

ASSESSMENT OF THE ETHIOPIAN CIVIL SOCIETY LAW IN THE LIGHT OF HUMAN RIGHTS PROTECTION

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Abstract

The objective of this paper is to examine the Civil Societies Law of Ethiopia vis-a-vis Human rights protection. For this purpose, research products, reports, and laws have been critically analyzed. According to this study, the general articulated objective of the civil societies` law is a response to an ever increasing demand for legal norms for the management of civil society organizations. This law is praiseworthy; it can have contributions to ensure the accountability of civil societies, and to establish a uniform civil societies` administration. In contrary, the law has certain constraints on the protection of rights. That is, the rights to form association, the right to choose areas of operations, and the freedom of resources possession of the civil societies have been curtained. The law excludes Ethiopian Resident Societies and Foreign Charities from forming associations in the fields that pertain to rights advocacy and democracy. Such exclusion is a legal act of contravening the provision of the federal constitution that guarantees the right of association for any purpose. The law had forced some civil societies to change their areas of operations and to quite their functions. Therefore, to pursue full-fledged protection of human rights, amendment on some provisions the law is imperative.

Keywords: Civil Societies Law; Constitution; Human Rights, Protection

1. INTRODUCTION

Civil societies are the agents of development, contributing a lot to the political reform, human rights protect and accessibility of social services. They operate at local, regional and international levels. They may be categorized as policy advocacy and lobby groups, charity organizations and other forms. In this respect, Pedraza-Farina (2013:110) argues that “civil society may include lobbying groups that represent powerful business interests, Non-governmental organizations (NGOs) with international reach, and local community associations”. This author also indicates that, civil society embraces voluntary civil associations such as church-related groups, parent-teacher associations, sports groups, and fraternal groups

(ibid). In national and local levels, they may fill the gap left by the government for this purpose, they conduct advocacy work, promote public awareness and engaging in direct service in the form of relief or charity services. In substantiating the above saying, Eman Mohamed (2012: x) gives a summary on the role of civil society by arguing that “civil society has emerged as an important catalyst of change in the development and democratic processes through making contributions to the developing countries where abject poverty still dominates the livelihood of the people and democratic values and system of governance are yet in their infancy.” This implies that, in the states affected by poverty and maladministration civil

societies have vital roles. Due to its vital importance, the necessity of providing convenient legal grounds for civil societies is recognized by several countries like Ethiopia.

In Ethiopia, there are varieties of civil societies that are operating in a number of activities ranging from policy advocacy activities to direct service provisions. For the sake of providing the civil societies with the legal basis, to provide convenient working environment and regulate the activities of them, the incumbent government of Ethiopia has adopted the new civil society proclamation in 2009. This new legal regime consists of the Council of Ministers Regulation No. 168/2009 as well as directives issued by the Charities and Societies (CSOs) Agency. Here, anyone expects that the establishment of such law help protect and realize human rights through ensuring the freedom of association, creating detail legal basis for citizens` access to information, providing a chance to access resources and ensure the existence of spaces and rules of commitment for negotiation, participation and public dialogues. It is also necessary for citizens to foster their ability to exercise their voice. In support for this clam, Ethiopian government and some authors argues that the CSL has certain positive implication on the administration of CSOs. The mentioned law has a lot to curb harmful practices exercised by Charities and Societies (Eman, 2012). According to Ministry of Justice of Ethiopia (2008), the CSL facilitates the civil society organisations to become development partners of the government; creates a conducive environment to enable citizens to exercise their constitutionally guaranteed right to associate, and enables to identify illegal activities within the civil society organisations and to penalise the offenders. Others such as the Ethiopia`s Human Rights Action Plan (EHC and MoJ, 2012) argues that the promulgation of the law brought positive result in protection of human rights. Generally, the merits and the viability of the law to the human rights protection

have been propagated by the government of Ethiopia and its agents and supporters.

Contrary, from the outset, the Civil Society law (CSL) of Federal Democratic Republic of Ethiopia (FDRE) has been facing certain criticism from activists, civil society organization and international human right institutions for its direct and indirect negative impacts on human rights protection. For instance, the US State Department (2010 and 2016) and the Center for International Human Rights (CIHR) (2009) were some of the sources that reiterated the restrictions imposed on freedom of association, right to access to resources and freedom from excessive state interference by Ethiopia`s civil society law. According to CIHR (2009; 8-9), "Ethiopia`s law is more restrictive of human rights activities than comparative laws in other democracies in Sub-Saharan Africa." Under the law, "Ethiopian Residents Societies or Ethiopian charities (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) and "Foreign Charities (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) cannot be recognized as association if they have the desired to operate in the fields of human rights, good governance, and conflict resolution and so on. The law restricts income from foreign sources for "Ethiopian Charities" or Ethiopian Societies" and it has negative impact on human rights (International Center for Not-for-Profit Law (ICNL), 2010; Amnesty International, 2012). According to the CSL (article2), Ethiopian Charities" or "Ethiopian Societies" are those Charities or Societies that are formed under the laws of Ethiopia, all of whose members are Ethiopians, generate income from Ethiopia and wholly controlled by Ethiopians. Accordingly, banning diversified funds considered to be the restriction on the capacity to work on

human rights because only “Ethiopian” charities and societies that are legally allowed to advance human rights, the rights of children and person with disability, gender equality, nations and nationalities, good governance and conflict resolution. In addition, according to CIVICUS (2013), the law allowed the Federal Civil societies Agency to have excessive interference in the innermost activities of the CSOs.

The focuses of the critics are on the negative impacts of some provisions of the law on the right to association, and resource possession and fund raising of the civil societies. The government’s limitation to discharge its duty and obligation to protect human rights through promoting human rights defender civil society is another subject of the critics. By the way of summing up, the articulations by some non-governmental organizations, human rights activists and international institutions condemn the law of its negative impact on human rights.

Thus, the divergent views claims that forwarded by the government of Ethiopia and human rights defenders require analytical assessment on the aforementioned controversial civil societies` law of Ethiopia. Therefore, based on the above backdrop, in its attempts to examine the compatibility of the Ethiopia`s law with human rights principles, the study assesses the international CSL and the features of civil society in Ethiopia. *Methodologically*, descriptive analysis has been employed. Concerning the sources of data, a number of research products, reports, laws and other documents related to the subject have been critically analyzed.

2. CIVIL SOCIETIES AND THE LEGAL PRINCIPLES

Civil societies are actors in political, social, economic and cultural aspects of the societies in international and national levels. In view of establishing legal international environment, the international community has adopted several rules

that are under the auspices of the UN and other regional human rights regimes.

Universally, the Universal Declaration Human Rights, International Covenant on Economic, Social and Cultural Rights (ICESCR), and International Covenant on Civil and Political Rights (ICCPR) are the bills of rights. In addition, International Labour Organization, the African Charter of Peoples` and Human Rights, and other sub-continental instruments are considered as the international human rights laws. All of these are adopted and ratified by Ethiopia and thus Ethiopia is expected to be abided by the principles of those laws. Hence, these legal regimes are the framework to discuss the impacts of CSL of Ethiopia on human rights.

According to the international laws, exercising the freedom of association through establishing civil society organization (CSOs) is one of the worth mentioning practices in the realization of the human rights. Beyond the permission to form civil society, the creation of convenient environment for the exercise of the right of association, expression, communication and cooperation, and freedom from excessive interference, are the important issues in the realm of civil society. In addition, CSOs have the right to possess and raise funds and it deserves appropriate protection from the government.

A) The Right to form Association: International laws grant the rights of individuals to form associations, to join into associations and to participate as well. According to article 20 of the UDHR, everyone has the right to freedom of association, and no one may be compelled to belong to an association. The Declaration of International Labour Organization (ILO) in 1998 on Fundamental Principles and Rights at Work is particularly significant because it grounds trade union rights in the basic, democratic, political right of freedom of association. The declaration has grant right to worker to form organized negotiation and struggle for their rights. In the same manner, the

UDHR, Article 23 (4), states that "everyone has the right to form and to join trade unions for the protection of his interests." According to Article 8 of the ICESCR, everyone has entitled the right to form association to promote and protect their economic, social and cultural values. Similarly, ICCPR, article 22 (1 and 3) has detail provisions on the right of association and to be protected from unlawful restriction to the exercise of this rights. Particularly, according to ICCPR, article 22 (1 and 3), everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

These laws recognized the aforesaid right for the people of the world in political, social and economic spheres of life. The right of association is beyond the freedom to form CSOs. It involves the right of individuals to interact and organize among themselves to jointly express, promote, pursue and defend common interests.

B) The Right to Free Expression: Civil society representatives, individually and through their organizations, enjoy the right to freedom of expression. According to the FDRE Human Rights Action Plan, as with freedom of association, freedom of expression is enshrined in the "UDHR (article 19), the International Covenant on Civil and Political Rights (article 19 and 20), and International Convention to avoid Racial Discrimination ..." (article 5 and 8) (MoJ and UNDP 2012:69). The rights to express and promote collective views through association are also stated in article 9 of African charter. Hence, the respect to speak out about any issues of public importance by the representatives of the association is part and parcel of the freedom of association. It can promote individuals participation in CSOs in order to speak more loudly.

C) The Right to Operate Freely: Any legally formed institution deserves a sort of independence and legal autonomy to undertake its organizational

function. It is also logical that, once formed, "civil societies/NGOs/ have the right to operate in an enabling environment that is free from unwarranted state intrusion or interference in their affairs" (ICNL and NED, 2008:25). Freedom of association embraces the freedom of the founders and/or members to administer the internal governance of their organizations. Indeed, one of the principal elements of freedom of association is the ability to run one's own affairs (McBride, 2003). Internal setting rules and procedures as well as implementing it with one's own personals in the jurisdiction of them. However, the international laws do have conditions to allow states' interference in internal affairs of civil societies. For instance, as the ICCPR points out in article 22 (3) there are four permissible grounds for state interference with freedom of association: the interests of national security or public safety, public order, and the protection of public health or morals or the protection of the rights and freedoms of others. This implies that inter alia the right to association, and civil society's freedom from states interference are not absolute right. However, interference can only be applied for legitimate democratic and accountable government system.

D) The Right to Communication and Cooperation: The already established civil societies expected to communicate, work with others and create networks to realize their institutional goals. To elucidate, individuals and NGOs have the right to communicate and seek cooperation with other elements of civil society, the business community, international organizations and governments, both within and outside their home countries (ICNL and NED, 2008). The right to freedom of expression stated in ICCPR (article 19) embraces the rights to communicate with stakeholders. Impart or report and receive information in any available media is the expressed rights. In this regard, the UDHR article 19 reads as "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information

and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Similarly, the African Charter on Human and People’s Rights stated in Article 9 (1) says “Every individual shall have the right to receive information.” *Cooperation:* For the sake of enhancing communication and cooperation, and to pursue collective goals, individuals and institutions have the right to form and participate in human networks and alliances. Networks and partnerships are imperative in exchanging information and experience, increasing awareness, or engaging in human rights advocacy.

E) State Duty to Protect: The adoption of the international law into the national legislations compels the state to full realization of the principles of the international law. As stated above the principles are about the freedom of association, right to expression to reach the public, convenient environment for operation, and freedom to financial access. Therefore, working to realize these rights is the duty of the states party to the international legal regimes. Concerning this issue, the ICCPR, Article 2 reads as:

(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind ... (2) each State Party ... undertakes to take the necessary steps ... to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

The key theme of this provision is about the duties of states in fulfilling and promoting human rights through establishing convenient legal and practical grounds.

3. ETHIOPIA’S CIVIL SOCIETY, CIVIL SOCIETY LAW AND THE HUMAN RIGHTS

3.1. Overview of Civil Society in Ethiopia

In Ethiopia, in the form of traditional associations, associational life has deep root. Edir, Ekub, Mahiber (in the Orthodox Christians) and other forms of social organizations are entrenched in the life of the people. Those associations have varieties of benefits for the public range from emergency services to upholding spiritual values. The public are not new to the exercise of freedom of association and are enthusiastic to form association whether formal or informal. Apart from the traditional associational life, modern charities have had formed for different purposes. However, in Ethiopia, the formation of modern civil societies has short history. By 1930s faith-based organizations were formed for the first time and later 1950s welfare societies began to operate in humanitarian activities especially during in the time drought and famines. Meanwhile, the practice and the management of CSOs have not been advanced. In recent past years especially when crisis, some non-governmental organizations – mostly foreign ones – have managed to engage in relief and emergency activities (Taskforce, 2011). The emergence of modern CSOs in Ethiopia was largely related to food aid and rehabilitation programs (Ibid). NGOs started operating in Ethiopia mainly after the 1974 famine, but they had a much larger presence in Ethiopia after the 1984 drought (ibid). Later, from 1991 onwards, different civil society organizations with various objectives which include human rights advocacy, have mushroomed and occupied a prominent space in the social life of the country, as a result of which the country now boasts to have over three thousand registered civil society organizations (ECSO, 2008). The new political platform of the post-1991 helped few civil societies to work on human rights, civic education, and democracy, emergency aid and conflict issues. Moreover, NGOs working on development were also employed rights-based approach to

development. In the midst of this development, by 2009, the government of FDRE enacted law by the obvious pretext of creating legal environment for the activities of CSOs. The law has brought a significant impact on the civil society system of the country. The law grouped civil societies into three categories: Ethiopian societies and Ethiopian charities, Ethiopian residents' societies and Ethiopian residents' charities' and foreign charities. Further, it has brought several new provisions for the administration of the civil societies range from the registration to structure, operation, and supervisions.

The law limits the scopes of the activities of the CSOs and restricts the human rights advocacy societies. Reports of Amnesty International (2012) and CIHR (2009) asserted that as a result of the adoption of CSL by 2009, there were resignations of civil societies from operation as well as changing of areas of operation (change from human Rights and advocacy activities to developmental work). According to the FDRE "MoJ, "there were 3,522 organizations registered before the civil society organizations (CSOs) law was adopted, and, after the law, 1,655 organizations reregistered" (US Department of State, 2010: 28). According to Societies and Charities Agency in 2012, about 1600 CSOs have been reregistered under the new Charities and Societies Law. Of these, more than 1500 are Ethiopian resident and foreign charities working on development and welfare; and around 98 Ethiopian charities and societies which are allowed to work on human rights and conflict resolution (ibid). To conclude, in Ethiopia, the formation of modern civil societies has short history. The practice and the management of CSOs have not been advanced; and the detailed legal basis for the sector established only by 2009 with the coming of the said law. Due to the coming into force of this law, there were changes of objective, areas of operation and strategies. Others have also closed down since they mainly relied on foreign

sources due to the lack of local advanced culture of donation and support.

3.2. Human rights under the Charities and Societies Law of Ethiopia

3.2.1. The Right to Entry

Ethiopia has myriads laws that grant and recognize the freedom of association. At the apex of the legal system; the Constitution of Federal Democratic Republic of Ethiopia (FDRE) article 31 has given recognition for the freedom of association. Arguably, freedom of association includes the rights to form trade union, charity organization, political party, society and other forms of arrangement. The Constitution of FDRE in Article 31 provides that "every person has the right to freedom of association for any cause or purpose" rather than armed association. Further, accordingly, everyone not only an Ethiopian has the freedom of association for any purpose. No discrimination based on their objective or purpose (except armed and violent struggle). However, the Civil societies 'law limits this constitutionally enshrined right by discriminating societies and charities based on their income source. It prohibits foreign and Ethiopians charities (whose fund exceeding 10% acquired from foreign donation) to form association for the objective of human rights protection, democracy, election and conflict resolution. Similarly, according to a 2012 report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, "the enforcement of these [the CSL] provisions has a devastating impact on individuals' ability to form and operate associations effectively" (US State Department, 2016: 23). The report admitted that the law does not allow the CSOs to register for legal and peaceful goal due to their purpose and financial sources. as a result, the law has problems in two ways: first restricting of the right to form association based on purpose and income source is violation of human rights; and second, the act of banning Ethiopian Residents Charities or Ethiopian Residents

Societies and Foreign charities in the protection and promotion of human rights has a direct negative impact on human rights.

The CSL is promoting the CSOs to partake in economic development with disregarding human rights issues. Hence, this legal measure is the reflection of the government's "Developmental state agenda" that gives priority and attention to promote socio-economic rights. In substantiating the above claim Amnesty International (2012) says that at least seventeen organizations reportedly changed their focus from human rights to development work during the re-registration process. By 2016, "Human Rights Watch" has reported the continuances of the adverse impact of the law on human rights. To elaborate, the law bars work on good governance, conflict resolution, and advocacy on the rights of women, children, and people with disabilities if organizations receive more than 10 percent of their funds from foreign sources.

During the State of Emergency that declared in late 2016, the government banned independent associations to reach the public whose rights were violated. Upon the end of the State of Emergency another version emergency called the "Rule of command post" declared in November 2017 to clam the protracted instability. This was marked the culmination of the practices of restriction on the rights of Ethiopian public.

3.3. The Freedom from excessive Interference

Once formed, "civil societies have the right to operate in an enabling environment, free from unwarranted state intrusion or interference in their affairs" (ICNL and NED, 2008:25). As discussed above, the freedom from excessive interferences is given recognition by the international laws/treaties/ that Ethiopia is party. Concerning the CSOs law, article 85 entitled "Power to Cause the Production of Documents and Search Records" reads: (1) the CSOs Agency may, for the purpose of discharging its functions, by order, require any

Charity or Society or an officer or employee thereof: to furnish orally or in writing the Agency with any information in her/his possession which relates to any Charity or Society; or to furnish the Agency with a copy of or extract from the document; or to transmit the document itself to the Agency for its inspection (Proclamation No.621/2009).

Thus, the agency has substantial powers to interfere in the running, administering and planning of CSOs, which, among other concerns, jeopardizes the security of victims of human rights violations (Amnesty International, 2012). For example, the provision confers the agency with the power to order 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 (ibid). Hence, one can argue that such information 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 organizations. This constrains the ability of victims to access redress, and the ability of human rights organizations to fully document incidents and patterns of violations (CIVICUS, 2013). Moreover, most of other provisions allow the agency to have say and information on the system of CSOs. The law has provided the agency with excessive power to oversee every activity of them. No privacy of internal business. The agency has the right to know the when about of the meeting of general assembly, to interfere in the issues of property, confidential document, and finance and so on of the individual CSOs. Article 84 is one of the best provisions conferring the government to see the ins and outs of them. The provision reads as:

Power of Inquiries: (1) *The Agency may from time to time institute inquiries with regard to Charities or Societies or a particular Charity or Society or class of charities or societies, either generally or for particular purposes.* (2) *For the purposes of any such inquiry, the Agency may by order require any Charity or Society or an officer or employee thereof: (a) furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which that person has or can reasonably obtain information, or to return answers in writing to any questions or inquiries addressed to him on any such matter; (b) to furnish copies of documents in his custody or under his control which relate to any matter in question at the inquiry; (c) to attend at a specified time and place and give evidence or produce documents.*

However, requesting information from CSOs for public benefit is the duty of the government. But it needs to be done without negatively affecting the privacy of the human right defenders. This is because that the day to day activities of human rights protection are more serious and deserves confidentiality.

3.4. The Right to Free Expression

Freedom of expression is necessary for the effective and proper functioning of NGOs. The Ethiopian Constitution guarantees this right under article 29 (2), which read: "Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice." This right is also guaranteed under article 19 of the ICCPR and article 9 of the ACHPR. NGOs promote human rights through education, monitoring, and advocacy, all of which require the ability to express thoughts and information Vienna Declaration and Program of Action (1993). In contrary, freedom expression has certainly limited by the CSOs law of Ethiopia. Having denied the right to association has

an implicit impact on the right to expression. The association is the means to express common interest, views in organized manner helps to express loud to be heard. It is a means collectively express, promote, pursue, and defend common interests. In this regard, as CIHR (2009) expressly points out, the CSO law violates citizens' rights to freedom of expression directly or indirectly.

3.5. The Right to Cooperation

Undertaking human rights activities in collaboration with national and international actors is an effective way for the protection of human rights. Despite of this, the civil societies' law of Ethiopian has some provisions that implicitly curtail the establishment of networks among local and international human rights defenders. The Charities and Societies proclamation places restrictions on the right to cooperation to promote the human rights (Tiwana, 2008), and the law significantly impinges on the right to have networks of communication among international and national CSOs (CIHR, 2009). The above claims have logical ground since legal restriction imposed on the rights to cooperate with fund providers or donors. On the other hand, the work to promote human rights could not be succeeded without the engagement wide range of networked actors. Therefore, the impediments posed by the law on the CSOs to communicate and cooperate with the foreign groups are one of the moves to halt the promotion of human rights.

3.6. The Right to Seek and Secure Resources

The right to seek and access fund from diversified sources and the utilization of the fund for organizational objectives are the right that cannot be seen separately from the freedom of association. This is because that the realization of the objectives of the association is only through resources. CSOs have the right to seek and secure funding from legal sources. Legal sources must include individuals and businesses, other civil society actors and international organizations, inter-governmental

organizations, as well as local, national, and foreign sources (ICNL and NED, 2008).

As mentioned in article 2 (2) and article 14 (5) only 'Ethiopian Societies and charities' whose foreign fund is not exceeding 10% of their income are eligible to work on human rights. Such restriction has impact in human rights protection because it constrains the operational capacity of CSOs. The less the CSOs possess financial and capital resources the more they are handicapped to perform human rights activities. For example, Ethiopian Women Lawyer Association (EWLA) provides pro bono legal services to many Ethiopian women who do not have the resources to retain a lawyer, and after the coming into force of the said law (CSL) EWLA's assistance for women diminished (CIHR, 2009). EWLA have cut 70 percent 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 (CIVICUS, 2013).

Another victim of this law was Human Rights Council (EHCO). It has been forced to close nine of its twelve branch offices and have cut 85 percent of its staff (Amnesty International, 2012). According to the same source, 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 reduced to 450,000 Birr (US \$26,300). Millions of birr from the two human rights defenders (EWLA and HRCO) had been frozen by the government by applying the CSL.

Here, one can be forced to ask why not 30%, 40%, or 50% fund allowed from foreign sources to the Ethiopian Charities and Societies. Indeed, it needs justification. Dictating to secure 90% income from domestic source is considered as a move to limit the capacity of CSOs because the fund from Ethiopia (in a country the culture of donation is not advanced) may not be satisfactory to work on multidimensional issue of human rights. Even, 30%-45% donations from foreign source could not

allow the foreign donors to have exclusive influence on the operations local human rights defenders. In this condition, the right and the capacity to secure the independence are still in their hand because the majority (65%- 55%) of their budget is from local sources.

Income Generation: Within the framework of fund raising, the CSOs law provides the CSOs with the right to generate income through business activities and conduct public collection. In this respect, the CSL in article 103 stipulate "organizations must have written approval from the Charities and Societies Agency for all income-generating activities they undertake," and according to article 98, "they must gain a permit from the Agency to conduct public collections." The provisions does not stipulate a time period in which the agency must respond or make a decision on a fund-raising proposal or on an application for a public collection permit. This provision opens the ground for arbitrary implementation to delay a fund-raising proposal though human right protection demands urgent funding.

Moreover, the law allowed CSOs to generate income from business activities. According to 103 (1) of the law, Charities or Societies may, engage in income generating activities that are incidental to the achievement of their purposes. This provision is one of the positive measures to secure the local financial source of the CSOs. Income generation from local sources also enables CSOs to start to become more independent, which is may be another goal of Ethiopian policy. The goal of independence can be seen from the perspective of the government intention to avoid or lessen foreigners/ funder givers / manipulation on Ethiopian societies and charitable practices, merely because they are the sources of the majority of financial resources. However, the initial capital to commence the business is also a challenge and it is a need to facilitate the ways to have access to loan from governmental banks. In general, the provision is more important, and it could compensate the

financial shortage caused by the legal restriction on the foreign funds. The permission stipulated under article 98 (provision permitting public collection) could have also the same positive impacts.

3.7. State's Duty to Protect

The states have a duty to promote respect for human rights and fundamental freedoms and to protect the rights of NGOs. The states' duty is both negative (i.e., to refrain from interference with human rights and fundamental freedoms), and positive (i.e., to ensure respect for human rights and fundamental freedoms). With regard to Ethiopia, a myriad of reports of local and international institutions articulated the reluctance of the government to discharging its duty to protect human rights through the CSOs laws. According to Amnesty International (2013) and US States Department (2010), the government of FDRE has failed to fulfill its duty of protecting the civil societies. This criticism was resulted from the imposition of restrictions by CSL on freedom of association, freedom from excessive interference, freedom of expression, right of access to fund, rights of expression and cooperation.

3.8. The Right to Access Justice

The FDRE constitution, Article 37 reads: "Everyone has the right to bring a justifiable matter to, and to obtain a decision or judgement by, a court of law or any other competent body with judicial power." According to this provision, any association representing the collective or individual interest of its members; or any group or person who is a member of, or represents a group with similar interests are entitled to have this right. Despite of the recognition of the mentioned rights by the constitution of the country some provisions of the CSL have certain deviance.

Article 104 of proclamation No 621/2009 discusses, Ethiopian Charity or Society aggrieved by the decision of the CSOs agency Board may appeal to the Federal High Court within 15 days from the date

of the decision. Only Ethiopian Charities and Societies have the right to appeal to court against the decisions of the Charities and Societies Agency. On the other hand, Ethiopian Residents Societies and Foreign Charities are not allowed to exercise the right to access justice. Their existence and operation is subject to the prerogative of the government, and they do not have the right to seek judicial review to the arbitrary decisions of the agency such as denial of registration, canceling of registration, or to suspending operations. According to Article 93 (Dissolution of Charities and Societies), the dissolution of Ethiopian Charities and Societies shall be effected by the decision of the Federal High Court. They have the chance to appeal to the said court. However, Ethiopian Resident Societies and Societies and Foreign Charities have no right to appeal courts upon their dissolution by the CSOs agency of FDRE. Both article 104 (3) and 94 (2) have slight contradiction with the constitutional principle of access to Justice.

3.9. Punishments

According to Amnesty International (2012) punishment for infringement or trespass of the law could create fear within human right defenders and CSOs. As this study come across with the CSL, infringements of legal provisions could lead to heavy fines or imprisonment for NGO staff. As stated in article 102 (2d), the minimum punishment in fine is five thousand birr. The other punishments in fine exceed ten thousand Ethiopian birr. They could be also criminally liable for simple breach of CSOs law such as veiling documents. It seems intimidating to the CSOs. Hence, there are some provisions that need to be toned down.

4. FINDINGS AND CONCLUDING REMARKS

4.1. Major Findings

Based on the analytical assessment on the compatibility of the Ethiopian CSOs law with

Human rights protection, the following findings are forwarded:

- The general objective of the CSOs law of Ethiopia is to add a value in the legal system of the country. Corollary, it can have important contribution to ensure the accountability of civil societies, establish a uniform regulatory system and provide CSOs with legal protection.
- *Freedom of Association:* The freedom of association proclaimed in the constitution of FDRE certainly bared by the proclamation of Charities and Societies. Ethiopian resident Societies and Foreign Charities are excluded to form association in fields that pertain to human rights activities. But, the constitution allows the freedom of association for any purpose except armed and non-peaceful agendas.
- *Financial restriction:* Ethiopian charities and Ethiopian societies, whose 90% budget is from local sources, are the only legal person who allowed partaking in the advancement of human and related activities. But, they are weak to reach the multidimensional human rights problems of the country since the law prohibited them to acquire foreign funds exceeding one-tenth of their annual budget. Thus, the law is against the protection of human rights because it constrains the operational capacity of human rights defenders.
- *Excessive Interference:* The law allows government interference to a number of internal activities of the CSOs. Any document including human rights confidential human rights credentials as well as every administrative business of CSOs are subjected to the search of the CSOs agency.
- *Access to Justice:* the law denies the rights of Ethiopian Resident Charities and Societies and Foreign Charities to appeal to court in case of dissatisfaction by the decision of the CSOs Agency. Or Foreign and Ethiopian Resident NGOs are unjustly denied the right to appeal administrative decisions.
- Due to the coming into force of the CSOs law, there were decrement of the number of CSOs, whose purpose is human rights protection and conflict resolution.
- The cumulative effect of the restrictions on the CSOs resulted in the violation of the right to cooperation, information exchange, collective expression and communication.

4.2. Concluding Remarks

The adoption of specific law for CSOs is and providing them with specific legal basis to promote, manage, support, and monitor are steps forward in realizing the principle of good governance. Thus, the adoption of Charities and Societies Law of Ethiopia could be seen as a step forward in the institutionalization as well as legalization of CSOs` activities. It has established clear provisions on the registration (how to form), regulation and service deliveries to and from them. The Law has also incorporated some praiseworthy provisions concerning local fund accession and tax exemption for the CSOs and ensuring accountability for the entire system. To elaborate, the permission for them to engage in income generating activities from local sources can help them to ease the intention and practice of dependency on foreign fund, and ensure the sustainability of their activities. There is also provision declared the exemption of charities and societies from income tax when they engage in business for organizational purpose. Such legal move has is a move to support the human rights functions through strengthening the financial muscles of the CSOs. To create accountable system in the activities of civil societies and charity

charities system the law has provisions that stipulated the necessity of auditing practice and keeping books of account. Hence, those provisions must be implemented in the way that can promote the institutional framework of reinforcing the capacity of Charities and Societies in their effort to realize human rights goals. The interpretation of the provisions also needs to be “in good faith.”

Despite of the above positive contributions, some provisions of the law pose unintended and formidable challenges, especially for smaller Ethiopian charities and societies. They were affected by fund shortage to undertake human rights activities. The law imposes restriction on financial possession, bans to form association on the basis of source of fund and purpose, and prohibits Ethiopian residents’ societies and charities to appeal to courts. In addition, this paper argues that the prevalence of intimidating provisions of punishment for infringement and the permission of excessive interference of the CSOs Agency in the internal affairs of the CSOs are also the move to harass human rights defenders. In this respect, the law is less attractive for the formation and development of social capital. Corollary, the law has impacts on human rights: *first*, the restrictions on the right to association are by itself a human rights violation, *second*, it has also a far reaching effect on human rights because it hurts the activities of CSOs to serve human rights by limiting their financial capacity, and *third*, it reduce the number of human rights defender through banning Ethiopian resident charities and foreign CSOs to engage in the protection and promotion of human rights. Law has also indirect far reaching effects on the right of expression, communication, information exchange, and cooperation. Therefore, there is a need for amendments of provisions to relax the restriction financial sources and the right of access to justice (for Ethiopian residents’ societies and charities). The excessive punishments and the authorization of interference could also better to be toned down.

Furthermore, the paper proved that there are procrastination of registration and service provision by the charities and societies Agency. This affects the on time accessibilities of CSOs to protect and defend human rights. It is resulted from the extensive scrutinizing activities and bureaucratic problems. More importantly, after the coming into force of the law, there are charities and societies that changed their purposes (shift from human rights to development activities), reduced the coverage of their services, and quite their functions. Hence, to reverse adverse effect of the law on human rights, the regime must temperate the provisions that tempered the formation and survival human rights defender.

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