

**FDRE CHARITIES & SOCIETIES PROCLAMATION No. 00/2008**

**Technical Analysis of Second Draft of Proclamation  
(released mid June 2008)**

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# Executive Summary

## KEY CONCERNS:

**Definitions & Work Areas:** The 90/10 funding rule, when combined with categories of development activity that foreign civil society organizations (CSOs) are excluded from, remains unchanged as a basis of categorizing CSOs. In particular, greater clarity is still required in defining what is “political” and “non-political” advocacy, as well as how the new category of, “Charities and Societies of Ethiopian Residents” is affected by this law. For instance, the revised draft now allows “Foreign Charities and Societies” to engage in community and sustainable development work, however, it now excludes them from generally accepted work on gender, children, and disability issues. Therefore, the key recommendation is that the 10% threshold on source of funds be removed, and emphasis could be placed on the constitution and management control of the organizations by Ethiopians. It is also recommended that list of development sectors defined under Article 14 be removed. A more appropriate option may be to include a Sub Article that explicitly defines and explicates those development sectors/charitable purposes in which Foreign Charities and Societies are not allowed to operate.

**Powers of the Agency:** The scope of authority of the Charities and Societies Agency (hereafter ‘the CSA’ or ‘the Agency’) has changed. Although the agency’s powers have been diluted to some degree, it remains largely unaccountable due to very limited judicial recourse (on points of law, not fact). As such, the powers of the Agency remain excessive and intrusive, with limited checks and balances. A key area of concern is the potential for arbitrariness and bias through selective application of the implementation of the law.

**Criminalization of Non-Criminal Behaviour & Excessive Penalties:** A section on Penalties has been added to the law (Section 10, Articles 103-108) to consolidate key criminal penalties. The major change is an overall increase in the severity of the penalties. For example, a maximum 5-15 years “rigorous” imprisonment now applies to several misdemeanours (eg. participation in unregistered organizations). It is recommended that the criminalization of activities that are generally non-criminal in nature be removed, as administrative fines would suffice as a deterrent for non-compliance.

**Absence of Legal Recourse for Foreign Charities & Societies:** Overall, the Proclamation does not provide significant legal coverage and recourse through due judicial processes to Foreign Charities and Societies, as well as individuals employed by CSOs in general, nor does it allow for judicial review and appeals based on fact (i.e. not only law).

Article	Concerns / Impact	Recommendation(s)	Alternative(s)	International Good Practice
<p><b>1. Ethiopian Charities &amp; Societies</b></p> <p>Section 1, Article 2, Sub Article 2</p> <p>Section 1, Article 2, Sub Article 3</p> <p>Section 1, Article 2, Sub Article 4</p>	<p>The 10% threshold on foreign funding could curtail or shutdown the operations of many Ethiopian Charities and Societies, as their ability to mobilize resources may be affected.</p>	<p>Remove criteria regarding 10% threshold on foreign funding.</p>	<p>If Sub Article 4 and the 10% threshold in Sub Article 2 are removed, then no alternative or change is proposed for the remaining text of Article 2.</p>	<p>These Articles should be reviewed against Article 22 of the International Covenant on Civil and Political Rights (ICCPR).</p>
<p><b>2. Scope of Application</b></p> <p>Section 1, Article 3</p>	<p>By “virtue of an agreement” with government, Sub Article 2(b) makes what should be an objective regulatory decision on CSOs into a political matter, subject to potential abuse through selective application.</p>	<p>It is recommended that Sub Article 2(b) – exception via agreement with government – be deleted.</p>	<p>Clarify and define what exactly constitutes an agreement with government (i.e. MoU, Programme/Project document, etc.), as well as the basis for such agreements.</p>	<p>It is generally considered incorrect legislative practice to exclude any civic organizations from national legislation, by virtue of an administrative agreement with government.</p>
<p><b>3. Definitions of Development Sectors</b></p> <p>Section 3, Article 14</p>	<p>This could impact donor programmes, and the financial viability of CSOs due to limited scope of generally accepted development work and funding opportunities.</p>	<p>It is recommended that Sub Articles 2 and 5 be removed, as these would make some donor programmes and foreign CSOs work in the aforesaid sectors illegal.</p>	<p>Include a Sub Article that explicitly defines and explicates those development sectors/charitable purposes in which Foreign Charities and Societies are not allowed to operate.</p>	<p>An enabling policy framework or legislation allows CSOs to be treated like all other legal entities and thereby, permits them to engage in activities for the benefit of their members and the public.</p>
<p><b>4. Refusal of Application for Registration</b></p> <p>Section 5, Subsection 2, Article 70</p>	<p>The potential for arbitrary refusal decisions and implementation abuse created by the vesting of sole authority and discretion in the Charities and Societies Agency [the Agency], without a meaningful right of appeal (on facts) to the courts, could be used to deny legitimate charities and societies the right to associate.</p>	<p>It is recommended that Sub Articles 2 and 5 be removed from the Proclamation.</p>	<p>Sub Articles (1) and (3) provide sufficient grounds for refusals of CSO applications for registration.</p>	<p>In general, it is considered best practice to allow for appeals of government decisions that adversely affect a CSO.</p>

Article	Concerns / Impact	Recommendation(s)	Alternative(s)	International Good Practice
<p><b>5. Power to Institute Inquiries</b></p> <p>Section 7, Article 85</p>	<p>The absence of restrictions for the Agency to make effective use of inquiries only when necessary could facilitate abuse of this authority, and undermine the work of CSOs.</p>	<p>The conditions and reasons which justify the initiation of an inquiry should be clearly defined in order to ensure a transparent, non-intrusive and legitimate method of inquiry.</p>	<p>Most regulatory bodies supervise organizations by requiring reporting that is appropriate to the CSO's size and activities. The Proclamation already requires such reports and financial statements that demonstrate organizational efficiency and effectiveness.</p>	<p>In many instances, when the objectives of such inquiries have not been clear, it has led to the abuse of such discretionary powers, leading to delays in CSO activities as well as poor usage and/or seizure of its human and financial resources.</p>
<p><b>6. Limits on Administrative Costs</b></p> <p>Section 7, Article 90</p>	<p>This 30% ceiling on administrative costs may encourage "creative" accounting in order to meet the requirement and prove impractical to monitor.</p>	<p>The 30% limit on administrative costs should be eliminated from the law.</p>	<p>Adequately enforcing the annual reporting and disclosure requirements defined in Articles 78-84 of the Proclamation would have a greater impact on NGO accountability than any cap on administrative expenses.</p>	<p>Most NGO laws avoid the application of such spending caps. When such caps have been employed they have often undermined transparency and credibility of CSOs.</p>
<p><b>7. Protection of Property (...of a Charity or Society in the event of misconduct or mismanagement...)</b></p> <p>Section 7, Article 92</p>	<p>It greatly restricts the authority of CSOs to undertake remedial measures for resolving potential internal problems. The Agency's powers are excessively broad with no safeguards to prevent abuse. Another concern is the lack of right to appeal afforded to CSOs.</p>	<p>In the event of a reasonable ground to assume there has been mismanagement, a provision should be made for the matter to be settled through the courts, following normal procedures as per the Civil and Criminal Code.</p>	<p>An unequivocal right to appeal and injunctive relief for the organization until its appeals are exhausted should be added to the provision if it is not removed. The application of the Criminal and Civil Code should serve as an adequate deterrent.</p>	<p>Formal charities and societies (civic organizations) should generally have the same rights, obligations and protections as other legal persons, and subject to similar civil and criminal sanctions to other legal persons such as partnerships and corporations.</p>
<p><b>8. Removal and Replacement of Officers</b></p> <p>Section 7, Article 93</p>	<p>This Article undermines the independent operation of civic organizations.</p>	<p>It is recommended that this Article be excised.</p>	<p>The exercise of discretion by the organization's board of directors, management and members are less intrusive means to ensure effective management.</p>	<p>The ACHPR has directly addressed the appointment of NGO directors by government, as being a violation of the right to association under Article 10 of the African Charter.</p>
<p><b>9. Application for Public Collection</b></p>	<p>The effect of this article may limit opportunities for building</p>	<p>Article 99 should be redacted, as CSOs should be permitted</p>	<p>The Criminal Code serves as a sufficient deterrent for</p>	<p>The majority of countries have chosen to address this</p>

Article	Concerns / Impact	Recommendation(s)	Alternative(s)	International Good Practice
<b>Section 9, Article 99</b>	partnerships and mobilizing domestic resources to the detriment of CSOs.	to engage in all legally acceptable and culturally appropriate fundraising activities.	fundraising activities that are counter to public interest and mitigates the need for criminal sanctions.	issue through self-regulatory schemes.
<b>10. Penalties for Unlawful Charities &amp; Societies</b> <b>Section 10, Article 104</b>	The effect of this Article would discourage individuals from participating in CSOs for fear of inadvertent violations that may trigger harsh penalties.	It is recommended that the punishment of rigorous imprisonment as a sanction be removed from Sub Article (2), and that Sub Articles (3) and (4) be removed, given that awareness and/or intent to break the law should be ascertained a priori.	Alternatives include providing small fines, administrative penalties and other limited sanctions designed to encourage CSO compliance.	Based on best practice, simple administrative fines are routinely a sufficient deterrent for such administrative misdemeanors.
<b>11. Conducting Unlawful Assembly in Premises</b> <b>Section 10, Article 105</b>	This article criminalizes non-criminal behaviour and imposes severe punishment for individuals without establishing the necessary intent or factual predicate that would generally underlie recognized criminal acts through the criminal code.	It is recommended that this article be removed from the Proclamation.	Simple fines would suffice as a deterrent.	
<b>12. Unlawful Public Collection and Income/Procuring Subscription and Funds</b> <b>Section 10, Article 106</b>	This Article criminalizes any association with such “unlawful” charities and societies either in the form of raising funds or procuring subscription or aid for the unregistered associations.	It is recommended that this Article and its sanctions be removed, as it lacks reasonable justification and constitutional basis.	Replace the criminal sanctions in this article with nominal fines and allow right of appeal to an independent court.	Countries (Egypt, Belarus, and other Middle East Countries) that have employed such provisions have effectively discouraged individuals from participating in CSO activities.
<b>13. Disseminating Information about Unlawful Charity or Society</b> <b>Section 10, Article 107</b>	This Article imposes severe penalties on CSOs for disseminating materials, based on unclear and subjective grounds for interpretation by the Agency that may lead to an abuse of	It is recommended that this Article be deleted from the final draft of the Law.	The Criminal Code should govern any criminal sanctions and the imposition of imprisonment as a punishment.	

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	this authority.			
<b>14. Supply of False or Misleading Information</b>  <b>Section 10, Article 108</b>	The subjective standards of this Article may be used, without any mens rea, to imprison members, employees, or anyone associated with a CSO to ten years rigorous imprisonment.	It is recommended that this Article be deleted from the Proclamation.	The Agency and the law may employ the Criminal Code against persons who commit “fraud” or other clearly defined crimes that already exist.	Generally accepted international standards do not impose criminal sanctions where a corollary crime does not already exist in the criminal code.
<b>15. Claims and Appeals</b>  <b>Section 11, Article 110</b>	This Article restricts the right of appeal to “Ethiopian charities” and “aggrieved Ethiopians” and limits the scope of appeals to matters of law only, while denying international organizations any appeal to an independent court.	This article should be amended to comply with Ethiopia’s international and constitutional obligations.	The Proclamation should be revised to include full rights of appeal for both domestic and foreign CSOs.	Article 110 should be reviewed against Article 3 & 7 of ACHPR and Article 3(b) and 14 of the ICCPR.

## 1. Ethiopian Charities & Societies

### Section 1, Article 2, Sub Article 2

"Ethiopian Charities" or "Ethiopian Societies" shall mean those charities or societies that are formed under the laws of Ethiopia and all of whose members are Ethiopians and are funded or controlled by Ethiopians. However, they may be deemed as Ethiopian charities or Ethiopian societies if they receive money from foreign sources not more than ten percent of their total asset.

### Section 1, Article 2, Sub Article 3

"Foreign Charities" or "Foreign Societies" shall mean those charities or societies that are formed under the laws of foreign countries or which consist of member who are foreign nationals or controlled by foreign nations or receive funds from foreign sources.

### Section 1, Article 2, Sub Article 4

"Charities or Societies of Ethiopian Residents" shall mean those charities or societies whose members reside in Ethiopia, more than 10% of whose total revenue originates from foreign sources and that are formed under the laws of Ethiopia.

#### 1.1 Potential Impact / Concerns:

- 1.1.1 The delineation between Ethiopian and Foreign Charities and Societies based solely on their source of income will limit incentives for Ethiopians to organize and assemble, given that the gross majority of Ethiopian Charities and Societies (ECS) rely on over 90% percent of their funding from external sources.
- 1.1.2 The gross majority of ECS are not only implementing agents for government and donor programs, but recipients of significant capacity building support to develop their own internal capacity as effective development agents/ partners. In many instances, this support is realized through partnerships with international NGO partners.
- 1.1.3 Therefore, the 10% threshold would constrain ECS in building effective partnerships for mobilizing resources and receiving capacity building support. This could reduce the resources available for ECS from donors and potentially impact related components under government programmes.

#### 1.2 Recommendation(s):

- 1.2.1 It is recommended that the 10% threshold on source of funding and the definition of "Charities and Societies of Ethiopian Residents" be removed from the Proclamation. This recommendation is made on the basis that income sources for an organization are a secondary consideration when compared with the other determining factors for evaluating nationality objectively, i.e. formation under Ethiopian law, membership comprised of Ethiopian citizens, and control of the organization by Ethiopian nationals. In short, the definition of Ethiopian Charities and Societies should be related to its management, control and incorporation by Ethiopians and not to the amount of funding it receives from foreign sources.

#### 1.3 Alternative(s):

- 1.3.1 If the 10% cap on foreign funding is removed, then no alternative or change is necessary for the remaining text; the definition would then simply affirm that any indigenous charity or society that seeks recognition as a "legal person" of Ethiopian nationality be formed under Ethiopian law and controlled by Ethiopians. Further, the newly added category of "Charities of Ethiopian Residents" would be no longer necessary.

#### **1.4 International Good Practice:**

- 1.4.1 Articles 2, 3 and 4 should be reviewed against Article 22 of the International Covenant on Civil and Political Rights (ICCPR), with respect to the right to freedom of association with others. It should further be noted that the principles articulated in the ICCPR apply to citizens as well as non- citizens, i.e. foreigners and aliens.
- 1.4.2 It is considered best practice to encourage various categories/sources of NGO income through appropriate regulatory mechanisms, from self-generated to government funding to private philanthropy. An organization that is properly established in one country generally is allowed to receive cash or in-kind donations, transfers, and grants from sources outside the country so long as generally applicable customs and foreign exchange laws are satisfied.

## 2. Scope of Application

### Section 1, Article 3

1. This Proclamation shall apply to the following:
  - a. charities and societies that operate in more than one state;
  - b. charities and societies of Ethiopian residents even where they operate only in one state; and
  - c. charities and societies operating in the city governments of Addis Ababa or Direedawa.
2. This Proclamation shall not apply to the following:
  - a. religious organizations;
  - b. international and foreign charities and societies operating in Ethiopia by virtue of an agreement with the Government of the Federal Democratic Republic of Ethiopia; and
  - c. traditional self-help and saving associations ("Edirs" and "Ekubs")

### 2.1 Potential Impact / Concerns:

- 2.1.1 Sub Article 2(b) creates an exception to the application of restrictions (Article 14, Sub Article 5) for Foreign Charities and Societies (FCS) that operate "by virtue of an agreement with the Government of the Federal Democratic Republic of Ethiopia".
- 2.1.2 Although this could allow key development work to continue, it unfortunately makes what should be an objective regulatory decision on international organizational involvement into a political matter, subject to potential abuse through selective application.

### 2.2 Recommendation(s):

- 2.2.1 If the forthcoming Alternative (3.3.1) is accepted and applied, then the need for an agreement between FCS and Government may not be necessary. As such, it is recommended that Sub Article 2(b) be removed from Article 3.

### 2.3 Alternative(s):

- 2.3.1 If this recommendation is not accepted, then it would be useful if Sub Article 2(b) clarified, defined and explicated as to what exactly constitutes an agreement with government (i.e. MoU, Programme/Project document, etc.), as well as the basis for such agreements.

### 2.4 International Good Practice:

- 2.4.1 International best practice demonstrates that legislations that govern civic organizations be inclusive, not exclusive. Contrastingly, it is generally considered incorrect legislative practice to exclude any civic organizations from national legislation, by virtue of an administrative derogation.

### 3. Definitions of Development Sectors

#### Section 3, Article 14

1. A charity means an institution, which is established for charitable purposes and gives benefit for the public.
2. A charitable purpose shall include the following:
  - a. the prevention or alleviation or eradication of poverty or disaster;
  - b. the advancement and improvement of economic development and environmental protection;
  - c. the advancement of animal welfare;
  - d. the advancement of education;
  - e. the advancement of health or the saving of lives;
  - f. the advancement of the arts, culture, heritage or science;
  - g. the advancement of amateur sport and the welfare of the youth;
  - h. the relief of those in need by reason of age, physical and mental 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 the practical implementation of human and democratic rights;
  - k. the promotion of the equality of nations, nationalities, peoples, gender and religion;
  - l. the promotion and protection of the rights of children and the disabled;
  - m. the advancement of conflict resolution or reconciliation;
  - n. the promotion of the efficiency of the justice and law enforcement services; and
  - o. any other purposes as may be prescribed by directives of the Agency.
3. A public benefit shall be deemed to exist where:
  - a. the purposes of the charity can generate an identifiable benefit to the public;
  - b. the purposes of the charity do not create a situation wherein its benefits exclude those in need; and
  - c. any private benefit of individuals and organizations could be acquired only incidentally and as a secondary consequence of the organization's activities.
4. The Agency may determine the details of charitable purposes and the public benefit by directives.
5. Only Ethiopian charities can take part in the activities that fall under Sub-Article 2 (j), (k), (l), (m), and (n) of this Article.

#### 3.1 Potential Impact / Concerns:

- 3.1.1 Sub-article 5 of this Article prohibits Foreign Charities and Societies from taking part in activities that address (j) advancement of human and democratic rights, (k) promotion of nations, nationalities, peoples, gender and religion, (l) the promotion of the rights of children and the disabled, (m) the advancement of conflict resolution or reconciliation, and (n) the promotion of the efficiency of the justice and enforcement services.
- 3.1.2 The advancement of human rights, equality and justice and addressing the needs and rights of vulnerable groups (such as women, children, disabled, etc.) are an integral part of donors' corporate/global models, strategies and programming frameworks for development assistance to meet the MDGs. These globally accepted models, strategies and frameworks require that funding be channeled through national and international civil society organizations (CSOs).
- 3.1.3 In effect, Sub Article 5 would make illegal the current programming of many of the charities and societies operating in the country, including donor and International NGO programs targeting the abovementioned sectors. Large programs, like PBS, that include components focused on rights and equality may also be directly affected. In a humanitarian situation, restrictions on "the promotion and protection of the rights of children and the disabled" would, arguably, disallow an organisation from engaging in child protection and other related activities. Furthermore, networks that promote collaboration between faiths/religious groups could also be affected.

- 3.1.4 If such strategies cannot be effectively and efficiently employed, due to restrictions prescribed by Sub Article 5, then donor resources that are earmarked for these sectors may be reallocated or repatriated. It may be difficult for most donors to consider scaling up programming and assistance in this context.
- 3.1.5 In addition, by restricting the work of foreign charities in the sectors mentioned above, the majority of their operations may be curtailed and have further negative repercussions on the financial viability of domestic organizations, as an environment with limited funding options would deprive them of opportunities for building/maintaining partnerships and soliciting funds. Several cases in East Europe and the Middle East can attest to this.

### **3.2 Recommendation(s):**

- 3.2.1 Development and advocacy work on the restrictions summarized by Sub Article 5 are universally accepted international principles and programming areas. Accordingly, no restrictions should be placed upon any organization acting to promote them.
- 3.2.2 Therefore, it is recommended that the list of development sectors defined as “charitable purposes” (Sub Article 2) as well as the exclusion of Foreign Charities and Societies from these purposes (Sub Article 5) be removed from Article 14.

### **3.3 Alternative(s):**

- 3.3.1 If the Ethiopian government has legitimate concerns for state interests impacted by the funding or support of particular activities by the international donor community and/or their implementing partners, it may be more appropriate to detail these concerns and regulatory measures in the Proclamation, including a justification for such restrictions. A more appropriate option may be to include a Sub Article that explicitly defines and explicates those development sectors/charitable purposes in which Foreign Charities and Societies are not allowed to operate.

### **3.4 International Good Practice:**

- 3.4.1 An enabling policy framework or legislation allows CSOs to be treated like all other legal entities and thereby, permits them to engage in activities for the benefit of their members and the public.
- 3.4.2 CSOs are key participants in framing and debating issues of public policy and should have the right to speak freely about all matters of public significance, including public debate of existing or proposed state policies and actions.
- 3.4.3 Any CSO engaging in an activity (e.g. health care, education, social services to persons living with HIV/AIDS, etc.) that is subject to licensing or regulation by a regulatory organ of the state should be subject to the same generally applicable licensing and regulatory requirements and procedures that apply to activities of individuals, business organizations, or public organs.

## 4. Refusal of Application for Registration

### Section 5, Subsection 2, Article 70

The Agency shall refuse to register a charity or society where one of the following reasons occurs:

1. The rules of the proposed charity or society do not conform with the major requirements stipulated under this proclamation;
2. There is sufficient reason to believe that the proposed charity or society is to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Ethiopia;
3. The application for registration does not comply with the provisions of this law or any regulation made hereunder;
4. The name under which the charity or society is applying to be registered is similar to the name of another charity or society or any other institution or is contrary to public moral or the law;
5. Where the name of the charity or society Federal or national context and its members or place of work is not representative of at least five regional states.

#### 4.1 Potential Impact / Concerns:

- 4.1.1 The rationale for refusing to register an organization represents a key area of concern within the Proclamation. As written, several of the grounds articulated for refusal are ambiguously subjective and lack objective standards for evaluation. The potential for arbitrary refusal decisions and implementation abuse created by the vesting of authority and discretion in the Charities and Societies Agency [the Agency], without a meaningful right of appeal to the courts (i.e. no appeals on questions of fact), could be used to deny legitimate charities and societies the right to associate, register, operate, as well as access to justice.
- 4.1.2 Sub Article 2 is subjective and ambiguous, as the “reasons” that deem charitable purposes to be unlawful are not defined, justified or explicated. This does not provide the Agency with legitimate grounds and clearly articulated criteria for refusing registration to civic organizations. As such, it is unclear what purposes constitute a violation of “public peace, welfare or good order in Ethiopia”. The absence of clarity leaves room for bias and selective refusal of applications that may hinder the legal status and the operations of legitimate applicants.
- 4.1.3 Sub Article 5 considers grounds for refusal of registration of a national CSO that does not have “members or place of work” representative of at least five regions”. This would involve opening of at least five branch offices and ensuring membership from the outset from five regional states. Given the cap on administrative costs (Article 90), this will be almost impossible to achieve for most ECS.

#### 4.2 Recommendation(s):

- 4.2.1 While appreciative of the reality that the Agency will need to exercise its judgment to refuse registration in some instances, it is imperative that the law limit the circumstances and scope of this authority to only convincing and compelling reasons. Further, the grounds for refusal should be construed strictly so as to justify the restriction on the right to associate.
- 4.2.2 Therefore, it is recommended that Sub Articles 2 and 5 be removed from Article 70.

#### 4.3 Alternative(s):

- 4.3.1 Alternatively, the legitimate interest of refusing organizations that do not deserve legal recognition can still be achieved through sub-articles (1) and (3) as currently drafted.

4.3.2 Another alternative mechanism for ensuring the national character of organisations would be to provide a time period wherein they should demonstrate the commitment to nationwide coverage by opening of branches and expanding the membership base. Another option may be to encourage and provide incentive to CSOs to affiliate with other organizations.

#### **4.4 International Good Practice:**

4.4.1 It is considered best practice to allow for appeals of government decisions that adversely affect an NGO. We recommend inclusion of a provision requiring the registration authority, when it denies an application to register an NGO, to provide the denial in writing, to give specific reasons for the denial, and to provide a full right of appeal to a court for the denial.

## 5. Power to Institute Inquiries

### Section 7, Article 85

1. The agency may from time to time institute inquiries with regard to charities or societies or a particular society or charity 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. to furnish accounts and statements in writing with respect to any question arising from 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 of the inquiry; and
  - c. To attend at a specified time and place and give evidence or produce documents.
3. The agency may use, for the purpose of the inquiry, any source of information including reports from the public, reports from government agencies and the reports of charities and societies themselves.

#### 5.1 Potential Impact / Concerns:

- 5.1.1 As currently drafted, the articulated standards for initiating an inquiry are too vague and subjective to determine under what conditions an inquiry by the *Charities and Societies Agency (CSA)* would be justifiable and legitimately necessary under the law. The article provides that the Agency can initiate an inquiry “generally or for particular purposes” without any enumerated limitations or appropriate guidance for avoiding the abuse of this authority. In an effort to promote transparency and good governance by civil society groups, the Agency should serve as a model through the use of non-intrusive, legitimate, and transparent methods of inquiry.
- 5.1.2 The absence of restrictions for the CSA to make effective use of inquiries only when necessary could potentially mean that this power is exercised to simply frustrate the work and operation of organizations. Responding to groundless inquiries by the Agency would represent a significant drain on organizational resources. Inquiries may also be used to create a climate of fear and intimidation for NGO staff.

#### 5.2 Recommendation(s):

- 5.2.1 It is recommended that the conditions and reasons which justify the initiation of an inquiry should be clearly defined and explicated, in order to ensure a transparent, non-intrusive and legitimate method of inquiry. The power of formal inquiry of an organization should be allowed in limited circumstances, such as when fraud has been committed by an organization’s management or multiple complaints have been lodged about the operations or program of particular charity. These complaints should be public and an organization should be afforded an opportunity to respond to them, before the Agency undertakes an investigation of that charity.
- 5.2.2 There should also be a binding provision for the Agency to provide reasonable notice and timeframes for compliance with any inquiry. The initiation of an inquiry and its grounds should be communicated in writing to the investigated organization. This is especially important for any requests for documentation and interviews of NGO staff.
- 5.2.3 The Proclamation provides sufficient scope for oversight by the Agency, through the submission of annual reports, financial statements and annual audit of charities and societies. Failure to comply with such provisions provides the Agency with sufficient grounds to institute an inquiry. This Article should include a provision that provides CSOs the right of appeal, on both fact and law, to an independent court.

### **5.3 Alternative(s):**

5.3.1 There are less intrusive means to supervise organizations that will meet the government's goals of ensuring compliance with the law and development of an effective and well-governed civil society. Most regulatory bodies supervise organizations by, in the first instance, requiring reporting by organizations that is appropriate to their size and type of activity. Reports, such as those already required in the Proclamation, typically include annual reports, financial statements and audits that show how the organization has used its resources as well as narrative information describing the organization's activities and accomplishments.

### **5.4 International Good Practice:**

5.4.1 The alternative described above is commonly found in West European regulatory systems.

5.4.2 Recent research and analysis indicates that broad inquiry provisions have not worked well in practice. In many instances, when the objectives of such inquiries have not been clear, it has led to the abuse of such discretionary powers, leading to delays in CSO activities as well as poor usage and/or seizure of its human and financial resources.

## 6. Limits on Administrative Costs

### Section 7, Article 90

1. The annual administrative cost of any charity may not be more than 30 percent of the total sum it spends to implement the purposes for which it is established.
2. The Government may give incentives to those charities and societies that allocate more than 80 percent of their expenditures to charitable purposes.

#### 6.1 Potential Impact / Concerns:

- 6.1.1 This article establishes that an organization may spend no more than 30% of its total resources annually on administrative expenditures. It is assumed and appreciated that the rationale for this spending limit is to ensure that charities and societies manage and expend their program resources in a cost effective manner, and that foreign funding may have contributed to the inflated share of expenditure on administrative costs.
- 6.1.2 However, in practice, this ceiling may provide an incentive for some CSOs to manage and account for their finances unethically and thereby, undermine CSO accountability and transparency, instead of promoting those values. For example, in Mexico, similar rules have had the unintended consequence of forcing authorized CSOs to engage in “creative accounting” in order to meet the stringent administrative expense cap, ultimately undermining the transparency and credibility of the sector.
- 6.1.3 Certain administrative expenses are essential to ensure sound organizational management, compliance with the law, and cost-effective delivery of services and programs. The imposition of an arbitrary spending limit on all civic organizations limits their management of the discretion and flexibility to govern effectively and implement their programs. A uniform, one size fits all, cap is not appropriate because the need for administrative expenditures vary widely between different organizations.
- 6.1.4 For example, deductively, this ceiling establishes a 70% spending minimum for program activities that is simply not feasible or practical for organizations operating in the humanitarian and other development sectors, especially in conflict prone regions and vulnerable communities. The implementation of this provision may have the potential to deny registration or curtail the operations of organizations servicing these sectors.
- 6.1.5 There is no guidance as to what kinds of costs are considered administrative costs. For example, is a per diem for program participants administrative or programmatic? What about the salaries of program staff? These ambiguities expose organizations to possible undue interference.

#### 6.2 Recommendation(s):

- 6.2.1 The expenditure of resources by organizations should be left to their internal management and the efficacy of their decisions is best evaluated through the annual audit process. Therefore, it is recommended that this Article be removed from the Proclamation.
- 6.2.2 If this recommendation is rejected, each organization should annually be able to declare its expected program versus administrative spending ratio and held to that individually tailored standard.

### **6.3 Alternative(s):**

- 6.3.1 A proposed alternative is to allow the 30% limit on administrative costs to be achieved by the end of the 3 year registration period, with some appreciation that pledged resources do not appear and therefore make it difficult for CSOs to stay within this limit.
- 6.3.2 Adequately enforcing the annual reporting and disclosure requirements defined in Articles 78-84 of the Proclamation would have a greater impact on NGO accountability than any cap on administrative expenses. For example, Article 79 requires the annual submission of a statement of accounts for each registered organization, and 80 mandates an annual external audit by a certified auditor. Finally, Article 82 requires each organization to submit an annual financial report to the Agency. Collectively, these articles provide sufficient information to oversee and evaluate the management of resources by an organization in a mutually cooperatively manner.
- 6.3.3 Further, the governing board of CSOs, donors, and its public beneficiaries are better positioned - and likely more motivated because of their mutual interests - to ensure against excessive administrative expenses.

### **6.4 International Good Practice:**

- 6.4.1 Most countries' NGO laws avoid the application of such spending caps. This is accepted best practice. When such caps have been employed in countries like Ukraine, Kyrgyzstan, and Russia, they have had the unintended consequence of undermining transparency and credibility of NGO sector reporting.

## 7. Protection of Property

### Section 7, Article 92

Where the agency upon an inquiry or investigation with respect to any charity or society and ascertains that there is or has been any misconduct or mismanagement in the administration of the charity or society and where it is necessary to act for the purpose of protecting the property of the charity or society the agency may take the following measures:

1. Suspend any officer responsible and order the appropriate body of the charity or society to make a replacement;
2. Order the charity or society to improve its system of administration;
3. Pending the execution of the orders of the agency by the charity or the society under sub articles (1) and (2) of this article;
  - a. it shall suspend the conclusion of certain types of contractual obligations or payments effected by charities or societies without the authorization of the agency,
  - b. Suspend any person who holds any property on behalf of the charity or society or any debtor, not to part with the property or not to pay his debt without approval by the Agency.

#### 7.1 Potential Impact / Concerns:

- 7.1.1 This provision affects not only the independence of CSOs, but it also has the potential effect of allowing the Agency to effectively seize an organization's property, suspend its operations and order the removal and replacement of its management, without prior judicial review and oversight.
- 7.1.2 This greatly restricts the authority of charities or societies to undertake their own remedial measures for internal problems of misconduct or mismanagement - if it has been clearly found that such conduct occurred. The powers given to the Agency in this article are excessively broad and there are no safeguards to prevent abuse of discretion and implementation by the Agency.
- 7.1.3 It is also inconsistent with the right to property as outlined in Article 40 of the FDRE Constitution (see 11.4.1).
- 7.1.4 In effect, this provision allows the Agency to exercise executive, legislative and judicial powers without appropriate checks and balances.

#### 7.2 Recommendation(s):

- 7.2.1 The Agency should use the normal provisions of the Civil and Criminal Code, rather than have administrative powers to intervene in the internal affairs of CSOs. It is recommended that the provisions allowing the Agency to remove and replace employees or officers and restrict transactions of NGO property be excised from the law.

#### 7.3 Alternative(s):

- 7.3.1 Agency findings of misconduct or mismanagement alone do not justify the authority to remove NGO staff and restrict its transactions without review. An unequivocal right to appeal and injunctive relief for the organization until its appeals are exhausted should be added to the provision if it is not removed.
- 7.3.2 The intent and/or execution of criminal acts should be ascertained through an independent court of law. The application of the Civil and Criminal Code through due process provides the government with appropriate coverage to indict and prosecute individuals that 'intend to' or 'have carried out' criminal acts.

#### **7.4 International Good Practice:**

- 7.4.1 Formal charities and societies (civic organizations) should generally have the same rights, obligations and protections as other legal persons, and subject to similar civil and criminal sanctions to other legal persons such as partnerships and corporations.

## 8. Removal and Replacement of Officers

### Section 7, Article 93

1. Where any officer of a charity or society does not meet any of the requirements provided for under Art. 71 of this Proclamation the agency shall order the appropriate body of the charity or society to remove and replace by another.
2. The agency shall order the suspension of the officer referred to in sub article 1 above pending the appointment of a replacement.

#### 8.1 Potential Impact / Concerns:

- 8.1.1 Allowing the Agency to order the removal of officers and agents of a charity provides excessive government intrusion into the internal affairs of an organization while also creating the potential for abuse of discretion by Agency officials.

#### 8.2 Recommendation(s):

- 8.2.1 It is recommended that Article 93 be removed from the Proclamation.

#### 8.3 Alternative(s):

- 8.3.1 The exercise of discretion by the organization's board of directors and members are generally less intrusive means to ensure effective management, including the removal and/or replacement of staff. Such oversight and authority is directly within the respective duties and interests of the governing board and management of CSOs.
- 8.3.2 Another alternative would be to introduce judicial oversight for the authority contemplated by this provision. Such a mechanism has been employed in the Ethiopian Civil Code. For example, Article 432 authorizes appointment of directors only through a court. This would mitigate possibilities of abuse by the Agency.

#### 8.4 International Good Practice:

- 8.4.1 The African Commission on Human and People's Rights (ACHPR) has directly addressed the appointment of NGO directors by government and deemed it to be a violation of the right to association under Article 10 of the African Charter. Civil Liberties Organization (in respect of the Nigerian Bar Association) vs. Nigeria, Communication 101/93. The Commission found that the appointment of the directors constituted interference in the self governance of the Bar Association in violation of the principle of free association.

## 9. Application for Public Collection

### Section 9, Article 99

1. No charity or society may conduct any public collection unless permit is granted by the Agency.
2. The permit given under this article shall specify the public collection purpose, duration, place and any other criteria set forth by the Agency.
3. Any charity or society which contravenes sub-article (1) of this article shall be punishable with fine or simple imprisonment or both. Any money or property collected shall be taken by the Agency and may be applied to a charity or society with a similar purpose at the Agency's discretion.

#### 9.1 Potential Impact / Concerns:

- 9.1.1 The permit requirement raises concerns for informal, unregistered charities and societies that are not recognized legal entities. Fundraising is perhaps the most important operational issue for many civic society organizations. Recognizing that the government has expressed a concern on the potential over-reliance of foreign funding by Ethiopian civil society, it is therefore critical that the environment of support from domestic private sector partners and the general public be promoted and enabled. However, the effect of this article is to curtail such potential partnerships and support to the detriment of civil society through unnecessary bureaucracy and criminalization of fundraising activities.
- 9.1.2 The potential application of this article to all charities or societies is overbroad and could have implications for the exercise of constitutional rights of association and expression.

#### 9.2 Recommendation(s):

- 9.2.1 There should be a careful balancing between protection of the public from potential fraud and the protection of NGO's right to speech and association. Regulation of fundraising, as conceived in this article, would likely inhibit the ability of organizations to communicate their message and obtain public support. Therefore, it is recommended that Article 99 be deleted.
- 9.2.2 Compliance with this Article should not be mandatory for all groups. Registration is only necessary when a group seeks legal personality. Many groups within Ethiopia may not want or seek such recognition but still seek to undertake small fundraising activities. These groups should not be required to seek permits from the Agency.
- 9.2.3 CSOs should be permitted to engage in all legally acceptable and culturally appropriate fundraising activities, including door-to-door, telephone, direct mail, television, etc., campaigns, lotteries, raffles, lotteries, charity balls, auctions as well as other fundraising events.

#### 9.3 Alternative(s):

- 9.3.1 The Criminal Code serves as a sufficient deterrent for fundraising activities that are counter to public interest and mitigates the need for criminal sanctions. General fraud and other criminal laws apply to civil organizations and can be invoked if there is any misrepresentation or fraud in connection with the solicitation of funds from others.

#### 9.4 International Good Practice:

- 9.4.1 The majority of countries have chosen to address this issue through self-regulatory schemes. When regulation of fundraising have been implemented, it has typically focused on limiting the time and place of such campaigns. For example, forbidding the potential nuisance of door to

door campaigns in the middle of the night or not allowing fundraising activities in commercial spaces without the consent of the owner.

## 10. Penalties for Unlawful Charities, Societies & Activities

### Section 10, Article 104

1. Any person or group of persons acting as a charity or society or while not being registered within the time limit prescribed by this proclamation or a charity committee acting without authorization shall be deemed to have formed and participated in an unlawful charity or society.
2. Any person who participates in the management of any unlawful charity or society shall be punishable, unless the criminal code provides a higher penalty, with a fine not less than Birr 10,000 and not exceeding Birr 20,000 and by a rigorous imprisonment not less than 5 years and not exceeding 15 years.
3. Any person who is or acts as a member of an unlawful charity or society, or attends a meeting of an unlawful charity or society, shall be, unless a more severe penalty is prescribed by the Criminal Code, punishable with a fine not exceeding Birr 5,000 and by a rigorous imprisonment not less than 3 years and not exceeding 10 years.
4. Whosoever provides or solicits from others or attempts to solicit from others funds to an unlawful charity or society shall be punishable as an accomplice.

#### 10.1 Potential Impact / Concerns:

- 10.1.1 The effect of such provisions could discourage individuals from participating in CSOs for fear of inadvertent violations that may trigger harsh penalties.
- 10.1.2 The introduction of criminal sanctions for any persons who manage, join or attend meetings, or otherwise provide funding or support to unregistered charities serves as a disincentive for the development of the civil society in Ethiopia.
- 10.1.3 If implemented, this article criminalizes non-criminal behavior by imposing severe punishment for individuals, without establishing the necessary intent or factual predicate that would generally underlie recognized criminal acts through a court of law.
- 10.1.4 For example, employees of charities and societies who are not involved in management decision-making or appropriately informed of management decisions could be sentenced to 15 years imprisonment without any intent to violate the law or conduct unlawful activities.

#### 10.2 Recommendation(s):

- 10.2.1 It is recognized that the law must contain sanctions to ensure compliance. In order to ensure that organizations obey the law, and remain transparent and accountable, it is appropriate to include sanctions such as small fines, loss of tax benefits, and where necessary dissolution. However, the use of criminal sanctions for individuals associated with unregistered organizations is overbroad and disproportionate to the potential violation of the draft law.
- 10.2.2 Therefore, it is recommended that the punishment of rigorous imprisonment as a sanction be removed from Sub Article 2 as a prescribed penalty.
- 10.2.3 It is further recommended that sub-articles (3) and (4) be removed given that awareness and/or intent to break the law should be ascertained a priori to penalizing members, attendees, and/or funders of organizations.

#### 10.3 Alternative(s):

- 10.3.1 Alternatives based on best practice include providing small fines and other limited sanctions designed to encourage CSO compliance with laws.

10.3.2 The law can explicitly recognize the distinction between formal charities/societies (those that want legal personality and pursue registration) and informal organizations (those not seeking legal personality), and allow informal organizations to operate after providing nominal notice to the Agency of their existence such as contact information for the charity's officers and directors.

**10.4 International Good Practice:**

10.4.1 Based on best practice, simple administrative fines are routinely a sufficient deterrent for such administrative misdemeanors.

## 11. Conducting Unlawful Assembly in Premises

### Section 10, Article 105

Whosoever knowingly allows a meeting of an unlawful charity or society, or of members of an unlawful charity or society to be held in any house, building or place belonging to or occupied by him, or over which he has control, shall be punishable by a fine not less than Birr 2,000 and not exceeding 5000 and by an imprisonment not less than 2 years and not exceeding 5 years provided the criminal code does not prescribe a more severe penalty.

#### 11.1 Potential Impact / Concerns:

- 11.1.1 The underlying intent of this article is to limit access to space for meetings and assembly of members of unregistered charities and societies. However, the introduction of criminal sanctions for any person who allows the use of their property for such activities provides a disincentive for persons to dispose of or use their property in accordance with the “right to property” as defined by Article 40 of the Constitution.
- 11.1.2 If implemented, this article criminalizes non-criminal behavior and imposes severe punishment for individuals without establishing the necessary intent or factual predicate that would generally underlie recognized criminal acts through the criminal code. No distinction is made between ‘intentionally aiding’ an unlawful charity and ‘providing unwitting assistance’.
- 11.1.3 For example, a landlord who rents his compound to a registered organization could still face criminal punishment if that organization was prospectively refused registration and conducts what is deemed by the Agency as unlawful activities.
- 11.1.4 Such situations and others could lead to severe operational constraints on organizations for securing office space as well as increased transaction costs, in the event that property owners transfer the risk associated with such transactions by increasing the cost of rent.
- 11.1.5 Any increase in transactions costs could further impact the cost efficiency and viability of organizations to competitively mobilize resources. Ultimately, one consequence of this article could be to frustrate the ability of organizations to keep their administrative overhead to a minimum, and thereby affect their compliance with the 30% maximum administrative expenditure requirement found in Article 90 (see above).

#### 11.2 Recommendation(s):

- 11.2.1 As discussed and recommended regarding the criminal penalties imposed by Article 104 (see immediately above), administrative sanctions are generally more proportional and effective for addressing the regulation of civil society rather than the employ of criminal sanctions.
- 11.2.2 Any use of criminal sanctions for property owners who rent to unregistered organizations and/or allow assembly within their premises is overbroad and disproportionate. The imposition of fines and imprisonment should not be applied to third parties and intermediaries such as landlords who tangentially come into contact with organizations for business purposes but are not engaged with the work or function of these organizations otherwise.
- 11.2.3 Therefore, it is recommended that Article 105 be removed from the Proclamation.
- 11.2.4 This recommendation and analysis is also applicable to Articles 106 through 107. Both articles impose imprisonment as a sanction for third-party actors who might conduct business transactions or associate generally with an unregistered charity. Article 106 threatens

imprisonment for “any person procures or attempts to procure from any other person any subscription or aid” for an unlawful charity, while Article 107 imputes criminality on “any person who prints, publishes, displays, sells or exposes for sale, or transmits information through the post or in any other electronic media , in the interests of an unlawful charity.”

11.2.5 Therefore, it is recommended that Articles 106 and 107 also be excised from the law. See supra.

### **11.3 Alternative(s):**

11.3.1 There is no practical paradigm for the imposition of punishments (fines or imprisonment) for arms-length interactions between landlords and prospective tenants (or other third-party actors like journalists as provided in Art.106) that does not unnecessarily burden the function of what is simply contractual dealings between two independent parties.

11.3.2 If the primary reason for criminalizing individuals that have contact with an unregistered organization is to enforce registration, then criminal sanctions should be replaced due to their disproportional nature. Simple fines would suffice as a deterrent.

## 12. Unlawful Public Collection and Income/Procuring Subscription and Funds

### Section 10, Article 106

Any charity or society that conducts public collection or engages in income generating activities without permit in accordance with this proclamation shall be punishable with a fine not less than Birr 10,000 and by a rigorous imprisonment of not less than 3 years and not exceeding 10 years, provided the Criminal Code does not prescribe a more severe penalty.

#### 12.1 Potential Impact / Concerns:

12.1.1 Unlawful charities and societies are labeled under Art. 104 as “any person or group of persons acting as charities and societies while not being registered”. Article 106 criminalizes any association with such “unlawful” charities and societies either in the form of raising funds or procuring subscription or aid for the unregistered associations. This however could undermine the constitutional right of individuals to associate and engage in lawful activities (Art. 31 of the Constitution), as it provides a disincentive to limit scope for raising of funds.

#### 12.2 Recommendation(s):

12.2.1 The authority granted in this article lacks reasonable justification and constitutional basis for implementation as also discussed in the analysis of Articles 104, 105, and 107.

12.2.2 Therefore, it is recommended that Article 106 and its sanctions be removed.

#### 12.3 Alternative(s):

12.3.1 If it is retained, the criminal sanctions provided in this article should be replaced with nominal fines that are proportional and focused on promotion of best practices for charities and societies, without unreasonably penalizes individuals.

12.3.2 Specify a procedure allowing charities and societies and the individuals associated with them to appeal any finding of violation before an independent court.

12.3.3 If abuse in the solicitation of funds is identified, the sanctions on individuals or institutions can be addressed by applying the the Criminal and Civil Codes.

#### 12.4 International Good Practice:

12.4.1 Similar restrictions as those found in this article, are mostly found in countries such as Belarus, Egypt, and other countries of the Middle East. The commonality between these contexts is the effect of their CSO regimes has been to discourage individuals from participating in NGO activities.

12.4.2 For example, in Yemen the effect of the law has caused many NGOs to end their operations for fear of inadvertent violations that may trigger harsh sanctions. Such measures are not considered best practice generally.

## 13. Disseminating Information about Unlawful Charity or Society

### Section 10, Article 107

Any person who prints, publishes, displays, sells or exposes for sale, or transmits information through the post or any electronic media, in the interests of any unlawful charity or society shall be punishable with a fine not less than Birr 3,000 and not exceeding Birr 5,000 and by a simple imprisonment of not less than 3 years and not exceeding 5 years, provided the criminal code does not prescribe a more severe penalty. Any book periodical, pamphlet, poster, newspaper, letter or any other document or writing in respect of which the person is convicted shall be confiscated.

#### 13.1 Potential Impact / Concerns:

- 13.1.1 The fact that any penalties ensue for the simple dissemination of materials produced by organisations labeled as unlawful, which includes materials produced by non-registered organisations, provides the Agency with unchecked authority that has the potential for abuse.
- 13.1.2 The only grounds for limiting expression are “to protect the wellbeing of the youth, and the honour and reputation of individuals. Any propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law.” The current text of the law makes no such considerations regarding restricted content of any information shared “in the interests an unlawful charity.”

#### 13.2 Recommendation(s):

- 13.2.1 Consideration of the contents of the disseminated information, published document, transmitted, sold or displayed instrument should be made prior to criminalizing the act. However, the starting point of revising this provision should still begin from the definition of Unlawful Charities and Societies given under the Article 104. As detailed above in Articles 105 and 106, the constitutionally guaranteed right to association for any lawful purpose is eviscerated by the potential application of this law.
- 13.2.2 It is recommended that this Article be deleted from the final draft of the law.

#### 13.3 Alternative(s):

- 13.3.1 The Criminal Code provides sufficient scope for the government to indict and prosecute any persons that publish and/or disseminate illegal materials, whereby the decision to impose criminal sanctions such as imprisonment is best implemented through an independent court of law.

## 14. Supply of False or Misleading Information

### Section 10, Article 108

1. Any person who intentionally or negligently provides the Agency or a sector administrator with information, which is false or misleading shall be punishable with a fine not less than Birr 5, 000 and not exceeding Birr 10, 000 or with simple imprisonment or both provided the criminal code does not provide a more severe penalty.
2. Any person who willfully alters, suppresses, conceals or destroys any document which he is or is liable to be required by this proclamation to produce to the Agency or a sector administrator shall be punishable with fine not less than Birr 10,000 and not exceeding 15,000 and with a rigorous imprisonment of not less than 5 years and not exceeding 10 years.

#### 14.1 Potential Impact / Concerns:

- 14.1.1 This article exposes “any person” who provides information to the Agency that it deems “false or misleading” to significant administrative and criminal sanctions. Given that “negligently” providing “false” information to a police officer would not be considered a crime under the criminal code, it is unjustifiable that such a subjective standard could be used to imprison members, employees, or anyone associated with a charity or society to 10 years rigorous imprisonment.
- 14.1.2 The sanctions are disproportionate and create significant liability for many activities that may occur without any mens rea or intent to frustrate the law. For example, an office assistant who shredded charity documents while updating files could be prosecuted under 108 (2) for “willfully destroying” documents that s/he is “liable to be required by this Proclamation to produce”.

#### 14.2 Recommendation(s):

- 14.2.1 It is strongly recommended that this article be deleted in its entirety, given its severe penalties and lack of a justifiable basis for criminalizing communications and activities that are not criminal in nature.

#### 14.3 Alternative(s):

- 14.3.1 The Agency and the law may employ the Criminal Code against persons who commit “fraud” or other clearly defined crimes that already exist. There is no need to impose such sanctions as part of the regulation of charities and societies. Deterrence and compliance with the law are better promoted through administrative sanctions.

#### 14.4 International Good Practice:

- 14.4.1 Generally accepted international standards do not impose criminal sanctions where a corollary crime does not already exist in the criminal code. The Proclamation contravenes that norm in Articles 104 - 108 by mandating imprisonment for actions that by their nature are not criminal nor necessarily against the public interest.

## 15. Claims and Appeals

### Section 11, Article 110

1. The Agency shall decide over grievances made to it in relation to its activities within a reasonably short time.
2. Any person aggrieved by the decision of the agency may appeal to the Board within 15 days from the date of the decision. The decision of the Board is final.
3. Notwithstanding sub article (2) of this Article any Ethiopian charity or society or any interested Ethiopian aggrieved by the decision of the Board may appeal to the Federal High Court on questions of law within 15 days of the decision by the Board.
4. Where the appeal relates to registration or cancellation, there shall be deemed no registration or cancellation to have been effected until the concerned authority gives its final decision.

#### 15.1 Potential Impact / Concerns:

- 15.1.1 The Proclamation's limitation on right of appeal for regulated organizations falls far short of constitutional and international standards for equal protection and full appeal rights.
- 15.1.2 It restricts the right of appeal to "Ethiopian charities" and "aggrieved Ethiopians" and limits the scope of appeals to matters of law only, while denying international organizations any appeal to an independent court. Given the broad authority of the Agency provided in the Proclamation, it is necessary to ensure that all Agency actions can be reviewed independently. Otherwise, the Agency has unfettered executive (investigative), legislative (ability to issue regulations), and judicial (preside over claims) powers in violation of many constitutional principles and safeguards.
- 15.1.3 Although it is provided that the Agency will decide on appeals presented to it, there is neither a clear appeals mechanism nor a fixed time limit by which the Agency must make its decision; the article only states that the Agency will decide "within a reasonably short time" but offers no other guidance.
- 15.1.4 This limited right of appeal for Ethiopian civil society and the denial of appeals rights by international entities contravenes Article 37 of the FDRE Constitution which guarantees the Right to Access to Justice.

#### 15.2 Recommendation(s):

- 15.2.1 The right of appeal to an independent court, regardless of whether it is a question of law or fact, should be incorporated into the proclamation. This article should be amended to comply with Ethiopia's international and constitutional obligations.

#### 15.3 Alternative(s):

- 15.3.1 The Proclamation should be revised to include appeal rights for both domestic and foreign organizations to an independent and impartial court with full jurisdiction that includes matters of law and fact.
- 15.3.2 A timeframe for Agency decisions should be clearly identified, and pending an agency decision, the organization should be allowed to operate without interference.

#### 15.4 International Good Practice:

- 15.4.1 Article 110 should be reviewed against the principles of equality before the law, the right to have one's cause heard, and the right to appeal, as set out in the African Charter on Human and People's Rights, Articles 3, 7; ICCPR, Articles 3(b) and 14.