider Ethiopia’s adherence to its commitments under the relevant international human

⁴⁰ Article 57(7), Charities and Societies Proclamation (621/2009)

⁴¹ “Mass-Based Societies” shall include professional associations, women’s associations, youth associations and other similar Ethiopian societies”, Article 2(5), Charities and Societies Proclamation (621/2009)

⁴² Preliminary Statement, European Union Election Observation Mission – Ethiopia 2010, May 2010, http://www.euom.eu/files/pressreleases/english/eu-eom-ethiopia-preliminary-statement-25052010_en.pdf

⁴³ Civil society organizations

rights treaties during the following three years. The Coalition consisted of the Ethiopian Human Rights Council (EHRCO, now HRCO), the Ethiopian Women Lawyers Association (EWLA), Action Professionals Association for the People (APAP), the Organization for Social Justice in Ethiopia (OSJE, now OSD) and the Ethiopian Bar Association (now the Ethiopian Lawyers Association). The Coalition was formed with the financial support of the National Human Rights Commission in cooperation with the UN Office of the High Commissioner for Human Rights (OHCHR). Although the Coalition was formed after the Charities and Societies Proclamation was passed, one participant in the process told Amnesty International that the organizations hoped to submit the reports before they were required to re-register according to the provisions of the law.⁴⁴

The five organizations prepared a parallel report to the UPR process. However, during the finalisation of the report, one member of the coalition, the Ethiopian Bar Association, withdrew at the last minute. The submission was made by the remaining four members. After the coalition presented their submission to the UPR, and also because of their other activities, the organizations were subjected to harassment, threats and warnings by government agents to the extent that the Director of EWLA fled the country. Subsequently EWLA and APAP withdrew from the reporting Coalition. EHRCO and OSJE continued with the preparation of the report to the Committee on the Elimination of Racial Discrimination. However, OSJE also withdrew from the Coalition, leaving only one member. EHRCO proceeded alone to submit the parallel report which the Coalition had prepared to the UN Committee for the Elimination of Racial Discrimination (CERD) in August 2009. Subsequently, in response to continued threats and harassment, the Secretary General of EHRCO also fled the country.

The other planned submissions were not produced. As a result, no Ethiopian non-governmental organization submitted parallel reports for Ethiopia's consideration by the Committee on the Elimination of All Forms of Discrimination against Women or to the Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights. Nor have any parallel reports been submitted to the Committee on Economic, Social and Cultural Rights, which is due to consider Ethiopia's adherence to its commitments under that treaty, in May 2012.

Parallel reports submitted by domestic civil society organizations are an essential component in a state's consideration by the UN human rights instruments. The Ethiopian government's professed commitment to cooperation with these instruments is belied by the heavy obstacles it has placed on civil society organizations' participation in the process.

RIGHTS-BASED APPROACH TO DEVELOPMENT

The Charities and Societies Proclamation separates human rights work and development work and treats them distinctly. However, many development practitioners advocate a human

⁴⁴ Re-registration under the new law was delayed during the establishment of the Charities and Societies Agency

rights based approach to development in acknowledgement of the fact that inequality, injustice and discrimination, which are often categorised as human rights issues, underpin development and poverty issues. The human rights based approach to development maintains that only in addressing these systemic inequalities can development be achieved in a sustainable way. The UN definition of a human rights based approach to development states that “A HRBA [Human Rights Based Approach] leads to better and more sustainable outcomes by analyzing and addressing the inequalities, discriminatory practices and unjust power relations which are often at the heart of development problems. It puts the international human rights entitlements and claims of the people (the 'right-holders') and the corresponding obligations of the State (the 'duty-bearer') in the centre of the national development debate, and it clarifies the purpose of capacity development.”⁴⁵

Under the provisions of the law, development organizations may no longer employ a rights-based approach. Development NGOs had to re-write their mandates to remove the rights centred approach. This might include, for example, the promotion of gender equality as the sustainable approach to gender-based development issues such as girls' education or maternal mortality. The promotion of gender equality is explicitly restricted under the law.

Amnesty International was told that after the law was passed, both local and international development organizations invested considerable time in scenario planning, developing coping strategies and rewriting their mandates. Rights-based activities were written out of the mandates of all development organizations. Some programmes were ended as a result. Many international NGOs had also previously included strengthening civil society among their programme objectives, but this area of work was dropped after the law was passed. Many also ended or significantly altered their cooperation with local partners, to avoid risk of repercussions against both parties.

One stakeholder with experience with international and local development organizations told Amnesty International that the biggest problem for development organizations was how to interpret the provisions of law. “The vague and subjective nature [of the provisions of the law] means that it remains for the government to enforce or not as they see fit.” As a result, the law has led to significant levels of fear and self-censorship among development organizations.

“The government had already made NGOs pretty timid. The law codified that. Everyone became fearful, even of being implicated by association with another organization.”

The stakeholder observed that this self-censorship under the threat of repercussions has had a phenomenal impact on how development professionals strategise, plan their work, and even how they think about their work;

“You frame all of your thinking, language and activities to be in line with the government, to the point where there is less and less space, even in people's heads, to challenge the government's way of doing things.”

⁴⁵ <http://www.undg.org/index.cfm?P=221>

OPERATING IN FEAR

Ethiopia's authorities have demonstrated hostility to human rights organizations for many years, including numerous threats and warnings being made to human rights defenders by state agents, surveillance of offices and individuals, arrests and prosecutions of human rights activists. For example, two human rights activists were imprisoned for two and half years between 2005 and 2008, during which time they were charged, tried and convicted on charges of treason and other offences.⁴⁶ This long-standing hostility to human rights organizations has been institutionalised in the Charities and Societies Proclamation, placing heavy restrictions on their work and threatening human rights defenders with imprisonment for transgressing the law.

The law has increased the climate of fear in which human rights defenders operate. A number of human rights defenders fled the country after the law was passed. As mentioned earlier, many organizations have broadly interpreted the vague definitions in the law, and further restricted their own activities because they are afraid of the repercussions if the Charities and Societies Agency's interpretation is not favourable. The vast majority of human rights organizations and activists are now too afraid to speak out, or to have the affairs of their organization discussed. Human rights defenders are highly constrained in communicating with international organizations (including Amnesty International), journalists, the UN human rights bodies or other international human rights entities. Most human rights defenders believe that if they are known to have contact with international organizations they will face repercussions from the government. The nature and scope of the law embodies and increases the perceived threat to human rights defenders to such a high extent that it has caused significant self-censorship to ensure that they do not run afoul of the law and the threat becomes real. Such is the long reach of this threat that even some large international development organizations would not give Amnesty International an opinion or comment anonymously, due, they said, to fear of the potential reaction of the government *against all organizations*.

Local human rights organizations have reported that they are finding it difficult to recruit staff since the law was passed, because many people are now too afraid to work for a human rights organization.

"People are scared to join the organization as staff too, because of the association that this organization is an enemy of the government."

NGO staff member, Ethiopia

⁴⁶ See Amnesty International, 'Justice Under Fire: Trials of opposition leaders, journalists and human rights defenders in Ethiopia', 29 July 2011, <http://www.amnesty.org/en/library/info/AFR25/002/2011/en>

CASE STUDIES: THE IMPACT OF THE LAW ON THE COUNTRY'S LEADING HUMAN RIGHTS ORGANIZATIONS

CASE STUDY: HUMAN RIGHTS COUNCIL (HRCO) – VITAL MONITORING AND DOCUMENTING OF HUMAN RIGHTS ABUSES

Since 1991 the Human Rights Council (HRCO) has conducted extensive work in monitoring and documenting human rights abuses across Ethiopia. The organizational objectives are to encourage and monitor the respect for human rights in Ethiopia; to promote the rule of law and due process; and to contribute to the establishment of a democratic system. Before the law was passed, HRCO had 12 branch offices across the country, 58 staff members, and was the only organization conducting field-based human rights research. It also carried out human rights education, advocacy, trial monitoring, detention centre visits, information dissemination, election monitoring and voter education, provided human rights training, including for security forces and judicial officials, and legal support to victims of human rights violations.

Before the law was passed, HRCO were undertaking significant levels of human rights work across the country. For example, during 2008 HRCO investigators documented 9,000 reports of human rights abuse. Of these, 1,723 were further investigated and reports issued. These included 475 reports of unlawful detention, 435 reports of extra-judicial killings, and 201 reports of torture. Its mandated activities also included issuing three regular reports per year on 'The Human Rights Situation in Ethiopia,' and special reports from detailed investigations of specific issues. In 2008 HRCO issued the three regular reports, and six special reports on specific issues. In other activities during 2008, the organization provided human rights education to 1,562 people in more than 25 locations around the country. Four training courses were provided to members of the police force, prosecutors and judges on the rights of persons in detention, including pre-trial detention, during trial proceedings, and after conviction. Training was also provided in six regions to federal and regional courts, justice bureaus, prison administrations, police, and justice and security affairs bureaus, on the prevention of torture and other cruel, inhuman or degrading treatment. Legal aid services were provided to 1,142 people, along with a range of other human rights related activities.

The law has caused a substantial reduction in the scale and breadth of work carried out by HRCO. In the initial stages of implementation of the law, a number of HRCO staff members, including the Executive Director, fled the country. As a result of the financial restrictions contained in the law, HRCO have been forced to close nine of their twelve branch offices and had to lay off 49 of their 58 staff, or 85 percent of their original workforce. In 2008 the organization had an annual budget of six million Ethiopian Birr (US \$351,000). HRCO's budget for 2011 was 441,200 Ethiopian Birr (US \$26,000).

In 2008 HRCO had 17 human rights field investigators. In 2011 they had four. Due to the huge impact of the law on the organization's capacity, during 2011 they were only able to issue one of their mandated three regular reports per year on the human rights situation in the country. HRCO reports that they have been forced to severely cut costs, even for basic operational activities. For example, staff members are now limited to 30 minutes of internet access per day.⁴⁷ The organization has been forced to drastically scale back its human rights activities and many aspects of its work have been stopped altogether. Before the law, HRCO had a Branch and Membership Affairs Department, a Communications and External Relations Department, an Advocacy and Human Rights Education Unit, a Legal Support Unit and a Planning and Project Development Service Unit. In 2010 it was forced to formally disband each of these departments. As mentioned earlier in this report, the process of re-registration under the new law also forced HRCO to cut its significant election monitoring and voter education activities from its mandate.

CASE STUDY: ETHIOPIAN WOMEN LAWYERS ASSOCIATION (EWLA) – SUBSTANTIAL PROMOTION AND PROTECTION OF WOMEN'S RIGHTS

Before the law was passed the Ethiopian Women Lawyers Association (EWLA) was a leading women's rights organization, and the only major organization focussing exclusively on women's rights at the national level. The stated mission of the organization was to promote the economic, political, social and legal rights of women and to that end, assist women to secure full protection of their rights under the Ethiopian Constitution and the relevant international human rights conventions. The mandated objectives of the organization included the elimination of all forms of legally and traditionally sanctioned discrimination against women, and working towards the equal treatment of women with men in education, employment, access to justice and all benefits, in line with the obligations of the Ethiopian government under the International Convention on the Elimination of All Forms of Discrimination against Women.

Prior to the passing of the Law, EWLA had 65 full-time staff members and conducted vital work in the field of women's rights and access to justice, particularly in advocating full inclusion of gender equity in national legislation. The organization also provided legal aid to women, including victims of gender violence, advocated on cases involving gender issues, conducted awareness-raising activities, conducted research and published on issues concerning law and gender. In 2004 EWLA submitted a parallel report to the UN Committee on the Elimination of Discrimination against Women. In 2011 EWLA barely continued to exist.

As described above, the freezing of EWLA's account cost the organization 10 million Birr (approximately US\$595,000) in frozen funds. As a result of the freezing of their account, as well as the legal restrictions on receiving new funding, the organization has been forced to lay

⁴⁷ Human Rights Council, Report: The Impact of the CSO Proclamation on the Human Rights Council, July 2011, p9

off almost 75 per cent of their staff and to significantly curtail their activities.

Before the law was passed, EWLA's substantial activities were reaching thousands of beneficiaries. For example, in 2008 EWLA provided free legal aid to 17,357 women; 43 cases were taken up for legal representation, 28 clients were referred for protective shelter, 776 clients were provided with financial assistance for court fees, transportation costs and medical expenses for those who were victims of violence. In the same year, over 10,000 people participated in human rights education activities; trainings were conducted for police and prison personnel on various rights issues; 70,000 booklets were produced and disseminated on revised family laws of four regional states and on the revised federal family law; a hotline was established which received 7,332 calls in its first eight months; and research was undertaken to inform the revision of the Criminal Procedure Code. This list represents just some of the significant and diverse work EWLA undertook in a single year. Much of this work was undertaken with financial support from foreign governments, UN agencies and other sources.

In 2011 the organization had effectively ceased to function, with the exception of a small amount of free legal aid being provided to women by volunteers. In EWLA's absence, no other organization is conducting advocacy to promote the rights of women within the justice system, both at the national and regional levels, as well as other vital areas of work formerly undertaken by the organization.

The impact of such a significant reduction in EWLA's activities has negative implications for women's rights generally in Ethiopia, and in particular on women's access to justice, the inclusion of gender considerations in new legislation, and wider advocacy of all rights of women and girls.

“THE OPPOSITION IN DISGUISE”⁴⁸ — DE-LEGITIMISATION OF HUMAN RIGHTS WORK

Before the introduction of the Charities and Societies Proclamation, it was widely acknowledged that Ethiopia’s civil society needed better regulation, particularly due to mismanagement and corruption among the proliferation of small development NGOs. The CSP laid out a legal framework and created a dedicated regulatory body for this purpose. However, the restrictions the law places on human rights work go significantly beyond what is necessary or legitimate to regulate these activities.

The government of Ethiopia explains the restrictions placed on human rights NGOs receiving foreign funding as a necessary measure to prevent foreigners from interfering in Ethiopian politics,

“We need to make sure that the rights of citizens are not curtailed in any way. But, the privileges we grant to others do not include the rights to tamper in our political affairs.”

Minister of Government Communication Affairs, Bereket Simon⁴⁹

“We will not have foreign NGOs interfering with us, doing political activities.”

A Ministry of Justice official in a meeting with Amnesty International⁵⁰

However, it is not foreign funding that the government objects to. A considerable proportion of the national budget is donor funded. Rather, it appears to be the human rights work that the government objects to. The law treats development organizations very differently from human rights organizations. The Ethiopian government has repeatedly emphasised to Amnesty International that everyone has the right to work on development issues and that there are no restrictions on this work. Indeed, development organizations are largely unaffected by the law’s provisions. They do not suffer any funding restrictions provided that their work does not involve any human rights angle. The comments cited above and similar comments from other senior members of government, including CSA officials, strongly indicate that the government considers the role of human rights defenders as political and illegitimate.

⁴⁸ This quote has been attributed to Prime Minister Meles Zenawi on numerous occasions

⁴⁹ In a meeting with Amnesty International, 17 Aug 2011

⁵⁰ In a meeting with Amnesty International in Addis Ababa, Ethiopia, 19 Aug 2011

Human rights work in any country involves scrutiny of a government's practices and its adherence to its human rights commitments, as it is the government's responsibility to realise and protect the rights of its citizens. This work may often be critical of governments' behaviour, particularly where the government is implicitly or explicitly involved in human rights violations. Human rights organizations play a crucial role in holding governments accountable to their human rights commitments. Everyone has the right to engage in the political affairs of their country, to obtain information on the actions of their government, and to hold their government to account.⁵¹ This is, in particular, a legitimate and a vital role of human rights organizations.

However, the government appears to interpret criticism of its practices to signify support by the human rights defender or human rights organization of one or more political opposition parties, or of promoting the ideas of the opposition. The Ethiopian government does not seem to distinguish between 'political' activities, which are the realm of all citizens, and 'politics' which is the realm of politicians. Members of the Ethiopian government have repeatedly alleged that human rights defenders and organizations' activities are actually promoting the agenda of the political opposition.

This perception, which de-legitimises human rights work, is central to a long-standing governmental hostility towards human rights organizations which has manifested for many years through harassment, threats, arrest and prosecution of human rights defenders. It also appears to underpin the Charities and Societies Proclamation. Bereket Simon, government spokesperson and cabinet Minister, reportedly stated before the law was introduced that the Human Rights Council and the Ethiopian Women Lawyers Association, the country's leading human rights organizations, "needed to be silenced." These two organizations have been massively affected by the law.

The statements by senior members of the government and the way the law specifically identifies and restricts human rights work indicates that the law was created to suppress an area of work the government considered problematic. The law has disproportionately affected human rights organizations. The impact of the law is that today human rights organizations barely exist in Ethiopia. There is almost no human rights monitoring, documentation or advocacy happening; severely limited provision of assistance to victims of human rights violations; and almost no scrutiny of government behaviour or adherence to human rights principles and standards, meaning that the government is not questioned or held to account.

⁵¹ See for example the International Covenant on Civil and Political Rights, <http://www2.ohchr.org/english/law/ccpr.htm>, for expansion on a range of political rights, including the right to seek and impart information (article 19), and the International Convention on the Elimination of Discrimination Against Women, <http://www2.ohchr.org/english/law/cedaw.htm>, including the right of women 'to participate in non-governmental organizations and associations concerned with the public and political life of the country.'

CONCLUSION – THE CURRENT ENVIRONMENT FOR HUMAN RIGHTS DEFENDERS IN ETHIOPIA

Three years after the law was passed, human rights civil society in Ethiopia is unrecognisable. Organizations which were internationally admired for their high-quality and independent work, and who were conducting vast programmes of essential human rights work across the country, are now barely functioning.

A representative of the Ministry of Justice told Amnesty International that in passing the law “our objective is not to restrain them [human rights activists] in participating in civil society” but the reality is quite the opposite. The law has had a devastating impact on human rights organizations, and has significantly restrained human rights defenders from conducting their legitimate and vital role in civil society. The country’s leading human rights organizations have lost almost all of their income because of the funding restrictions. Further, these organizations have been subjected to enforced changes of mandate, programme activities or the name of their organization. Even development organizations have had to revise their approaches, and change their activities because of the restrictions on human rights work. The law has created significant discretionary powers for the government to interfere in the running of human rights organizations, which is affecting the activities conducted by organizations, fund-raising opportunities, membership recruitment and retention, and which is also endangering the security of victims of human rights violations.

On several occasions government officials have told Amnesty International that the law has not damaged human rights work in the country. A Ministry of Justice official stated, “We have plenty of civil society organizations – the youth association, the women’s association, millions of members promoting human rights.”⁵² These mass based organizations are closely aligned with the ruling party, as mentioned previously in this report. It is possible that they do discuss some aspects of human rights, in their activities and within their membership. However, whilst the promotion of human rights at any and every level is a positive objective and is certainly to be welcomed, the promotion of human rights is only one component of essential work on human rights in any country. The monitoring, documenting, researching and reporting on human rights violations is essential to the protection of human rights, as are holding authorities to account for their policies and practices, and enabling victims of violations to access justice and redress. These vital functions of human rights organizations have been eviscerated by the Charities and Societies Proclamation.

⁵² In a meeting with Amnesty International, Addis Ababa, Ethiopia 19 Aug 2011

The law has also had a devastating impact on the staff of human rights organizations, the human rights defenders themselves. For many years human rights defenders have operated in a climate of fear in Ethiopia, subjected to regular harassment, arrest, detention and even violent attack. The underlying impact of the Charities and Societies Proclamation has been to entrench still further, and even to institutionalise, this fear pervading the work of human rights defenders. The majority of human rights defenders and development practitioners are now too scared to speak out, to have the experiences of their organization discussed or publicised, or to criticise government policy or practise. Many human rights organizations cannot communicate with Amnesty International because they fear the risk of repercussions is too great. The law caused a number of human rights defenders to flee the country, and human rights organizations now report they have trouble recruiting staff due to the perceived risk associated with working for a human rights organization.

The impact of the law has therefore been to substantially undermine and weaken the promotion and protection of human rights in Ethiopia. The curtailment of the activities of human rights civil society organizations has an enormous impact on the protection of the rights of the Ethiopian people. Before the law was passed human rights NGOs were assisting tens of thousands of Ethiopians every year, in documenting and reporting the testimonies of victims of human rights violations, establishing patterns of abuse, conducting advocacy on behalf of the voiceless and disempowered, providing legal assistance to victims in accessing justice, and in training key stakeholders on their human rights obligations.

The government of Ethiopia regularly expresses its commitment to upholding human rights, and makes significant efforts to engage with the human rights mechanisms of the UN Human Rights Council and at the African Commission on Human and Peoples' Rights. However, this professed commitment is utterly belied by the introduction of a law which places explicit restrictions on human rights work, in violation of international law and Ethiopia's own Constitution, and under which human rights defenders can be sentenced to terms of imprisonment for carrying out their legitimate activities.

The government of Ethiopia continues to be responsible for widespread human rights violations. In this context, it is particularly concerning that the Charities and Societies Proclamation restricts human rights organizations from observing, monitoring, documenting and reporting on this reality, and therefore restricting the level of scrutiny or oversight the government is under.

It is clear that this was the intended affect of the law - the Charities and Societies Proclamation is another vehicle for silencing critical voices. In this respect the law does not stand in isolation; the Freedom of the Mass Media and Access to Information Proclamation⁵³ and the Anti-Terrorism Proclamation⁵⁴ were promulgated one month before the CSP and six months afterwards, respectively. All three laws place excessive restrictions on the rights of freedom of expression and freedom of association, limiting Ethiopian individuals' abilities to participate in the political life of the country, and particularly, to criticise the government.

⁵³ Freedom of the Mass Media and Access to Information Proclamation (590/2008)

⁵⁴ Anti-Terrorism Proclamation (652/2009)

Due to the severe obstructionist and intrusive measures included in the Charities and Societies Proclamation, its impact has been the demolition of human rights work in Ethiopia, and the de-legitimisation of this work, despite its fundamental importance to the realisation of human rights in Ethiopia. The law therefore jeopardises the observance and protection of the rights of every citizen of Ethiopia.

RECOMMENDATIONS

TO THE GOVERNMENT OF ETHIOPIA

Amnesty International calls on the government of Ethiopia to:

- Explicitly recognise, respect, protect and promote the rights of human rights defenders, including the rights of freedom of expression, association, and exchange of information, as set out in international and regional standards as well as the Constitution of Ethiopia;
- Amend the Charities and Societies Proclamation to omit provisions which restrict human rights activities carried out by local and international organizations, which prohibit and criminalize much of the work of human rights defenders, and which in turn undermine the promotion and protection of all the rights of the Ethiopian people;
- Remove or clarify provisions containing overly broad definitions or undefined concepts, to protect against arbitrary or abusive application of the law;
- Immediately unfreeze the bank accounts of HRCO and EWLA to release the funds which were collected before the law was passed, and were collected in line with the UN Declaration on Human Rights Defenders and the national laws and directives in place at the time of their collection, to enable the crucial work of these two organizations;
- Provide guarantees that all international and national non-governmental organizations in Ethiopia can operate freely and without fear of harassment, intimidation or arbitrary arrest in accordance with the UN Declaration on Human Rights Defenders, and create an enabling environment for their essential work in accordance with Ethiopia's obligations under article 22 of the International Covenant on Civil and Political Rights;
- Issue clear public orders to all police and other law enforcement agencies to cease all harassment, intimidation, and abuse of human rights defenders and activists;
- Ensure that the principles contained in the UN Declaration on Human Rights Defenders are incorporated into national law and fully implemented.

TO THE UNITED NATIONS HUMAN RIGHTS MECHANISMS

- For the UN Human Rights Committee, the UN Committee on the Elimination of Discrimination against Women, the UN Committee Against Torture, the UN Committee on the Elimination of Racial Discrimination – ensure that implementation of recommendations that the Charities and Societies Proclamation should be amended or repealed, are considered

during follow up procedures under those bodies where possible;

- For the Special Rapporteur on the rights to freedom of peaceful assembly and association to request an invitation from the government of Ethiopia to conduct a mission to assess the operating environment for human rights defenders in terms of the legislative restrictions in place and the harassment and threats that they face in their work.

TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

- Urge the government of Ethiopia to amend the Charities and Societies Proclamation to remove the significant restrictions placed on human rights work within its provisions;
- Request an invitation from the government of Ethiopia for the Special Rapporteur on Human Rights Defenders and the Special Rapporteur on Freedom of Expression to visit the country to assess the operating environment for human rights defenders in terms of the legislative restrictions in place and the harassment and threats that they face in their work.

TO THE EUROPEAN EXTERNAL ACTION SERVICE AND EU MEMBER STATES

- Implement the commitment under the EU Guidelines on Human Rights Defenders to promote and encourage respect for the right to defend human rights in Ethiopia, and provide practical support and assistance to human rights defenders in Ethiopia, in particular those at risk as laid out in the Guidelines;
- Raise concerns relating to the Charities and Societies Proclamation with the Ethiopian authorities, and call upon the authorities to amend the legislation in line with their international obligations;
- In particular, to raise concerns with the Ethiopian authorities on the restrictions to funding, as laid out in the EU Guidelines on Human Rights Defenders, calling on EU missions 'to ensure that human rights defenders in third countries can access resources, including financial resources, from abroad'.

TO THE INTERNATIONAL COMMUNITY

- Publically call on the Ethiopian government to amend the Charities and Societies Proclamation to omit provisions restricting the work of human rights organizations, to bring the legislation into line with Ethiopia's Constitution and international obligations
- Use channels of dialogue, including bi-lateral and multi-lateral human rights dialogue, to raise concerns with the government of Ethiopia on the Charities and Societies Proclamation, and to urge the government to respect their obligations under international law in relation to human rights defenders, freedom of expression, freedom of association and the right to

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The impact of civil society legislation in Ethiopia

information;

- The governments of **Canada, the United Kingdom, the United States** and the **Netherlands**, all made recommendations during the UN Universal Periodic Review of Ethiopia in 2009 that the Charities and Societies Proclamation should be amended or repealed. Despite Ethiopia's rejection of these important recommendations, those governments should continue to pursue the consideration and implementation of these recommendations through their channels of dialogue with the government of Ethiopia;
- For those members of the international community with presence in Addis Ababa, Ethiopia, improve efforts to provide assistance and support to human rights organizations to strengthen human rights civil society and contribute to an enabling environment for their work.

APPENDIX 2: TRANSLATION: MINISTRY OF JUSTICE CIRCULAR, 2009

The Federal Democratic Republic of Ethiopia
Ministry of Justice

Ref: 02/LM- 4/285/11
25 March 2009

To the Ministry of Capacity Building
To the Ministry of Education
To the Ministry of Trade and Industry
To the Ministry of Agriculture and Rural Development
To the Ministry of Transport and Communications
To the Ministry of Urban Development
To the Ministry of Finance and Economic Development
To the Ministry of Revenues
To the Ministry of Federal Affairs
To the Ministry of Health
To the Ministry of National Defence
To the Ministry of Foreign Affairs
To the Ministry of Information
To the Ministry of Water Resources
To the Ministry of Youth and Sports
To the Ministry of Women's Affairs
To the Ministry of Mining and Energy
To the Ministry of Culture and Tourism
To the Ministry of Labour and Social Affairs
To the Ministry of Science and Technology
To the National Regional Government of Oromia, Justice Bureau
To the Addis Ababa City Administration, Justice Bureau, Addis Ababa
To the National Regional Government of Amhara, Justice Bureau, Bahir Dar
To the National Regional Government of Southern Nations, Nationalities and Peoples', Justice Bureau,
Hawassa
To the National Regional Government of Afar, Justice Bureau, Semera
To the National Regional Government of Somale, Justice Bureau, Jijiga
To the National Regional Government of Gambella, Justice Bureau, Gambella
To the National Regional Government of Tigray, Justice Bureau, Mekelle
To the Dire Dawa Administration, Justice Bureau, Dire Dawa
To the National Regional Government of Benishangul-Gumuz, Justice Bureau, Assossa
To the National Regional Government of Harar, Justice Bureau, Harar

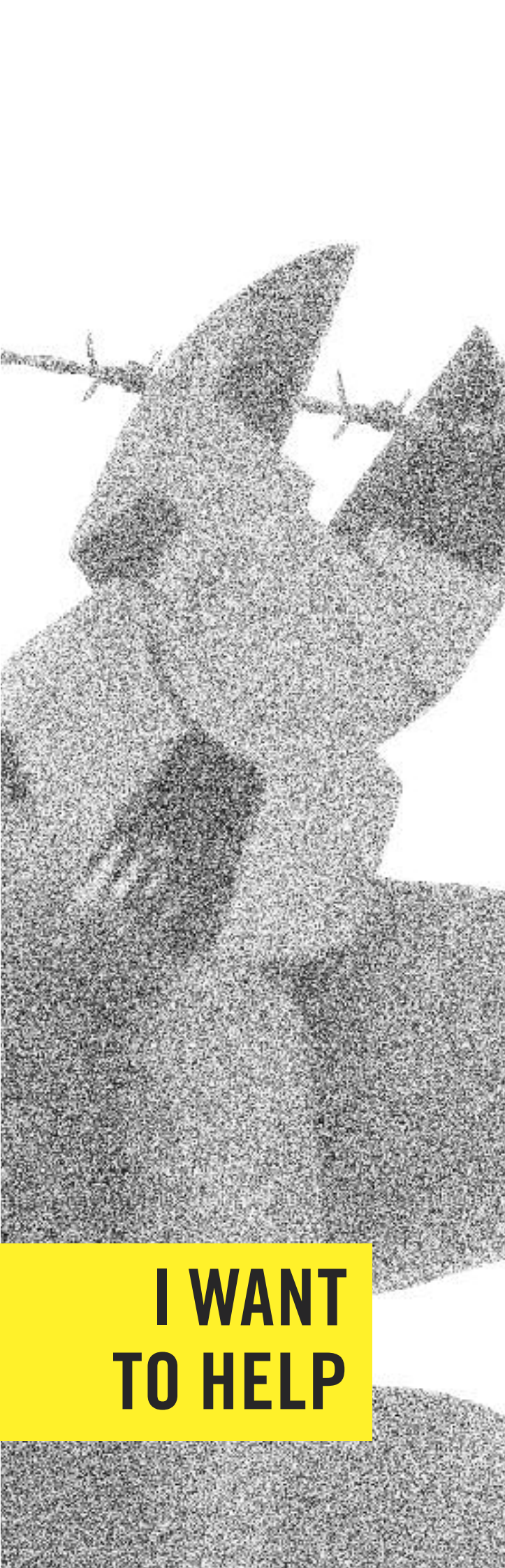
Subject: - Sending the New Charities and Societies Law

It is to be recalled that, as mentioned in the subject line, the Federal Government has been undertaking large studies for a long time to register and regulate charities and societies, and at the beginning of this year, submitted a draft legislation to the House of Peoples' Representatives that has been adopted.

Based on this and in line with the proclamation, the Government is in the process of setting up a Charities and Societies Agency to register and regulate charities and societies. Awaiting the Agency's establishment and resumption of registration and re-registration as per the proclamation, charities and societies can continue to work as they did in the past. Taking this into account, federal and regional executing bodies should be aware of the contents of the proclamation and are requested to contribute their parts for its implementation. A copy of the proclamation is enclosed with this letter.

Cc:
Office of the Ministry,
Societies' Registration Office
Ministry of Justice

Sincerely,
Berhanu Tsegaye
Minister d'Etat



**I WANT
TO HELP**

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

WHAT CAN YOU DO?

Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

- Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.
- Make a donation to support Amnesty International's work.

Together we can make our voices heard.

I am interested in receiving further information on becoming a member of Amnesty International

name

address

country

email

I wish to make a donation to Amnesty International (donations will be taken in UK£, US\$ or €)

amount

please debit my Visa Mastercard

number

expiry date

signature

Please return this form to the Amnesty International office in your country.

For Amnesty International offices worldwide: www.amnesty.org/en/worldwide-sites
If there is not an Amnesty International office in your country, please return this form to:

Amnesty International, International Secretariat, Peter Benenson House,
1 Easton Street, London WC1X 0DW, United Kingdom

amnesty.org



STIFLING HUMAN RIGHTS WORK

THE IMPACT OF CIVIL SOCIETY LEGISLATION IN ETHIOPIA

Human rights organizations in Ethiopia have been devastated by the impact of legislation restricting their work. Many organizations have changed their focus, activities have been significantly scaled down, offices have closed and numerous staff have lost their jobs. Two leading human rights organizations have had over US\$1 million of funds frozen.

The Charities and Societies Proclamation was passed in January 2009. It placed significant restrictions on funding for human rights work, granted the government excessive powers of interference in the running of organizations, jeopardized the security of victims of human rights violations, and allowed for the imprisonment of human rights defenders.

The government has displayed hostility towards human rights defenders for many years through harassment, arrests and prosecutions, and has indicated that they do not see human rights work as a legitimate activity. The law has institutionalized this climate of fear. The majority of human rights defenders are now too afraid to speak out.

The Proclamation has adversely affected the promotion and protection of the rights of the Ethiopian people. Today there are almost no organizations holding the government to account for its human rights performance.

This is one of three laws introduced since 2008 which restrict freedom of expression and people's ability to criticize their government. In this context the government continues to be responsible for widespread human rights violations, under ever-decreasing scrutiny.

Amnesty International is urging the government of Ethiopia to amend the Charities and Societies Proclamation to remove the restrictions on human rights activities, and to recognize, respect and protect the vital work of human rights defenders.

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March 2012

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