



## **Human Rights Watch's Analysis of Ethiopia's Draft Civil Society Law**

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The Ethiopian government is preparing to introduce a Charities and Societies Proclamation (draft law) to regulate all domestic and international civil society organizations (CSOs) carrying out activities in the country. Parliament has recently reconvened from recess and the Ethiopian government has signaled its intention to introduce the law for passage before the end of October.

The law is ostensibly a tool for enhancing the transparency and accountability of civil society organizations. But in fact, its provisions would create a complex web of arbitrary restrictions on the work civil society groups can engage in, onerous bureaucratic hurdles, draconian criminal penalties, and intrusive powers of surveillance.

In Human Rights Watch's view, the intended and actual result of this law would be to make it nearly impossible for any civil society organization to carry out work the government does not approve of. It also contravenes fundamental human rights guaranteed by international law and by Ethiopia's constitution. Most notably, the law would criminalize human rights-related work carried out by non-Ethiopian organizations while at the same time making it impossible for domestic human rights organizations to operate with any real degree of effectiveness or independence.

The draft bill has been met with strong opposition from some Ethiopian civil society actors and some international non-governmental organizations. Even some of Ethiopia's key bilateral partners, who are normally almost silent about the

government's dire human rights record, have voiced strong objections. Formal introduction of the bill was delayed and Parliament went into recess in July; the legislature has now resumed.

The Ethiopian government has amended some provisions of the original text of the draft bill. The current text of the bill (circulated in September) is the third draft the government has put forward and it is the version that is likely to be introduced to parliament in the coming days or weeks.

The current text is less restrictive than the original draft in some respects. It would not bar foreign and foreign-funded CSOs from working on poverty alleviation or economic development issues; the original text did. The new draft also explicitly places religious organizations outside of its scope of application. The original draft gave the government nearly unfettered powers to order any CSO to change its name and even its objectives as an organization; those powers have been largely removed from the current draft. The current draft also omits a provision that gave the agency overseeing CSOs the right to attend, or to send a police officer to attend, any CSO meeting. Other onerous, but relatively minor, provisions from the original draft have also been eliminated or curtailed.<sup>1</sup>

But in other ways the current text is even more repressive than the original draft. The range of areas of work that foreign and foreign funded organizations are forbidden to work on has been expanded to include issues touching on gender issues, children's rights, and the rights of disabled people. Ethiopian organizations funded by Ethiopian nationals living abroad are now explicitly considered "foreign" and are therefore also forbidden from engaging with human rights, governance, gender, and other issues.

Perhaps the most significant change in the current version of the bill is the elimination of several provisions that explicitly provided harsh criminal penalties, including lengthy prison terms, for such offenses as the dissemination of information on behalf of "illegal" NGOs. However the new draft does not eliminate criminal

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<sup>1</sup> For example, the original text required CSOs to seek government permission before opening new branch offices and to seek renewed registration every year (now every three years).

liability for breaches of the law's provisions. Rather, it simply provides that *any* violation of the law's byzantine provisions will be "punishable in accordance with the provisions of the criminal code."<sup>2</sup> And some minor administrative requirements are now explicitly transformed into crimes punishable with heavy fines and prison terms for individuals who fail to adhere to them.

The current version of the bill remains a blunt tool whose primary impact would be to destroy the already-limited ability of Ethiopian civil society actors to criticize or act independently of the government. It would also result in the *de facto* criminalization of any and all independent human rights work that seeks to document or challenge the Ethiopian government's appalling human rights record.

The climate for independent civil society organizations in Ethiopia has long been inhospitable and the likely impact of this law is still more ominous when understood in a broader context. Ethiopia's limited political space has already been narrowed through patterns of government repression, harassment, and human rights abuse since the controversy that followed the country's 2005 elections. Formal political opposition has largely evaporated in the years since then; April's *kebele* and *wereda* elections saw the ruling party winning more than 99 percent of all seats after running unopposed in most constituencies; one of the country's two remaining large opposition coalitions boycotted the polls altogether. This law would consolidate the existing trend towards narrowing political space by giving government the power to silence some of Ethiopia's few remaining independent civil society voices.

The draft law also has the potential to cause damage far beyond Ethiopia's own borders. The African Union Charter explicitly recognizes a need to "build a partnership between governments and all segments of civil society."<sup>3</sup> As the seat of the AU, Ethiopia should be setting standards in this regard, not setting out to criminalize the work of independent civil society actors. But the restrictions in the draft law are broad enough that they could be used to bar international organizations whose work touches on prohibited subjects such as human rights from carrying out *any* sort of activity in Ethiopia, even interacting with AU institutions. The

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<sup>2</sup> Draft law, section 103(1).

<sup>3</sup> Constitutive Act of the African Union, Preamble.

criminal offenses defined under the law are also broad enough that international CSOs attempting to engage with AU institutions around human rights issues in Ethiopia itself could find their staff fined or imprisoned for violating the law's provisions.

The following pages set forth what Human Rights Watch considers to be some of the most troubling provisions of Ethiopia's Draft Charities and Societies Proclamation.<sup>4</sup> The Ethiopian government plans to introduce the law to parliament this month, where the ruling party's overwhelming majority is likely to ensure swift passage with little meaningful debate.

## **Erecting Obstacles to Human Rights and Governance-Related Work**

The draft draws an important distinction between "foreign", "Ethiopian", and "Ethiopian resident" Civil Society Organizations (CSOs).<sup>5</sup> "Foreign" and "Ethiopian resident" CSOs (defined as any Ethiopian CSO that obtains more than 10 percent of its funding from sources outside of Ethiopia) are expressly barred from doing any work related to human rights, governance, and a range of other issues.<sup>6</sup> This would make expressly illegal any attempt by Human Rights Watch, Amnesty International, or any other international human rights organization to carry out any activities including research in Ethiopia without the written consent of the Ethiopian government.<sup>7</sup> It would also limit some of the development-related activity carried out by Ethiopia's international NGO partners, many of whom work through local partners who would under the law be barred from work related to human rights, democracy building, gender, children's rights, conflict resolution, or justice sector issues if they obtained substantial funding from international organizations.<sup>8</sup>

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<sup>4</sup>This updated analysis is based on the most recent draft Proclamation of September 2008. Two previous analyses published by Human Rights Watch were based on the May and June 2008 versions of the draft Proclamation.

<sup>5</sup> Draft law, sections 2.2, 2.3, 2.4.

<sup>6</sup> Draft law, sections 14.2, 14.5. Only "Ethiopian Charities" can take part in "...the advancement of human and democratic rights; the promotion of the equality of nations, nationalities and peoples, and that of gender and religion; the promotion of the rights of the disabled and children's rights; the advancement of conflict resolution or reconciliation; and the promotion of the efficiency of the justice and law enforcement services."

<sup>7</sup> Draft law, section 3.2.b of the draft law exempts from the scope of the law foreign organizations that are "operating in Ethiopia by virtue of an agreement with the Government of the Federal Democratic Republic of Ethiopia."

<sup>8</sup> Draft law, sections 2.4, 14.5.

In addition, the draft would cripple the few independent domestic CSOs who continue to work on human rights and governance issues by stripping them of access to foreign funding. The draft defines as “Ethiopian resident” rather than “Ethiopian” any Ethiopian CSO that receives more than 10 percent of its funding from foreign sources—which includes even Ethiopian nationals living abroad—*or* has any members who are foreign nationals.<sup>9</sup> This labeling of Ethiopian CSOs as somehow non-Ethiopian would hit hard given the lack of obvious fundraising and development opportunities inside of Ethiopia, one of the poorest countries in the world. The nongovernmental Ethiopian Human Rights Council (EHRCO), for example, would have to give up much of its current funding and repudiate some of its membership abroad. The likely result would be that EHRCO and other similarly-situated organizations would either have to close their doors or drastically curtail the scope of their work.

### **Government Control of and Interference with Domestic CSOs**

The law would create a Charities and Societies Agency (CSA) for the stated purpose of overseeing the management and general conduct of all CSOs in Ethiopia.<sup>10</sup> The CSA would be governed by a government-appointed Director General and a board consisting of seven government appointees, two of whom would be selected from CSOs by the government.<sup>11</sup> Since there is no provision for civil society participation or even consultation in the selection of the two CSO representatives on the board, their inclusion does not constitute any meaningful departure from government control.

The CSA would have enormous discretionary powers to refuse to accord legal recognition to CSOs, to disband CSOs that have already been legally recognized, and to subject CSOs to intrusive patterns of surveillance. Most CSA decisions would not be subject to any right of appeal—parties may challenge CSA decisions in court only on matters of law but most of the CSA’s powers are based on its own determinations

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<sup>9</sup> Draft law, sections 2.3, 2.4.

<sup>10</sup> Draft law, sections 4, 5.

<sup>11</sup> Draft law, sections 7, 8.

of fact, which are not subject to judicial review.<sup>12</sup> Foreign and “Ethiopian resident” CSOs have no right to appeal any CSA decision in court.<sup>13</sup>

All CSOs in Ethiopia, including those already established, would be required to register with the CSA within three months of their establishment.<sup>14</sup> The grounds upon which the CSA could refuse to register a CSO are so broad as to grant nearly unfettered discretion,<sup>15</sup> including in cases where “the proposed charity or society is likely to be used for unlawful purposes prejudicial to public peace, welfare or good order in Ethiopia.”<sup>16</sup> The Ethiopian government has regularly accused both domestic and foreign non-governmental organizations of pursuing nefarious purposes, including by casting acts of human rights-related protest and criticism as “anti-development” or even “anti-people” activities.<sup>17</sup>

Even CSOs that succeed in registering could then be de-registered or dissolved according to criteria that would accord an equally broad range of discretion to the Agency.<sup>18</sup> Among the grounds for forcible dissolution of a registered CSO is any situation where the CSA acting on its own discretion determines that the CSO “has been used for unlawful purposes or for purposes prejudicial to public peace, welfare or security” (emphasis added) — language that gives the CSA the clear power to make such findings even where no law has been broken.<sup>19</sup> Such decisions, as questions of fact, would not be subject to judicial review.<sup>20</sup> In practice this would amount to a grant of discretion broad enough to allow the government to disband

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<sup>12</sup> Draft law, section 105.3.

<sup>13</sup> Draft law, section 105.3.

<sup>14</sup> Draft law, section 65.2.

<sup>15</sup> Draft law, section 70.

<sup>16</sup> Draft law, section 70.2. The original draft law granted even broader discretion to the CSA, including in cases where “it appears to it [the CSA] that it is unlikely that the proposed society will achieve its purposes by virtue of its rules, insufficiency of funds or for any other reason.”

<sup>17</sup> In 2007 the Ethiopian government expelled the International Committee of the Red Cross (ICRC) from Somali Regional State after accusing it of supporting rebel Ogaden National Liberation Front (ONLF) forces there. The Ethiopian government has regularly accused both Amnesty International and Human Rights Watch of working to support various anti-government, pro-terrorist, or pro-rebel agendas.

<sup>18</sup> Draft law, sections 94, 95.

<sup>19</sup> Draft law, section 94.2.b.

<sup>20</sup> Draft law, section 105.3.

any CSO whose work it disapproves of. The CSA would also have unfettered powers to order the suspension or removal of any CSO official if the CSA “is satisfied” that there has been mismanagement of a CSO’s assets.<sup>21</sup>

In addition to this, the CSA would have broad powers to monitor all activities of every CSO covered under the law. Under the terms of the law all CSOs would be governed by a General Assembly, which cannot hold any meeting without first notifying the CSA in writing at least seven working days in advance.<sup>22</sup> The CSA would also have broad additional powers to compel any CSO to hand over to it information about its activities at any time.<sup>23</sup>

## **Other Bureaucratic Hurdles**

There is very little an Ethiopian CSO could do under the terms of the draft law without first notifying or seeking approval from the CSA. No CSO could establish a branch office without the prior approval of the CSA.<sup>24</sup> No CSO could change its name, place of business, or amend its rules without first notifying the CSA and having the changes ratified through CSA registration.<sup>25</sup> No CSO could use any kind of symbol without first having it registered by the CSA.<sup>26</sup> CSOs would have to renew their licenses with the CSA every three years; the CSA would grant that renewal after satisfying itself that the CSO in question had not violated any provisions of the law or any regulations issued by the CSA.<sup>27</sup>

In addition to the provisions described above, much of the text of the draft bill is made up of other new and onerous bureaucratic provisions so diverse that they would likely prove impossible for most CSOs to comprehend and follow to the letter.

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<sup>21</sup> Draft law, sections 92, 93.

<sup>22</sup> Draft law, section 87.

<sup>23</sup> Draft law, section 86.1.

<sup>24</sup> Draft law, section 73.3. This provision of the law may have been drafted erroneously; section 73.1 amends the original draft of the bill to require only that a CSO provide “prior notice” to the CSA before establishing a branch office. But section 73.3 states that if any CSO establishes a branch office without the “prior approval” of the CSA, the branch will be considered an “unlawful charity.”

<sup>25</sup> Draft law, section 74.1.

<sup>26</sup> Draft law, section 75.1.

<sup>27</sup> Draft law, section 77.1.

These range from detailed auditing requirements to explicit instructions as to the “particulars” a CSO must affix to any advertisement board it might make use of.<sup>28</sup> Failure to adhere to any of these provisions or any of the other bureaucratic minutiae spelled out by the law would be a criminal offense.<sup>29</sup> This problem is compounded by the wide range of even more detailed administrative regulations the CSA would be empowered to draw up and enforce under various provisions of the law.

These burdens would amount to something far more insidious than a time-consuming irritant. A finding by the CSA that any CSO has violated *any* provision of the law or *any* “regulations or directives” the CSA draws up under the law are grounds for the suspension of its license to operate.<sup>30</sup> Since few domestic CSOs are likely to possess the capacity necessary to ensure complete compliance with the law’s numerous and complex provisions, this could in effect give the CSA yet another basis to close down any CSO that offends or is perceived to threaten the control exercised by the Ethiopian government over its citizens.

## Harsh Criminal and Administrative Penalties

Coupled with the onerous provisions described above, the draft law articulates a draconian intolerance for any form of unauthorized civil society activity. The previous draft of the law provided for harsh criminal penalties for new criminal offenses such as “participat[ing] in the management” of an illegal CSO (up to 15 years’ imprisonment); disseminating information “in the interests of” an illegal CSO (up to five years’ imprisonment); or allowing an illegal CSO to hold a meeting on one’s property (up to five years’ imprisonment).<sup>31</sup> These sections have largely been deleted, but the broad criminal liability attaching to CSOs or individuals who run afoul of the law remains.

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<sup>28</sup> See, e.g., Draft law, sections 80, 76.2.

<sup>29</sup> Draft law, section 103.1.

<sup>30</sup> Draft law, section 94.1.b.

<sup>31</sup> Draft law, version 2 (June 2008), sections 104, 106, 107, 108.

The current draft of the law replaces these and most other criminal sanctions with a single broad provision stating that “any person who violates the provisions of this proclamation shall be punishable in accordance with the provisions of the criminal code.”<sup>32</sup> It would be left to the Ethiopian government to determine how it could try to apply existing criminal laws to cover the myriad “crimes” the law would make out of violating any of its byzantine provisions. In effect, the current version of the law would still make crimes out of actions that would be perfectly legal in Ethiopia today. These new offenses stand in open contravention of the internationally guaranteed rights to freedom of association and expression—rights which are also guaranteed by the Ethiopian Constitution.<sup>33</sup>

In addition, the law provides for specific criminal penalties for a handful of administrative infractions. These mainly deal with accounting and financial reporting requirements, but the law also makes a criminal offense out of failing to comply with a requirement that no more than 30 percent of a CSO’s budget be spent on administrative activities.<sup>34</sup> Failure to comply with any of these requirements puts the CSO in jeopardy of fines and even dissolution. Any official or employee who participates in “criminal acts” such as failing to keep adequate accounting records faces prison terms of between three and five years.<sup>35</sup>

## **Parallels with Zimbabwe’s NGO Law**

The basic structure of the draft law appears to be at least partially modeled after the NGO law passed by the Zimbabwean government in 2004. The law in Zimbabwe was passed by parliament but never implemented by the government. When the Zimbabwe NGO law was introduced, the US State Department condemned it as “an assault on civil society and an attempt to curtail political discussion in Zimbabwe”

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<sup>32</sup> Draft law, section 103.1.

<sup>33</sup> Article 31 of the Ethiopian Constitution guarantees the right to freedom of association “for any cause or purpose” except in cases where organizations are formed “in violation of appropriate laws” or in order to subvert the Constitution. Article 30 guarantees the right to freedom of assembly. Article 29 guarantees the right to freedom of expression. All of these rights are subject to caveats articulated in the Constitution, but at the same time Article 13 requires that the rights be “interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.”

<sup>34</sup> Draft law, sections 90, 103.2, 103.3.

<sup>35</sup> Article 103.2, 103.3.

and said that the law would “set up a mechanism for government oversight of nongovernmental organizations that would be highly intrusive and subject to political manipulation.”<sup>36</sup> The parallels between the two laws are numerous, but the Ethiopian law is in general more restrictive.

One of the most obvious differences between the Zimbabwe NGO law and the Ethiopian draft NGO law is that the Ethiopian draft would mete out far harsher punishment to people who violate the law’s provisions. The most draconian provisions of the Ethiopian bill have no parallel in the Zimbabwe law. These include the Ethiopian bill’s prison terms for dissemination of information produced by unregistered NGOs, allowing members of an unregistered NGO to meet on one’s property, and being a member of an unregistered NGO. In cases where parallel criminal offenses do exist under the Zimbabwean law, the penalties are less harsh—for example, Zimbabwe’s law proscribes a prison term of up to four months for collecting or attempting to collect public contributions or funds for an unlawful NGO.<sup>37</sup> The Ethiopian law would punish those guilty of the same offense as accomplices to crimes that carry prison sentences of up to 15 years.<sup>38</sup>

Human Rights Watch produced a detailed analysis of the Zimbabwe NGO law prior to its passage by parliament (<http://hrw.org/backgrounder/africa/zimbabwe/2004/12/>) outlining the ways in which it contravened international law and threatened to eviscerate the independence of civil society in the country. Nor was the significance of the Zimbabwe NGO law lost on the international community. Many governments condemned the legislation as an attack on the independence and freedom of civil society. Given the similarities between the Zimbabwe law and the Ethiopian draft bill, and given the fact that that the Ethiopian draft is significantly more restrictive and punitive than the Zimbabwe law, this draft should trigger at least the same level of international concern.

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<sup>36</sup> See “US Slams Zimbabwe Anti-NGO Law,” AFP, December 10, 2004, <http://www.mywire.com/pubs/AFP/2004/12/10/681012?extID=10051> (accessed May 19, 2008).

<sup>37</sup> Zimbabwe Non-Governmental Organizations Bill, section 26(1)(b).

<sup>38</sup> Draft law, section 104.1.

Ethiopia's draft law cannot be edited or further amended to make it acceptable; it is inherently abusive of basic human rights in that it seeks primarily to intimidate and dismantle the country's already-beleaguered civil society actors and criminalize human rights-related work carried out by international organizations. The draft should be scrapped and either replaced with a bill that does not have the infringement of basic human rights as its primary aim, or else the idea of an Ethiopian NGO law should be abandoned altogether.

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