

The limitation of the right to freedom of association in selected African countries

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1. Introduction

The role of civil society is essential to the promotion of human rights in Africa. Without Civil Society Organisations (CSOs), most human rights violations committed by the government would not be exposed.

Despite the contribution of CSOs, many governments continue to curtail the functioning of CSOs. Governments put many restrictions on CSOs activities under the guise of democratic measures. Many governments fear that civil society organisations intend to overthrow, expose and intimidate the ruling party. African leaders rarely appreciate the contributions that CSOs makes, in particular CSOs reporting on governance and respect for human rights.

The right to freedom of association is guaranteed at the international level under article 23 of the Universal Declaration of Human Rights, article 22 International Covenant on Civil and Political Rights, and article 8 of the International Covenant on Economic and Social Cultural Rights all guarantee the right to freedom of association.

At the regional level, article 10 of the African Charter on Human and People's Rights guarantees the right to freedom of association. Under article 12(3) of the African Charter on Democracy Elections and Governance, state parties are obliged to take all appropriate measures to create conducive environment for the operation of CSOs.

Although the right to freedom of association is guaranteed in most African constitutions and international conventions, the enjoyment of this right is not absolute. Several governments have used this limitation to suppress CSOs. Governments continue to intimidate and impose immense restrictions on CSOs in order to prevent the truth from being exposed.

The restrictions imposed on CSOs include: mandatory or cumbersome registration, intensive monitoring by the government, restriction on the operation of foreign CSOs and prohibition of receipt of foreign funds. Governments continue establishing new mechanisms of curtailing

the active role of CSOs in order to further their dictatorial regimes and limit the enjoyment of human rights.

The focus of this report is on states which have restricted CSOs from receiving foreign funding. These countries include Egypt, Ethiopia, Eritrea and Zimbabwe. Restrictions on access to foreign funding are often linked to other violations of freedom of association which are also covered in this report.

2. Limitations to freedom of association in practice

2.1.Egypt

In February 2012, 44 people working with CSOs in Egypt were arrested and charged in an Egyptian court for purportedly financially supporting CSOs in Egypt.¹ The arrests followed the raiding in December 2011 of 17 domestic and international CSOs. Property and documentation belonging to the organisations were impounded by government officials on accusation of receiving prohibited financial support from foreign organisations.

Egypt has ratified the International Covenant on Civil and Political Rights² which guarantees freedom of association.³ Moreover, article 4 of the Egyptian Constitutional Declaration 2011, provides for citizens to freely exercise their right to association by establishing associations including unions, organisations and parties.⁴ However, the right to association continues to be severely restricted by the government using subsidiary legislation (association laws).

The Association and Foundations legislation (Law No 84 of 2002)⁵ creates suppressive conditions for the registration of CSOs. Article 4 provides for laborious requirements for registration including financial data, resources and disbursements of the association. Article 6 provides for mandatory registration within 30 days upon depositing the required documents in the Office of Registry.⁶ The complexity of the documentation, the hectic procedures and

¹ 'Egypt to put NGOs workers on trial' *Aljazeera* 5 February 2012
<http://www.aljazeera.com/news/middleeast/2012/02/201225183511739497.html> (accessed 19 May 2012).

² United Nations Treaty Collection 19 May 2012
http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (accessed 19 May 2012).

³ International Covenant on Civil and Political Rights article 22(1).

⁴ Constitutional Declaration (2011) <http://www.egypt.gov.eg/english/laws/constitution/default.aspx> (accessed 19 May 2012).

⁵ Association and Foundations Law No 84 of 2002 (Association Law)
<http://www.icnl.org/news/2010/Proposed%20Egyptian%20Law%20on%20Associations%20and%20Foundations%20-%20English.pdf> (accessed 19 May 2012).

⁶ Constitutional Declaration (n 4 above).

deadlines coupled with the financial restrictions and detailed requirements have stifled the operation of CSOs.

Law No 84 of 2002 provides for the parameters within which the CSOs should operate and the prohibited areas of work. The law specifically permits activities evolving around ‘social care, development and awareness-raising of communities.’ For an organisation to engage in certain type of activities believed to have a political nature, permission must be obtained from government Regional Federation offices.⁷

Although collaboration with foreign associations is permitted,⁸ the government in a number of cases prohibited receipt of funds from outside Egypt. The prohibition often extends to receipt of money from Egyptians living abroad or ‘foreign persons’. The remittance of the funds is prohibited to organisations and individuals unless they acquire authorization from the Competent Minister or after the lapse of 30 days of ministerial notification without written objection by the Competent Minister.⁹ Between January and May 2012, the government declined to permit 20 CSOs from receiving a total of US\$ 3.5 million from foreign funders on the ground that such funds may be used for political activities or it was contrary to the legal provisions of the association laws.¹⁰ Most CSOs cannot operate without receipt of funds to monitor, compile and disseminate information.

The Competent Minister is directly involved in the management of the accounting systems of all organisations in Egypt. The Minister has powers to consider the balance sheet, audit report and the final accounts of the association. All gifts and asset of CSOs must be disclosed to the government.¹¹ By the time the CSOs has completed its obligations to the government, there is hardly any time or money left to perform their work.

In May 2012, the Human Rights Committee of the Egyptian People’s Assembly informed the general public that a new legislation on Associations was to be enacted to repeal Law 84 of 2002.¹² The Egyptian Organisation for Human Rights (EOHR) criticized the proposed law as

⁷ Association Law article 9.

⁸ Association Law article 12.

⁹ Association Law article 13.

¹⁰ ‘Cairo refused LE21 million in foreign NGO funding since 25 January uprising’ *Egypt Independent* 19 May 2012 <http://www.egyptindependent.com/news/cairo-refused-le21-million-foreign-ngo-funding-25-january-uprising> (accessed 19 May 2012).

¹¹ Association Law article 17.

¹² ‘NGO Law Monitor: Egypt’ *The International Centre for not for profit law* 17 May 2012 <http://www.icnl.org/research/monitor/egypt.html> (accessed 19 May 2012).

it does not define CSOs and fail to recognise their role in protecting human rights, bans newly formed CSOs from engaging in activities other than charity and service delivery, and subjects them to the control of the government from registration to engagements in activities.¹³

As the problems the Egyptian CSOs are experiencing is obtaining international attention and following the intervention by the United States concerning the trial of their nationals,¹⁴ it is hoped that such practises will be curtailed. CSOs including national and international should lobby the government to repeal the existing association law and that the draft association law is not enacted. If the law should be enacted, the restrictive provisions should be repealed so that CSOs can operate effectively.

2.2.Eritrea

Although the Eritrean Constitution provides for the right to freedom of association,¹⁵ the government paradoxically prohibits the operation of political parties and the establishment of ‘associations or private organisations’.¹⁶ The trade unions have also become inactive because of the intervention of the government.¹⁷

In Eritrea, there are only three operational CSOs: National Union of Eritrean Women (NUEW), the National Union of Eritrean Youth and Students (NUEYS) and National Confederation of Eritrean Workers (NCEW).¹⁸ The government has tedious procedures and criteria for establishing CSOs coupled with immense supervision that hinders the independent operation of CSOs.

Although the government commended CSOs for their work during the liberty wars and post independence struggles, in 2005, the Eritrean government stated that CSOs would not replace

¹³ ‘Egypt: Representatives of NGOs rejected the New Government Draft law’ *Egyptian Organisation for Human Rights* 23 April 2012 <http://allafrica.com/stories/201204240935.html> (accessed 19 May 2012).

¹⁴ *Aljazeera* (n 1 above).

¹⁵ The Eritrean Constitution article 19 (6).

¹⁶ United States Department of State, *2009 Country Reports on Human Rights Practices - Eritrea*, 11 March 2010 (US Department) <http://www.unhcr.org/refworld/docid/4b9e52f978.html> (accessed 6 April 2012).

¹⁷ D Connell “*Country at crossroads 2011: Eritrea*”

<http://www.danconnell.net/sites/default/files/Eritrea%20FH%2011.11.pdf> (accessed 30 April 2012).

¹⁸ As above.

the role of government bodies and therefore prohibited their operation. The government then enacted the laws governing the operation of CSOs.¹⁹

On 22 January 2002, Eritrea ratified the International Covenant on Civil and Political Rights (ICCPR).²⁰ This ratification has been of no consequence to Eritrea. The government continues to stifle the operation of CSOs contrary to the provisions of the ICCPR on the right to freedom of association.²¹

At the domestic level, Eritrea has legislation that imposes severe restrictions on the operation of CSOs the Non-governmental Organisation Administration Proclamation No 145/2005 (Proclamation).²² All CSOs are required to account to the government throughout their operations.²³ Any gifts or donations received by the CSO must be revealed to the entire society and the government must have knowledge of it.²⁴ The activities of CSOs are highly determined by the government, especially concerning resource allocation of CSO monies.²⁵

In relation to foreign funding, the Proclamation forbids the contractual liaison of CSOs with the United Nations or its ‘affiliates.’²⁶ All foreign organisations are to work through the Ministry or government bodies.²⁷ This provision is highly repressive because the term ‘affiliate’ is not defined in the Proclamation and has been literally translated to forbid the operation of foreign organisations in Eritrea.

The Proclamation issued by the government has greatly stifled the operation of CSOs and this has affected the society. There is scanty information on Eritrea making it difficult to advocate or lobby for change in Eritrea. Eritrea remains one of the most autocratic regimes in the world.²⁸ According to the Economist Intelligence Unit, Eritrea’s democracy position is 154 out of 167 countries in the world. Eritrea on a scale of 1% - 10% ranks at 1.47% for respect

¹⁹ Available at [Nongovernmental Organisation Administration Proclamation No 145/2005, \(Proclamation 145/2005\) http://www.unhcr.org/refworld/country,,,LEGISLATION,ERI,,493507c92,0.html](http://www.unhcr.org/refworld/country,,,LEGISLATION,ERI,,493507c92,0.html) (accessed 19 May 2012).

²⁰ Available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (accessed 19 May 2012).

²¹ United Nations Treaty Collection (n 2 above).

²² (n 19 above).

²³ Proclamation 145/2005 article 8 (2).

²⁴ Proclamation 145/2005 article 8(6).

²⁵ Proclamation 145/2005 article 8(3).

²⁶ Proclamation 145/2005 article 8 (5).

²⁷ Proclamation 145/2005 article 9(1).

²⁸ Democracy Index 2011 Democracy under stress Economist Intelligence Unit report (2011) 8.

of civil liberties. The Eritrean government should comply with its obligations under international law and ensure that their domestic laws are non repressive so that Eritreans can exercise the right to freedom of association.

2.3. Ethiopia

The right to freedom of association is a constitutionally guaranteed right in Ethiopia. The Federal Democratic Republic of Ethiopia (FDRE) Constitution article 31 provides:

‘Everyone shall have the right to form associations for whatever purpose. Associations formed in violation of the appropriate laws or associations formed with the objective of overthrowing the constitutional order or associations carrying out these activities shall be prohibited.’

In 2009, the government adopted a Proclamation on Charities and Societies (Proclamation) regulating the registration and activities of NGOs in the country. The Proclamation restricts NGOs by placing stringent requirements for entry and operation. According to the Proclamation there are two types of NGOs recognised in Ethiopia; Societies and Charities.²⁹

Article 2(2) of the Proclamation defines Charities and Societies as organisations formed by Ethiopians under Ethiopian law, fully controlled by Ethiopians and with at least 90 percent of their income generated internally. If an organisation receives more than 10 percent of its income from foreign funds it will be considered as ‘Ethiopian Resident Societies.’³⁰ These Ethiopian Resident Societies or any other Foreign Organisations are not allowed to engage in the following activities involving:

- human and democratic rights;
- promotion of equality of nations, nationalities and peoples;
- promotion of disabled and children’s rights;
- conflict resolution and reconciliation; and
- on justice and law enforcement services.³¹

²⁹ Charities and Societies Proclamation (Proclamation 621/2009) article 2(2).

³⁰ Proclamation 621/2009 article 2(3).

³¹ Proclamation 621/2009 article 14(5).

Moreover, article 103(1) of the Proclamation subjects the engagement of Charities or Societies in income generating activities to the written approval of the Charities and Societies Agency.³² These conditions have affected the activities of NGOs in the country.³³

Among the many institutions affected by this legislation is the only existing human rights monitoring NGO, Ethiopian Human Rights Council (EHRCO).³⁴ In December 2009, the government froze all EHRCO bank accounts based on an allegation that EHRCO generated income from foreign sources.

EHRCO filed an application to the Federal High Court challenging the retroactive application of the law and the absence of a provision on the freezing of assets in the Proclamation. The Court upheld the decision of the Agency in its judgement on 24 October 2011.³⁵ EHRCO took the matter to the Cassation Bench of the Federal Supreme Court in February 2012. Judgment is yet to be given.³⁶

Though Ethiopia was among the first countries in Africa to ratify the African Charter on Democracy, Elections and Governance,³⁷ it has failed to take upon its obligation to ‘create conducive conditions for civil society organizations to exist and operate’.³⁸

2.4. Zimbabwe

The Constitution of Zimbabwe guarantees the right to freedom of association. Article 21 of the Constitution recognises the right to freely associate in any form including in political parties and trade unions. The provision further provides for limitations in the interest of public defence, safety, order, morality or public health, and to protect the rights of others.³⁹

³² The Charities and Societies Agency is an institution of the Federal Government and is accountable to the Ministry of Justice of FDRE. See article 4 (1) and (2) of Proclamation 621/2009.

³³ Ramboll Consulting Management *Draft Country Procurement Assessment Report* (January 2010).

³⁴ ‘Ethiopia: Future of the last remaining human right NGO in the balance’ *Human Rights Waich (HRW)* 1 February 2012 <http://www.hrw.org/news/2012/02/01/ethiopia-future-last-remaining-human-rights-monitoring-ngo-balance> (accessed 24 March 2012).

³⁵ As above.

³⁶ Ethiopian Human Rights Council is not the only Organisation whose bank account is frozen. A case on Ethiopian Lawyers Association, a successful human rights advocacy Organisation, is also pending in the Federal Supreme Court for same reason. See Amnesty International ‘Stifling human rights work: The impact of civil society legislation in Ethiopia’ (2012) 17.

³⁷ Ethiopia ratified the Democracy Charter in 2008.

³⁸ Democracy Charter article 12(3).

³⁹ Constitution of Zimbabwe article 21(3).

Limitations to be provided by other laws should be interpreted in light of the above mentioned general rules.⁴⁰

The government enacted a law regulating activities of NGO operation in 1995. The Private Voluntary Organisations (PVO) Act was promulgated to replace the pre-existing law, Association Welfare Organisations (AWO) Act to govern all associations other than political parties and trade unions.⁴¹ There is another draft legislation to replace the PVO Act which has been approved by the parliament but has not received presidential assent since it was adopted in 2004.⁴²

The PVO Act makes registration mandatory requirement to the formation associations.⁴³ However, the complex requirements attached to registration makes the formation of NGOs difficult. According to section 9 of the PVO Act notifying the public in a newspaper to lodge objection with the registrar is required for a registration and there is no time limit on the period with in which the Board is to review the registration application. Furthermore, the grounds for denial of registration are left vague, subjecting it to the interpretation of the authority.⁴⁴

The PVO Act has been criticised for giving immense discretionary and controlling power to the PVO Board and the Minister for Public Service, Labour and Social Welfare.⁴⁵ The Board and the ministry have excessive power of control including: discretionary power to accept or reject application for registration, to cancel the registration of NGOs anytime based on vague grounds,⁴⁶ and to suspend associations for unlimited time.⁴⁷

The government has statutory authority to interfere in the finances of NGOs. Section 10 of the PVO gives power to Board to cancel registrations based on the ground that the reward is in their view excessive.⁴⁸ Though foreign funding in general is allowed by the law,

⁴⁰ As above.

⁴¹ The Private Voluntary Organisations Act, *Act no 6* (1995) (PVO) section 17.

⁴² International Centre for Not-for-Profit Law (ICNL) 'NGO law monitor: Zimbabwe' <http://www.icnl.org/research/monitor/zimbabwe.html> (accessed 24 March 2012).

⁴³ PVO section 6.

⁴⁴ ICNL 'Zimbabwe' 12:2 (February 2010)

http://www.icnl.org/research/journal/vol12iss2/special_9.htm#_ftn19 (accessed 24 March 2012).

⁴⁵ Article IX 'Unions, NGOs and political freedom in Sub-Saharan Africa' (March, 2001) 72.

⁴⁶ PVO section 10.

⁴⁷ PVO section 21 lists down grounds such as 'maladministration of the organisation' which gives wide-scope of interpretation and subjects every activity of the association to the scrutiny of the Minister.

⁴⁸ Article IX (n 45 above) 72.

prohibition on foreign funding for voter's education and the government accusation made on organisations that get foreign funding has practically made it difficult to receive foreign funds.⁴⁹

The government has greatly interfered in the activities of political parties and trade unions which has stifled the working environment for NGOs. The government suspended 29 local and international NGOs in Masvingo Province for purported affiliation to political parties.⁵⁰ There is ongoing prosecution of opposition party members and peaceful demonstrators. On 7 February 2012, Women of Zimbabwe Arise (WOZA) leader Jenni Williams and 13 others were arrested for participation in a peaceful demonstration.⁵¹ In Zimbabwe, the legal regime and existing violations by the government remain the greatest challenge to exercising the right to freedom of association.

Conclusion

Compromising the role CSOs have in the promotion and protection of human rights has an implication on the governance and democracy in a country. Unless governments are willing to actively engage non-state actors and the public at large in their decision making process, the hope of building a democratic nation where human rights are respected is unattainable. The selected countries' experience shows there is still a need for international and regional organisation's intervention on the matter.

The African Commission on Human and Peoples' Rights has affirmed the restriction on the exercise of the freedom of association has to be in conformity with the essence the right as guaranteed by national constitutions and international standards.⁵² Unwillingness of the government to respect rights and freedoms enshrined in international and regional agreements, and their respective constitutions must not always be left to the state alone. To realise changes and democracy in a country, there is a need to take measures to ensure the respect of the right to freedom of associations at the national and regional level.

⁴⁹ ICNL (n 44 above).

⁵⁰ 'Zimbabwe suspends 29 NGOs in latest ZANU-PF crackdown' *Voice of America: Zimbabwe* (15 February 2012) <http://www.voanews.com/zimbabwe/news/Zimbabwe-Suspends-29-NGOs--139384098.html> (accessed 9 April 2012).

⁵¹ Women of Zimbabwe Arise: Amnesty urgent action *The Guardian* 12 February 2012 <http://www.guardian.co.uk/world/2012/feb/12/amnesty-urgent-action-woza-zimbabwe> (accessed 10 April 2012).

⁵² See also Resolution on the Right to Freedom of Association of 1992 and *Civil Liberties Organisation (in respect of Bar Association) v Nigeria* para 14-15.