

**UPR Submission by Ethiopian Human
Rights Council (EHRCO)**

Ethiopia

April 2009

I. Background

1. The Constitution of the Federal Democratic Republic of Ethiopia which was adopted in 1995 recognizes a wide range of human rights and declares international agreements ratified by Ethiopia to be integral parts of the law of the land. Therefore, by virtue of the Constitution, the various international and regional human rights instruments ratified by Ethiopia are parts of the national law. With regard to institutional protection for human rights, a national human rights commission and an institution of the ombudsman are established.

2. Ethiopia has adopted a number of international and regional human rights instruments including the Universal Declaration of Human Rights (UDHR), the International Covenant Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (ACHPR). Although the Constitution declares that these human rights instruments are integral parts of the law the land their practical implementation particularly by courts is not satisfactory for various reasons.

3. The first reason is that the documents are not available in the working languages of courts. According to Ethiopian law a judge can only take judicial notice of a law if that law is published in the official law reporter, the *Negarit Gazeta*. None of the international and regional human rights instruments ratified by the country is either translated into the official language of courts or published in the *Negarit Gazeta*. This state of affairs made judges reluctant to apply provisions of the instruments even in cases where litigants invoke the provisions. Another reason for the minimal application provisions of international human rights instruments could be the fact that courts in Ethiopia do not have the mandate to interpret the Constitution. This power is given by the Constitution to the House of Federation, which is a political organ composed of delegates assigned by regional councils and representatives of minority ethnic groups.

Recommendation

The international and regional human rights instruments ratified by Ethiopia need to be domesticated in the form of publication in the *Negarit Gazetta*. They should also be translated into at least major working languages of courts at federal and regional levels.

II. The situation of human rights defenders

4. Human rights defenders in Ethiopia operate by organizing themselves in a number of forms. The majority of human rights defenders are non-governmental organizations (NGOs) and other Civil Society organizations including professional associations, community groups, self-help associations etc.

5. Freedom of association is recognized under article 31 of the Constitution in the broadest of terms. Absence of a legal framework that is harmonized with the constitutional provision about freedom of expression had long been a challenge for CSOs to engage in more robust and diverse initiatives in the areas of human rights and good governance. Provisions in the Civil Code and in the Associations Regulation dealing with the registration and supervision

of non governmental organizations were not sufficient to accommodate the various functions NGOs seek to undertake and to facilitate an efficient mode of registration and licensing. For instance, there were no specific reference about the registration and licensing of networks. As a result, the supervising authority tended to routinely dismiss applications for recognition and registration as a network. CSOs in Ethiopia had long been calling for the setting up of a comprehensive legal framework that can effectively address the diverse needs in the sector and take into account the extensive recognition given to the right by the FDRE Constitution. As a result, the new Charities and Societies Proclamation was enacted in January 2009 by the parliament.

6. Nevertheless the new law has not been even close to what civil society had in mind when calling for a comprehensive and modern legal framework for the past several years. The law has a number of provisions that severely undermine the operations of NGOs especially those that are engaged in human rights and governance related areas. The Charities and Societies law classifies NGOs primarily based on the amount of funding they receive from foreign sources. Therefore, an NGO that receives more than 10% of its funding from foreign sources is classified as a 'foreign' NGO even if all its members and leaders are Ethiopians and has its seat in Ethiopia. Once an NGO is classified as 'foreign' it cannot engage in areas such as human rights, democracy promotion, good governance, conflict resolution, women's rights, children's rights and rights of persons with disabilities. For the purpose of this law, 'foreign sources' includes Ethiopians living abroad.

7. In a country like Ethiopia, one of the poorest countries in the world, it is extremely challenging to raise large amounts of funds from local sources. Thus almost all NGOs are entirely dependent on foreign funding to undertake their program activities. Therefore restricting the amount of foreign funding to only 10% is literally closing down many local human rights groups that have been doing some remarkable work in human rights monitoring, awareness raising, voters' education, election monitoring and rights advocacy.

8. Apart from the restriction on funding, the law places a number of administrative and structural obstacles that stifle the operations of NGOs. For instance, the law gives an unfettered power to the Charities and Societies Agency, the government body entrusted with the task of supervising and licensing NGOs, to suspend and appoint NGO officers, to deny registration, to launch an inquiry into the operations of NGOs without giving any reasons for doing that, to demand and seize any document from offices. A 'foreign' NGO classified as such just by virtue of receiving more than 10% of its funding from foreign sources does not have the right of appeal in a court of law against any act or decisions taken against it by the Agency.

9. The law also requires NGOs seeking to operate at the national level to have offices in at least five regions in the country or have members from the same number of regions. It also puts a limit on the amount of budget NGOs can spend for administrative and program related purposes. Accordingly NGOs can spend only 30% of their annual budget for administrative purposes. 70% of the budget should be spent on program activities. This is not fair particularly considering the five region office requirement to operate at the national level which increases the administrative cost in the form of office rent fees and staff salary. Failing to maintain this 30/70 balance entails a criminal liability. There are also several other

provisions in the law that carry fines and prison terms to NGO officers in the event of non compliance.

10. In general, many provisions of the law contradict the constitutional provisions on freedom of association and expression. It is also a violation of international commitments as Ethiopia has ratified many of the major international regional human rights instruments including ICCPR and ACHPR. The effect of the application of this law will be drastic. It will obviously result in the closure of many local human rights groups mainly as a result of the cut in foreign funding and it will seriously undermine the effectiveness of those who manage to maintain their existence under this extremely restrictive legal framework.

Recommendation

Suspend the application of the Charities and Societies law and amend the restrictive provisions of this law in a manner that guarantees the rights of human rights defenders to promote human rights and democratic values.

11. These severe restrictions on the rights of free association of persons to provide an alternative voice for the citizenry or by promoting human rights, accountability and transparency in government are not limited to the Charities and Societies law. The government seemed to have resorted to a legalistic approach to silence any form organized dissent and activism. The patterns shown by the laws enacted or amended during the post 2005 period clearly show a growing trend of using the law and the judicial system as an instrument of suppression.

12. In this regard, the Amended Electoral law of 2007, the Media and Freedom of Information law of 2008 and the Amended Political Party Registration and the Charities and Societies law of 2009 are a few cases in point. The amended Electoral law severely restricts the involvement of civil society organizations in electoral activities by requiring them to choose between voters' education and election monitoring. An NGO cannot engage in both during elections. Apart from this, NGOs are required to obtain permission from the National Electoral Board of Ethiopia to engage in voters' education or election monitoring activities. A decision by the Board denying this permission is not subject to judicial review. The National Electoral Board of Ethiopia ignored repeated written application by EHRCO to monitor and observe the April 2008 local and by elections. The law requires the Board to give written explanations when it denies permission for a request to observe elections.

13. The Media and Freedom of Information law requires persons to organize in the form of a business entity to engage in any work related to the publishing and dissemination of newspapers or other publications. This law also provides for a large amount of fine for cases of defamation related to media work. The Amended Political parties registration law also restricts political parties from raising funds from Ethiopians living abroad while the activities of opposition political parties is seriously curtailed as a result government harassment, killing, and arbitrary detention of members and supporters of opposition groups.

14. While the 2010 national elections is only months away, the ruling party seem to have determined not to let any form of serious competition by closing down all possible means that could be used to air independent voices. State media have continued to be the exclusive

mouthpiece of the ruling party while the views of opposition groups and human rights defenders seldom entertained.

III. The political and social environment

15. The political situation in the country has generally deteriorated since the disputed 2005 general elections. The widespread crackdown that followed the violent street demonstrations left hundreds dead and tens of thousands detained. This had a very chilling effect on the activities of human rights defenders. The crackdown targeted virtually all forms of organized activity, which has the slightest of connections with politics and rights advocacy. Individuals working for human rights groups were hunted down and arrested or fled the country fearing the raging government attacks. For instance, four senior investigators of EHRCO fled the country upon release after three of them were detained for 21 days without any charges. An arrest warrant was subsequently issued on the two of them.

16. The mass arrests were followed by series of political trials in which opposition leaders, human rights defenders, journalists, publishers and ordinary citizens were charged with offenses such as genocide, treason and attempt to overthrow the constitutional order through the use of force. Although many of the defendants were released by a presidential pardon after almost two years in prison, two human rights defenders, Daniel Bekele of ActionAid Ethiopia and Netsanet Demissie of Organization for Social Justice in Ethiopia (OSJE) remained in prison because they refused to sign the 'acknowledgement of mistakes' and opted to defend themselves in court. Accordingly, the court found them guilty on the basis of what many believe a flimsy evidence of testimonies of witnesses and sentenced them to two years and a half in prison. They were subsequently released after reportedly signing an 'acknowledgement of mistakes'.

17. The crackdown and the subsequent trials of human rights defenders and other agents of independent voices had a very chilling effect on the situation of civil society in general and human rights defenders in particular. The increasing narrowing down of the political space and the manifest intolerance of government for any form of dissent were seen by the brutal measures that were taken against peaceful demonstrators and those who voiced concern over the deepening political crisis in the country. NGO leaders who expressed concern over growing trends of human rights abuses and politically motivated arrests were strongly warned by government agents to refrain from voicing.

18. After the crackdown, human rights defenders exercise extra caution in all their interventions not to fall foul of the different agents of government who since then keep a careful eye on them for any 'mistakes'. There are definitive indications that the contents of reports, press releases and any public statements of human rights defenders are examined for any signs of propagating 'undesired' messages among the populace. There have been occasions where leaders of human rights organizations were summoned to the Ministry of Justice following press releases issued by them on a human rights issue. In some cases the organizations were ordered by officials of the Ministry to retract the content of statements and told to refrain from any further similar activities.

19. Although there were some signs of opening up of the space seen for example in the revival of the free press and the increasing number of newspapers that have contents which

are critical of government, the challenge still remains. Editors and journalists still face harassment in the form of police interrogations and unwarranted charges including disseminating false information about government or its officials through the contents of their work. Websites and blogs run by Ethiopians in the Diaspora that are critical of government were largely blocked in Ethiopia.

20. Government intolerance for political opposition continued to be a serious concern. In October 2008 authorities arrested and detained dozens of people of Oromo decent on allegations of providing support for the Oromo Liberation Front. Among the detainees was Bekele Jirata, Secretary General of the Oromo Federalist Democratic Movement (OFDM), a political party having seats in parliament. Although Bekele and a few others were subsequently released on bail, criminal charges are pending in court. In December 2008 authorities rearrested Birtukan Midekssa, Chairperson of the opposition Unity for Democracy and Justice by revoking her pardon on account of a speech she made in Europe during a meeting with the party's supporters. The authorities announced that her pardon has been revoked and she will serve life in prison. There are reports saying that prison authorities denied access to those who asked to visit Birtukan in prison. Only her mother and her daughter allowed visiting. She is said to have been held in solitary confinement.

21. There have been incidents of arrests of young people of Oromo decent in many areas of the Oromia region. Human rights groups documented a number of illegal arrests, prolonged detention without charges and physical abuses of detainees by security forces. These abuses are committed mainly against persons that are suspected of having links with the Oromo Liberation Front. The arrests usually target students, human rights defenders, teachers and civil servants.

22. Incidents of ethnic clashes have been prevalent particularly in Oromia and South regions in 2007 and 2008. Although the root causes of the clashes were usually claims over grazing and farm lands as well as water streams, some of the clashes were caused following agitations of local authorities based on different ethnic lines and political affiliations. The clashes resulted in the death and injury of hundreds of people and destruction of property.

Recommendations

1. Suspend or amend the restrictive provisions of the Charities and Societies law, the Media and Freedom of Information law, the Amended Electoral law, the Political Parties Registration law to make them comply with the human rights provisions of the FDRE Constitution and the provisions of the international and regional human rights instruments ratified by Ethiopia.
2. Reform the state media in a manner that facilitates the airing of diverse views thereby minimizing ruling party monopoly and nurturing the culture of tolerance and transparency.
3. Set up an effective and transparent mechanism to bring perpetrators of human rights violations to justice so that impunity for rights violations is significantly minimized.
4. Train security forces with basic human rights principles and the national international and regional commitment of the country to uphold this principles.