

Examination and Analysis of Charities and Societies Proclamation of Ethiopia

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Abstract

It is argued that civil society organizations (CSOs) are crucial for ensuring good governance in any society. They can also contribute towards enabling accountable and transparent government and thereby enhancing employment opportunities and solve societal problems in any given country. Nevertheless, in Ethiopia the relationship between CSOs and Government is rather dubious and filled with mistrust. So it is found out via empirical investigation. The CSO law has been accused of over regulating and of hindrance to charities and societies operating in Ethiopia. The law, some contend, is framed with ill motive of controlling and subjugating. Nevertheless, the law is also argued for and that it put some sense to wild wishes and whims of CSOs (ulterior motives and criminal intents). This research is set out to examine and analyze the Charities and Societies Proclamation of Ethiopia.

Keywords: CSOs, charities, societies, proclamation, impact

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1. Introduction

The second half the 20th century witnessed a proliferation of civil society organizations (CSOs) in the global South. The increase in the number CSOs has been explained in terms of humanitarian crises, a perceived turbulence in world politics, the volatility of culturally plural societies, the acceleration of globalization and the failure of states to provide for their citizens and govern with legitimacy (Fisher, 1997). CSOs have been engaged in humanitarian assistance, service delivery, development projects, human rights and policy advocacy and environmental protection. They have been playing the role of the ‘the third sector’ in society, alongside government and business. It is equally important to note that CSOs in many countries have been operating under restrictive regulatory frameworks. Kendra Dupuy and her associates (2015) noted that 86 of 195 countries in the world have passed more restrictive CSO laws since 1955, most of which appeared between 1995 and 2012.

The relationship between governments and civil society, especially in Africa, is mostly characterized by conflict. Indeed, the relationship of civil society with government is partly depends on the nature of services they provided to the society. Thus, civil society which engaged in welfare provision and humanitarian relief are the least likely to experience conflict with government. They are usually welcomed by the government since they reduce the burden of the government to provide welfare to the citizens (Sandberg, 2013). On the other hand, civil societies which experience hostility from the governments are those who engaged in advocacy works like promotion of human rights and democracy. These types of civil societies are commonly considered as opponents of government policies and structures. And the government is most likely attempt to control and monitor their activities in any means possible (Cakmak, 2004). The 2009 Ethiopian Charities and Societies Proclamation is part of these contentions.

The proclamation regulates non-governmental organizations, mass membership based societies, charitable trusts and foundations. It has established the Charities and Societies Agency (CSA) with the objective to “enable and encourage charities and societies to develop and achieve their purposes in accordance to the law and to create a situation in which their operation is transparent and accountable” (FDRE, Proclamation No 621/2009, Article 5 (1&2)). This objective is appreciated because it fulfills the legal vacuum existing in the previous law.

But, the proclamation could be highly criticized as it places excessive restrictions on the work of civil societies engaged in good governance, human rights and democracy. According to Amnesty International (2012), this restriction imposed on civil society working on human rights, democracy and good governance in turn lead to the weakness of civil society which brings the weakness of democratization process in Ethiopia. With this in mind, the paper is aimed at examining and analyzing the Charities and Societies Proclamation of Ethiopia laying a particular emphasis on its conceptualization, funding and operational restrictions and challenges, as well as providing a policy options to be considered.

2. CSOs in Ethiopia: General Background

Long before the arrival of modern CSOs in Ethiopia, there were community-based traditional structures such as *Edir* (traditional funeral association), *Equb* (traditional credit association), and other self-help associations including those referred to in local vernaculars as *mahiber*, *debbo*, *seddaka*, etc. (Teshome, 2009). Although they have had undeniable local relevance, the ability of these informal associations to contribute to broader societal objectives and articulate public demands has not been clear (Rahmato, 2002). There were also faith-based

organizations in some parts of the country already in the 1930s. While formal NGOs such as the Red Cross started operating in the 1950s, the famine of the 1970s and the inability of the state to handle the situation led to the emergence of more relief and development NGOs (Consortium of Christian Relief and Development Association [CCRDA], 2009).

Under the *Derg* regime, which was as intolerant to independent voices as its Imperial predecessor, some relief and development NGOs continued to exist especially after the famine that hit the northern part of the country again in the mid-1980s (CSA, 2010). Trade unions and co-operatives were also in existence but as instruments of state policy or in close connection to the political state apparatus. The downfall of the *Derg* in 1991 and the transition to a relatively more pluralistic political system led to the creation of more CSOs, including NGOs, professional associations, chambers of commerce, and a handful of advocacy organizations. The number of local NGOs increased dramatically from the very small number of church-based and other organizations by the end of the 1980s to about 246 NGOs registered with the responsible organ of the Federal Government in the year 2000 (Rahmato, 2002). However, most of the CSOs focused on service delivery and development projects and very few of them were engaged in policy advocacy on issues such as human rights and governance (Berhanu, 2002). This has been ascribed mainly to the hostility of the government to those who get involved in such work (Rahmato, 2002).

The two decades from 1991 to 2009 are known as a period when a remarkable progress in the numbers and activities of CSOs was seen in the history of the country. A relatively enabling atmosphere and significant contributions by these CSOs (they later renamed as Charities and Societies Organizations) to various programs that the country was desperately embarked on gave boost to the birth of hundreds of Charities and Societies Organizations (Addis Standard, 2012). Alarmed by the activities of some Charities and Societies Organizations that the Ethiopian government has claimed were involved in political activities, the government has adopted a new Proclamation No. 621/2009 in 2009. Alas, it became one of the numbers of controversial proclamations the country has enacted since the current regime came into power in 1991.

3. Research Methodology

The paper utilized a qualitative research approach since it enables a cross-examination of facts. Thus, general literature and various empirical studies conducted on associated issues were reviewed and examined. In addition, policy documents and existing legal frameworks particularly the 2009 Charities and Societies Proclamation and subsequent directives issued to implement the Proclamation were carefully scrutinized. Furthermore, to objectively understand the impact of the Proclamation on Charities and Societies operating in the country, numerical data was collected from the Charities and Societies Agency i.e. an institution established to register and regulate Charities and Societies operating in the country.

4. Policy Initiation and Endorsement Process

Recent studies revealed the enactment of restrictive laws in many countries seriously shrank the operating environment for CSOs (Dupuy et al., 2015; CIVICUS, 2015). The space for civil society engagement has been shrinking in nondemocratic states and established democracies (Unmuessig, 2015). In the non-west, authorities associated civic activism with neo-liberal inspiration and opted for heavy-handed responses, while western democratic nations suspended civil liberties or reduced the space for civic life due to fear of terrorism and in the name of security. In Ethiopia, combinations of factors (namely, accountability deficit of CSOs and the unprecedented civic activism during the period leading to the 2005 contested election) seem to have led to promulgation of the controversial Proclamation No. 621/2009.

The CSP was drafted by government experts within the Ministry of Justice of Ethiopia. The draft containing provisions on the classification of CSOs into charities and societies, the rules of their formation, registration, and operation and the monitoring powers of the CSA passed through some stages of discussion and revision. The process was criticized for allowing very limited consultation with CSOs and legal professionals as the former were reportedly given only a short time to submit written comments (Dagne, 2008). Some improvements were made to the original draft of the law along the way, including the exclusion of religious organizations from its scope of application, the inclusion of two CSO representatives in then Board of the CSA, and the exclusion of the provisions that allow the Agency's representatives to participate in the meetings of CSOs (Human Rights Watch, 2009). However, some highly contested provisions remained in the Proclamation as it's finally endorsed by Ethiopian House of Peoples' Representatives.

5. The Proclamation and Its Restrictive Elements

The Proclamation was enacted to "enable and encourage charities and societies to develop and achieve their purposes in accordance to the law and to create a situation in which their operation is transparent and accountable" (FDRE, Proclamation No. 621/2009, Article 5 (1 &2)). This objective of the Proclamation is both important and useful because before the enactment of the law there were transparency and accountability deficits on the part of

CSOs operating throughout the country. Moreover, the Proclamation also fulfills the legal vacuum existing in the previous law.

The Proclamation governs two types of CSOs, namely, *charities*, which it defines as institutions established exclusively for charitable purposes and provide public benefits, and *societies*, which are voluntary, non-profit associations organized to promote the rights and interests of their members and to undertake other similar purposes (Articles 14(1) and 55(1)). The law mandates the CSA to register and regulate three categories of CSOs: Ethiopian Charities or Societies, Ethiopian Residents Charities or Societies and Foreign Charities (Article 2:2-4). The classification is based on the law under which they are formed, the nationality of their members, and the source of their funds. Let's briefly examine them:

a) Ethiopian Charities or Societies

Ethiopian charities or Ethiopian societies are those CSOs that are formed by Ethiopians under the Ethiopian laws and that can engage in any activity, including human rights and policy advocacy (Article 2:2). However, they are not allowed to receive more than 10% of their funds from foreign sources. This 10% ceiling came to be known as the 90:10 rule and it became the most controversial issue. Proponents of this provision argue that it reduce the vulnerability of sensitive domestic issues to manipulation by imported agendas that may accompany foreign funds.

On the other hand, critics viewed the 10% ceiling as a strategy to silence the rights organizations and undermine their influence in society by starving them of funds (Yalemzewd et al., 2009; Debebe, 2010; Dupuy et al., 2015). Empirical studies undertaken on the issue stipulates that the 90:10 rule has eroded the capacity of CSOs to attain their goals. Some CSOs are reported to have changed their commitment to service delivery and development while others terminated their operations.

In a country where close to 80% of the population lives on less than two dollars a day (United Nations Development Programme, 2010) and the culture of voluntarism is not deeply rooted, it is hard to imagine CSOs being able to raise 90% of what is needed for significant work on the various issues of human rights, democracy, the rule of law, and conflict resolution. Ironically, the government of the country itself derives about a quarter to one-third of its budget from foreign aid (FDRE Ministry of Finance and Economic Development, 2010). While recognizing the law challenges CSOs to look inwards for self-reliant and self-sustained financing, it looks almost practically impossible to locally raise 90% of what they need for their work, at least in the immediate and the intermediate term given the state of the economy of the county.

b) Ethiopian Residents Charities or Societies

Ethiopian resident charities or Ethiopian resident societies are CSOs that are formed by the residents of Ethiopia under the Ethiopian laws and they can receive up to 90% of their funds from foreign sources (Article 2:3). However, they are not allowed to engage in specific activities, namely, the advancement of human and democratic rights; the promotion of equality of gender, ethnic groups and religion; the promotion of the rights of children and persons with disability; the promotion of conflict resolution and the promotion of the efficiency of justice and law enforcement services (Article 14:2 & 5).

Creating a dichotomy between human rights and development is very difficult because: a) the right to development itself is a human right, and b) development activities will directly or indirectly contribute to the implementation of human rights, especially socio-economic rights. Likewise, development and conflict resolution are closely interlinked, as conflict is one of the causes for underdevelopment, and development activities often contribute to conflict resolution and lasting peace. Hence, it is difficult if not impossible to draw a clear line of demarcation between those activities that CSOs are permitted to undertake, and those which are off limits to them under the law.

Although the basis of this distinction remains unclear, the message is unequivocal: CSOs interested in service delivery and development can receive up to 90% of their funds from foreign sources but the money should be used only for service delivery and development, not for rights issues. Critics contend that these restrictions make the CSO law inconsistent with international standards related to freedom of association and human rights. The argument is that CSOs should not be barred from engagement in rights issues because of their income and all CSOs should be allowed to promote the international standards to which the Ethiopian Government is committed. Further, the proclamation seems to violate Article 31 of FDRE constitution which gives citizens the right to association.

Some Ethiopian resident charities or societies have been wisely and innovatively promoting (without advertising) governance and rights issues in such thematic areas as gender empowerment, rights of children and environmental protection. The recent forced closure of certain CSOs for exceeding their operational mandates reveals the risks involved in promoting a rights-based approach without a proper mandate.

c) Foreign Charities

Foreign charities are 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

(Article 2:4). There is no limit on the amount of funds that foreign charities are allowed to bring into the country. However, the restrictions that apply to the Ethiopian resident charities and societies apply to foreign charities as well and for the same reason.

Another important point that worth attention here is the 70:30 guideline (guideline on administrative and operational costs). The guideline requires CSOs to allocate 70% of their budget for programme activities and 30% for administrative purposes. The logic behind the law stems from the pre Proclamation allegations that CSOs spent 60% of their budget on administrative matters and that their highly paid leaders allegedly advanced the interests of foreign agencies rather than the citizens (Dupuy et al., 2015; EPRDF, 2006 in Debebe, 2010; Yalemzewd et al., 2009). Many local authorities and ordinary beneficiaries of CSOs' projects reportedly witnessed noticeable improvements in accountability, transparency and the flow of resources after the enactment of the proclamation.

The 70:30 guideline has been challenged on legitimate grounds. The argument is not that the 30% is unfair but that the items classified as administrative costs undermines the quality of CSOs activities. The classification of transportation, training, research and monitoring and evaluation expenses as administrative costs (rather than operational costs) is considered mistaken and counter-productive (Long and Regassa, 2013; Kassahun, 2013). It is mistaken because these costs are part of the core activities of most projects and counter-productive in that CSOs loose the motivation to launch projects in remote areas, undertake baseline studies, provide training and engage in serious monitoring and evaluation.

The guideline is also viewed as discriminatory in that it rewards financially strong CSOs. Organizations with very large budgets do not necessarily have the largest work forces, pay the highest salaries or spend proportionately more on research and training than smaller organizations. Indeed, they may not need to spend 30% of their budget on running costs. This is not the case for the resource-poor CSOs that may be required to exceed the 30% threshold. The proponents of this view call for the amendment of the provision to address the concerns of small CSOs.

The proclamation recognizes the rights of charities and societies to establish consortia to coordinate their activities. The directive issued to regulate the establishment of consortia recognizes the role that networks play: building the capacity of their members, voicing common challenges, facilitating experience and information sharing and enhancing the ethical and professional standards of their members. However, the 70:30 guideline considers all expenses incurred by a consortium as administrative costs stating that networks are not implementers and therefore they do not incur operational costs (Debebe, 2011). Thus, the consortia are expected to transfer a minimum of 70% of their funds from donors to member CSOs effectively reducing their role to that of fundraiser. Consortia are expected to derive their income from membership fees and a percentage share of the 30% administrative costs of CSOs and this makes it difficult for them to carry out broader functions.

As a response to the advocacy efforts exerted by different donors and CSOs to improve the regulatory framework, the CSA made some amendments to the 70:30 guideline. The changes apply to the salary and transport expenses of CSOs working on HIV, persons with disabilities, agriculture, access to clean water, environmental protection, capacity building, training and construction. Hence, the amendment does not apply to all the CSOs and does not address the concerns of small CSOs. Also, the request to reclassify research, monitoring and evaluation expenses as operational costs remains unaddressed. On a positive note, however, the government's responsiveness to the advocacy efforts deserves to be viewed as a step in the right direction.

Another limitation of the Proclamation relates to the composition and functioning of the CSA, which it establishes to 'ensure that CSOs operate legally and in accountable and transparent manners' (Articles 5-6). It is constituted of the Charities and Societies Board, a Director General and supporting staff (Article 7). The government appoints the seven members of the Board, of which two are nominated from CSOs, as well as the Director General, and the Agency is accountable to the Ministry of Justice (Articles 4, 7-8). The Board decides by majority vote-with four of its members meeting quorum-on any issue arising under the Proclamation and hears appeals from the decisions of the Director (Articles 9-10). The decisions of the Board shall be final except for Ethiopian CSOs which may take appeal to the Federal High court (Article 104). The limitation of CSOs to the nomination of only two members of the Board and the appointment of all members by the executive branch of government, to which the whole agency is accountable, raises questions about the representativeness and independence of the Board. The fact that the government nominees meet quorum and constitute a majority for any decision magnifies the problem relating to the composition of the Board that has extensive powers. It also limits civil society participation in decisions concerning themselves. The law further restricts the due process right (of appeal to court) of Ethiopian CSOs and foreign charities and their members.

The proclamation allowed charities and societies to engage in Income Generating Activities (IGAs) (Article 103). This provision is meant to enable CSOs to mobilize resources from within the country and reduce their heavy dependence on foreign funds. However, the provision contains restrictions that make engagement in IGAs rather difficult. CSOs wishing to engage in IGAs are expected to work on activities related to their 'core mission', secure written approval from the Agency, obtain valid business licenses from the relevant government departments and maintain separate accounts for their IGAs. It appears that CSOs' 'businesses' are subjected to additional scrutiny that does not apply to the private sector. Nevertheless, I personally argue that an IGA is a business activity that

must be governed by the trade law, not by charities and societies proclamation (CSP). Moreover, there should not be confusion between business and charity activities that would distort the market and put private businesses at a competitive disadvantage.

The provision that IGAs must be directly related to the ‘core missions’ of the CSO (Article 103:1) is particularly difficult for Ethiopian charities and societies. The logic behind this provision is enabling CSOs to promote their areas of interest and address business development gaps in those areas while avoiding overcrowding and market distortion in certain business areas and discouraging the establishment of CSOs with business as their primary interest. However, the logic works only for some CSOs. Organizations that are engaged in service delivery can easily identify IGAs (e.g., opening schools, clinics, bookstores, pharmacies, etc.) directly to their missions. In this regard, CSOs that receive 90% of their funds from foreign sources are in an advantageous position. The challenge is for Ethiopian registered CSOs working on rights issues and receiving only 10% of their funds from external sources. They find it difficult to identify business activities leading to marketable products and services that are directly related to their missions.

6. Some Impacts of the Proclamation

The Charities and Societies Proclamation had a dramatic impact on human rights and governance works in Ethiopia. The circle of active and professional human rights organizations was already small before the laws were passed. These groups, which were mostly established during the 1990s, provided legal aid and civic education, monitored elections and human rights violations, and advocated for the rights of minorities, women, and other vulnerable groups.

Following the promulgation of CSP, civil societies working on human rights and democracy have decreased in number, many have changed their mandate and those human rights organizations who survived have significantly scaled down their activities due to the major impacts of fund restriction (Amnesty International, 2012). While community-based giving is common across Ethiopia, there is no strong tradition of donating to charitable organizations. Thus, organizations have struggled to raise money through membership fees and fund-raising events. Consequently, only around 10 percent of the 125 previously existing local rights groups were re-registered under the new proclamation (CSA, 2018). Further, the provision that prohibits anonymous donations had also negatively impacted CSOs since capable citizens refrained from donating in the fear of potential political repercussions.

For some CSOs funding problems translate into capacity deficit in terms of human resources. After the enactment of the law, rights organizations were obliged to scale-down their personnel. Most small and resource-poor CSOs lacked qualified and experienced staffs to help with the mobilization of funds. The lack of experienced staff also affects the quality of planning, project implementation, monitoring and evaluation and the timely reporting on projects.

The CSP forced prominent human rights groups to abandon their core missions and to scale back operations significantly. Ethiopia’s leading human rights NGO, Ethiopian Human Rights Council (EHRCO, now HRCO), had to close 9 of its 12 regional offices and cut 85 percent of its staff. The Ethiopian Women Lawyers’ Association (EWLA) cut nearly 70 percent of its staff. In December 2009, the CSA, the regulatory body created under the CSP, ordered the freezing of these two groups’ bank accounts, claiming that the money had been received in violation of the ban on foreign funding—effectively a retroactive application of the law. HRCO and EWLA’s appeals to the courts were not successful (Addis Standard, 2012). Human Right Council (HRCO) had previously conducted human rights education seminars and workshops that aimed to raise awareness of human rights standards among public servants, police officers, and judicial officials. Despite initial skepticism, participation in these workshops was on the rise before the passage of the CSP, a total of 1,034 officials took part (HRCO, 2011). After the law was passed, the organization’s budget shrank from \$351,000 in 2008 to \$26,300 in 2011, forcing it to disband the program (Ibid).

In June 2016, the Charities and Societies Agency, announced that it had shut down more than 200 CSOs in the last nine months. The agency cited failure to comply with numerous requirements of the CSP and lack of funding as reasons for the closures. The announcement followed the agency issuing a directive that seeks to impose penalties for noncompliance with the CSP. By issuing this directive, the agency effectively gave itself quasi-judicial powers in criminal proceedings (Freedom House, 2016).

Moreover, CSP, especially its 70/30 guideline is forcing different organizations to move to other countries with more hospitable rules, like Kenya. The guideline is reported to have discouraged CSOs from employing and retaining qualified staff, launching projects in remote locations, giving capacity building training, undertaking serious monitoring and evaluation activities, and sharing information (Kassahun, 2013; Long and Regassa, 2013; Debebe, 2011). Hence, the law has resulted in various negative impacts, to mention a few: loss of job opportunities which were created due to the existence of these organizations (when the organizations move they take the opportunities they provide with them) and the indirect effect on employment creation via capacity building and training. It discourages different organizations from coming to the country, this negatively impact the potential opportunities (foreign currency source, and employment opportunities, etc.).

7. Conclusion and Policy Options

In nutshell, CSP was intended to boost transparency and accountability and thereby to create strong civil societies. Yet, the proclamation has many negative as well as positive impacts. With regard to positive aspects of the law, at least it put in place a legal framework that can govern operation of the civil society sector in the country. It also provided for the involvement of CSOs in income generation activities. Further, it somehow acknowledges the importance of the charitable organizations to the development of the country.

Yet, the analysis reveals that the law is inconsistent in its detailed regulation with the objective and purpose enshrined in its preamble. Likewise, the government strongly mistrusts civil societies and so do the CSOs as well. Hence, the relationship on ground between government and CSO via the CSP is not to the level expected. It is rife with mistrust and bad-faith. The proclamation is less systematized and over regulative. The classification of CSOs based on the income source and the funding requirement thereof is least agreeable to the actors and stakeholders of the CSOs. As such, many CSOs have been closed since the implementation of the new law. Again, many CSOs with strong intervention capacity are shunned off by the law from engaging on activities that foster democracy and human rights thereby contributing to good governance and accountability which in turn creates employment opportunity arising out of public accountability.

The review also undisputedly stipulates that the proclamation incapacitated organizations working on promotion of human right, democracy and good governance through funding restrictions. Given the state of the economy of the country and infant level of voluntarism, domestic resource mobilization is unrealistic in the current Ethiopian context at least in short-term. Thus, as a policy option, the government should better amend the restrictive provisions of the CSP and subsequent directives, particularly those restricting foreign funding for human right works and imposing the 30 percent cap on administrative expenses. However, the long-term strategy should be to encourage domestic resource generation and mobilization and to reduce heavy dependence on foreign donors. It's equally important to strengthen CSOs through financial and technical support so as to increase their role in the democratization process of the country.

On the other hand, CSOs are also advised to strongly lobby and increase domestic funding rather than hinging and totally depending on foreign sources. It is critical that both government and CSO engage in continuous debate and discussion towards ironing out differences and building common grounds for development. Finally, the government and CSs should work hand in hand and assist each other. The government should support CSs and their search for fund; it should not put restraints to limit their work and reach.

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