

COMMENTARY ON ETHIOPIA'S DRAFT CSO LAW

Amnesty International is pleased to provide this commentary on the draft Charities and Societies Proclamation submitted by Ethiopia's Legal Advisory Council to the Federal Attorney General.¹ The draft proclamation marks a major improvement on existing legislation and will offer greater respect for the rights to freedom of association and expression. Some provisions would, however, continue to significantly impede the enjoyment of these rights. This commentary proposes recommendations to encourage and urge the Ethiopian government to further strengthen the draft legislation in line with its expressed commitment to revise restrictive laws and bring any such laws in conformity with international human rights standards. This will also foster a more conducive environment for civil society and human rights defenders to contribute to other aspects of the Ethiopian government's reform program.²

CONTEXT

As part of the initiative to reform repressive laws and enhance the independence, impartiality and capacity of institutions, the Ethiopian government prioritized revision of the Charities and Societies Proclamation no. 621/09, the Anti-Terrorism Proclamation (ATP) no. 652/09, and the Freedom of Mass Media and Access to Information Proclamation no. 590/2008. The Office of the Federal Attorney General established a Legal Advisory Council, composed of prominent legal experts, on 29 June 2018, mandated to lead these legal reforms, including drafting amendments or new legislation. Since July 2018, working groups headed by members of the Council have been revising the three laws. Amnesty International is closely following the drafting process by the working groups. We note the expressed commitment of members of the Legal Advisory Council and its working groups to promptly review these laws in consultation with the public and relevant stakeholders.

ANALYSIS

After reviewing the draft CSO Proclamation submitted to the Office of the Federal Attorney General,

¹ The full text of the draft proclamation that Amnesty International secured is a version adopted by the Legal Advisory Council on 21 October 2018 which was transferred to the Office of the Federal Attorney General. All provisions cited are unofficial Amnesty International translations from Amharic. Since then, the draft has been reviewed within the Attorney General's office and some amendments have been introduced. This commentary is based on as much information as Amnesty International was able to secure on major amendments made to the draft at the Attorney General's office in November 2018. Amnesty International is unable to confirm the exact status of the draft law at the time of writing, but the Office of the Attorney General announced on 12 November 2018 that the draft is due to be tabled for discussion by the Council of Ministers before final consideration and adoption by the House of Peoples' Representatives.

² Amnesty International met Ethiopia's Federal Attorney General and Deputy Attorney General on 21 November to share the issues discussed in this commentary and other concerns which were reflected in previous versions of the draft law. Amnesty International shared this commentary with the Office of the Prime Minister and the Office of the Attorney General via email on 20 December 2018 prior to publication.

Amnesty International observed that the draft CSO Proclamation is a significant improvement on the Charities and Societies Proclamation no 621/09, which is still in force.³ Compared to the Charities and Societies Proclamation, the draft CSO Proclamation promises major progress by removing some restrictions on the rights to freedom of association and expression. Important changes in the draft CSO Proclamation include the absence of funding restrictions on CSOs that promote human rights, good governance, and related themes such as anti-corruption and conflict resolution. The draft law also removes many of the intrusive powers of the Charities and Societies Agency established under the Charities and Societies Proclamation that violate the privacy and independence of civil society. The draft also removes the restriction on individual CSO membership based on nationality and residence, which could help broaden the funding base for human rights organizations in the country. Equally important is the provision of the draft CSO Proclamation that guarantees the right of CSOs, including foreign CSOs, to challenge the CSOs Agency's decisions on registration applications, including in courts of law.

At the same time, Amnesty International observes that some provisions of the draft CSO law, if passed, would unduly restrict the right to freedom of association in Ethiopia. Ethiopia is a State Party to the African Charter on Human and Peoples' Rights (ACHPR) and the United Nations International Covenant on Civil and Political Rights (ICCPR). The ACHPR and the ICCPR both guarantee the right to freedom of association. Several UN and regional human rights bodies as well as independent experts have provided useful guidance and authoritative interpretations on the right to freedom of association, including the Guidelines on Freedom of Association and Assembly adopted by the African Commission on Human and Peoples' Rights (ACHPR Guidelines on Freedom of Association and Assembly) in 2017. Any restriction on the right must be narrowly construed and necessary for the protection of "national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others"⁴ and these restrictions are subjected to a rigorous test. Amnesty International's analysis identifies some areas where the draft legislation falls short in this regard.

A. REGISTRATION REQUIREMENT

Draft CSO Proclamation Article 60: Registration of CSOs

1. Any/all association/organization shall be registered by the Agency according to this law.

This provision requires that all CSOs in Ethiopia register with the CSOs Agency once it is established by the CSOs Board. CSOs currently registered will be required to re-register.⁵ In effect the draft law would maintain an authorization regime, where a CSO needs to register to operate, in contrast to a

³ Amnesty International, *Stifling Human Rights Work; The Impact of Civil Society Legislation in Ethiopia*, 12 March 2012 (AFR 25/002/2012).

⁴ International Covenant on Civil and Political Rights (ICCPR), adopted 1966; G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 59, U.N. Doc.A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976. Ethiopia ratified the ICCPR in 1993, Article 21.

⁵ As defined in Article 2 (1) and Article 88 (2), all CSOs including those already registered as per the Charities and Societies Proclamation are required to re-register.

notification process, where the legal status of a CSO is presumed upon receipt of notification by the relevant government authority. The draft law establishes a regime that falls short of accepted international standards on freedom of association, including the ACHPR Guidelines on Freedom of Association and Assembly in Africa, which state that “registration shall be governed by a notification rather than an authorization regime, such that legal status is presumed upon receipt of notification”⁶

The main aim of registering associations is to protect the rights and interests of individuals and the public in their interactions with associations, including contractual ones. This legitimate aim could be achieved through a “notification procedure”, which would guarantee the full enjoyment of the right to freedom of association. The UN Special Rapporteur on Freedom of Association and Assembly also supports a “notification procedure” including by citing several country experiences:

“associations are automatically granted legal personality as soon as the authorities are notified by the founders that an organization was created. In most countries, such notification is made through a written statement containing several elements of information clearly defined in the law, but this is not a precondition for the existence of an association. It is rather a submission through which the administration records the establishment of the said association. Such a notification procedure is in force in a number of countries (e.g. Cote d’Ivoire, Djibouti, Morocco, Portugal, Senegal, Switzerland and Uruguay.”⁷

He also recommends that branches of foreign CSOs or formation of unions or networks of associations, including at the international level, should follow similar notification procedure.⁸

Further, while the draft CSO law does not include sanctions for non-compliance with the registration requirement, sanctions can potentially be applied when this law is read together with Article 791 of Ethiopia’s Criminal Code:

Article 791.- Violation of Provisions Regarding Organization, Exercise and Control of Trades and Professions.

Whoever, apart from the cases punishable under the Criminal Code, contravenes the laws, regulations or directives regarding the licensing, qualifications, registration, exercise or control of

⁶ African Commission on Human and Peoples’ Rights (ACHPR), *Guidelines on Freedom of Association and Assembly in Africa*, 60th Ordinary Session, Niamey, Niger, 8-22 May 2017, para. 13, http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf (accessed on 30 October 2018).

⁷ United Nations (UN), *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, Maina Kiai, Human Rights Council Twentieth Session, A/HRC/20/27, 21 May 2012, para. 58, https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf (accessed on 30 October 2018).

⁸ UN, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, Maina Kiai, Human Rights Council Twentieth Session, A/HRC/20/27, 21 May 2012, para. 59, https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf (accessed 30 October 2018).

commercial and industrial undertakings, artisans, professional persons, temporary or seasonal employments, or professional associations and societies of any kind, is punishable with fine or arrest.⁹

This provision could be applied arbitrarily against individuals and CSOs perceived to be critical of the government and its policies and who may be involved in unregistered associations. Appreciating the potential for abuse of criminal sanctions for unregistered CSOs, the UN Special Rapporteur on Freedom of Association and Peaceful Assembly underlined that individuals involved in unregistered associations should be free to carry out any lawful activities in association with others, including peaceful assemblies without fear of criminal sanctions.¹⁰

Recommendation:

- a. **Revise Article 60 (1) to make notification sufficient to form CSOs, to acquire a juridical personality, and start operations.**

B. TIME LIMITS FOR REGISTRATION

Draft CSO Proclamation Article 60: Registration of CSOs

2. Upon confirmation that all the necessary conditions of this Proclamation are fulfilled, the Agency shall register and issue a certificate within 30 days commencing from the date of submission of application by domestic CSOs and within 45 days commencing from after the date of submission of application by foreign organizations.

3. Should the Agency fail to register and issue a certificate within the period specified in sub (2) or announce the rejection of the application for registration, it shall be presumed that there is no justification for the Agency to reject the registration.

4. The applicant can appeal to the Board (of the Agency) within 30 days, if the applicant is not given the registration certificate within the time specified in sub art. (2) of this article.

5. The Board shall evaluate and decide the complaint submitted within 60 days.

6. If the Board determines that there is no sufficient justification for non-registration of the CSO, it shall order the immediate issuance of the certificate of registration.

Amnesty International notes that the draft CSO Proclamation provides time limits for the registration

⁹ The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004, 9 May 2005, Article 791.

¹⁰ UN, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, Maina Kiai, Human Rights Council Twentieth Session, A/HRC/20/27, 21 May 2012, para. 56, https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf (accessed 30 October 2018).

of CSOs. However, the time limits for registration under article 51 (2) and article 51 (5) of the draft CSO Proclamation, especially for foreign CSOs, are unduly prolonged, particularly when factoring in the timeframe for appeals. The cumulative registration period, including the appeal process, for a domestic CSO is four months, and for a foreign CSO is more than 4 months. Such a prolonged registration period infringes on the right to association, since registration is a pre-requisite for attaining juridical personality, under Article 63.

A more enabling approach would ensure that formation of an association starts after an application is submitted.¹¹ The ACHPR Guidelines on Freedom of Association and Assembly in Africa provide that “registration procedures shall be simple, clear, non-discriminatory and nonburdensome, without discretionary components”.¹² They also presume that an association is established after their application is filed:

“Associations shall be provided with official documents confirming their submission of notification upon such submission. Should the authorities fail to provide such documents, mailing records and copies of the notification form submitted shall suffice as evidence of submission of notification”.¹³

Similarly, the UN Special Rapporteur on Freedom of Association and Assembly, recommends that: “under both notification and prior authorization regimes, registration bodies must be bound to act immediately, and laws should set short time limits to respond to submissions and applications respectively”.

Recommendations:

- a) **Reduce the time frame for decisions on CSO registration applications and appeals on the decision of the Agency (Article 60 sub articles 2 and 5);**
- b) **Stipulate a clear obligation on the Agency to issue a testimony or confirmation of receipt of registration application, possibly by providing a sub-article under Article 60.**

C. AGENCY RESTRICTIONS ON PURPOSES AND ACTIVITIES OF FOREIGN CSOs

Draft CSO Article 64: Freedom of operations

5. Notwithstanding the provisions of sub-article 4, foreign CSOs cannot engage in influencing decision making through advocacy and lobbying political parties. Moreover, CSOs cannot undertake voter

¹¹ See the comments under section B.

¹² ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, 60th Ordinary Session, Niamey, Niger, 8-22 May 2017, para. 13, http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf (accessed 30 October 2018).

¹³ ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, 60th Ordinary Session, Niamey, Niger, 8-22 May 2017, para. 16, http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf (accessed 30 October 2018).

education and election monitoring without a special permit from the relevant office.

Restrictions that may be placed on an organization's right to associate, including on purposes and activities of associations, are strictly limited under Article 22 of the ICCPR.¹⁴ To meet the ICCPR's requirement that a restriction be "prescribed by law," the restriction must be firstly sufficiently precise to enable an individual to assess whether his or her conduct would be in breach of the law, and to foresee the likely consequences of any such breach. A second issue is whether the restrictions are used in pursuance of legitimate grounds and the permissible legitimate grounds are limited to the four aims listed under Article 22 (2) of ICCPR.¹⁵ The interpretation of these grounds cannot be expanded to embrace grounds other than those explicitly defined in Article 22(2) of the ICCPR. These limited circumstances are "to be construed strictly; only convincing and compelling reasons can justify restrictions on... freedom of association."¹⁶ But legitimate government aims, in and of themselves, do not justify restrictions on freedom of association. Restrictions they must also be established "necessary in a democratic society". The "necessary" test implies that any measures must be proportionate to the legitimate aim pursued, and only imposed to the extent that is no more than necessary.

The African Commission on Human and People's Rights has also clarified that restrictions on the right to association must follow the same restrictions prescribed under the ICCPR.¹⁷ Paragraph 23 of the ACHPR's Guidelines on Freedom of Association and Assembly in Africa further provides that

¹⁴ Permissible restrictions include only those which are prescribed by law and which are necessary in a democratic society in the interest of (1) national security or public safety, (2) public order, (3) the protection of public health or morals, or (4) the protection of the rights and freedoms of others.

¹⁵ The four legitimate government aims articulated in Article 22(2) – "national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others" – are an exhaustive, not illustrative list.

¹⁶ In interpreting nearly identical language from Article 11 of the European Convention on Human Rights, the European Court of Human Rights has made clear that "only convincing and compelling reasons can justify restrictions on the freedom of association." *United Communist Party v. Turkey*, 4 Eur. Ct. H.R. 1 (1998) Para 46; *Sidiroupoulos v. Greece*, 4 Eur. Ct. H.R. 500 (1998 Para 40); *Socialist Party and Others v. Turkey*, Application No. 21237/93 (1998), para. 50. See also *Freedom and Democracy Party v. Turkey*, Application No. 23885/94 (1999); *Refah Partisi (The Welfare Party), Erbakan, Kazan, and Tekdal v. Turkey*, Application Nos. 41340/98, 41342/98, 41343/98, and 41344/98 (2001). See also the "Siracusa Principles" [United Nations, Economic and Social Council, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1984/4 (1984)], which were adopted in May 1984 by a group of international human rights experts convened by the International Commission of Jurists, the International Association of Penal Law, the American Association for the International Commission of Jurists, the Urban Morgan Institute for Human Rights, and the International Institute of Higher Studies in Criminal Sciences. Though not legally binding, these principles provide an authoritative source of interpretation of the ICCPR with regard to limitations clauses and issue of derogation in a public emergency. They are available at: <http://graduateinstitute.ch/faculty/clapham/hrdoc/docs/siracusa.html>.

¹⁷ See African Commission on Human and People's Rights, Guidelines on Freedom of Association and Assembly in Africa, para. 24

“associations shall determine their purposes and activities freely”¹⁸.

Amnesty International believes that Article 64(5) does not meet the strict test of permissible restrictions set forth under Article 22 of ICCPR.

Firstly, the restriction on foreign CSOs engagement in “advocacy and lobbying” activities targeting political parties as articulated in the draft CSO law is too broad and ambiguous, and as such does not meet the obligation to ensure such restrictions provided in law are sufficiently precise. Advocacy and lobbying activities capture a variety of legitimate and crucial activities that foreign CSOs could conduct including trainings, researches, publications, and public discussions impacting policy choices of political parties and their members. CSOs, irrespective of being national or foreign, should also be allowed to carry out activities aimed towards influencing political parties’ positions and programmes that relate to promotion and protection of human rights in Ethiopia. Hence such a broad and blanket restriction on advocacy and lobbying activities can cripple the operations of foreign CSOs and potentially create room for abuse by authorities.

Moreover, it is also unclear which legitimate aim – from amongst the strictly permissible grounds of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others – that the draft law intends to protect by restricting the right of foreign associations to engage in advocacy and lobbying activities targeting political parties. As discussed above, any interpretation of permissible restrictions on freedom of association cannot be expanded to embrace grounds other than those explicitly defined in Article 22(2) of the ICCPR. These limited circumstances are “to be construed strictly; only convincing and compelling reasons can justify restrictions on... freedom of association.” In the absence of clarity on the legitimate aim that justified the restriction on advocacy and lobbying by foreign CSOs, Amnesty International assumes that the restriction is indicative of the remnant of the hostile attitude towards foreign CSOs that inspired the restrictive CSO law which is still operational.

Even if there was any legitimate government aim for restricting the stated activities of foreign CSOs in Ethiopia, one that conform to the permissible grounds provided under international law, Amnesty International believes that Article 64(5) of the draft CSOs law does not meet the “necessity test as provided under Article 22(2) of ICCPR. Such a broad, vague and blanket ban on advocacy and lobbying activities of foreign CSOs could not be justified as being a proportional measure to protect a legitimate government aim. The government could pursue other measures, including proper interpretation and implementation of laws that govern elections in the country, to guard against any illegal interference in political contestations in the country.

Amnesty International therefore believes that this overly broad restriction imposed under Article 64 (5) of the draft CSOs law should be revised to enable foreign CSOs to exercise their freedom and independence in their areas of activities and engagement. As currently formulated, the draft law would negatively impact legitimate and critical activities like training, capacity building, and any other engagement with members of political parties, which could be perceived to amount to “lobbying”. It would potentially restrict much needed public debate and advocacy activities on issues related to

¹⁸ ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, 60th Ordinary Session, Niamey, Niger, 8-22 May 2017, para. 23, http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf (accessed 30 October 2018).

development in the country, including on trade, government budget, and on policy decisions related to international aid and loans. CSOs in Ethiopia should also be able to advocate for all stakeholders' engagement on human rights issues that would contribute to further progress in the realization of socio-economic rights and civil and political rights.

Recommendation:

a. The law should be revised to grant all CSOs, including foreign CSOs, the freedom and independence to determine their own activities and to allow them to engage with a wide range of stakeholders in fulfilment of their mandates.

D. INVESTIGATIONS/INSPECTIONS AND FREEZING OF ASSETS

Draft CSO Proclamation Article 77: Investigation power

- 1. Based on complaints from government institutions, donor organizations and the public, the Agency can investigate if a CSO is conducting its operations as per the law.*
- 2. Notwithstanding the provision above, the Agency shall determine that there is sufficient reason before starting to conduct the investigation.*
- 3. The Agency shall take all necessary measures to expedite all investigations (inspections) and complete within a short time without causing inconvenience to the routine operations of the CSO.*
- 4. Should there be a need to freeze the assets and finance of the CSO to conduct the investigations, the Director can give such an order for a period that does not exceed a month.*
- 5. The CSO can appeal the decision of the Director to freeze the asset in Court.*

Amnesty International is concerned that this provision would allow excessive and unlawful interference by the authorities with CSO operations and exceeds legitimate restrictions on freedom of association permissible under international law. As currently drafted, the law would allow the CSOs Agency Director to order asset freezes during investigations. Asset freezes prevent organizations from accessing resources effectively halting their work. This is an extraordinary measure which should only be imposed by a court, in limited circumstances and when necessary. The ACHPR Guidelines on Freedom of Association and Assembly in Africa recommend that such oversight powers are “carefully delimited” to avoid infringement on the right to freedom of association.¹⁹

Currently, the draft allows the CSOs Agency to investigate, including conducting searches, if it finds “sufficient reason”, an overly broad term which could lead to arbitrary interference. While the Agency may need to access some information to ensure accountability, this needs to be weighed against the right of individuals and organizations to privacy. Any restrictions on this right should be narrowly

¹⁹ ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, 60th Ordinary Session, Niamey, Niger, 8-22 May 2017, para. 33, http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf (accessed 30 October 2018)..

construed and should be necessary and proportionate for achieving a legitimate aim.

The draft law should be amended to clearly outline when the Agency may initiate investigations. Additionally, it should provide for judicial oversight of any searches, in line with the ACHPR Guidelines on Freedom of Association and Assembly in Africa which state that “inspections of associations by oversight bodies shall only be permitted following a judicial order in which clear legal and factual grounds justifying the need for inspection are presented.”²⁰

The UN Special Rapporteur also echoed the right of associations to privacy, stating that “authorities must also respect the right of associations to privacy as stipulated in article 17 of the Covenant on Civil and Political Rights.”²¹

As such, Amnesty International believes that the draft should be revised to provide precise and narrow grounds under which the CSO Agency can seek a court order to freeze assets, for example, if there is *prima facie* evidence of corruption, and ensure that such decisions are taken by a court subject to appeal.

Recommendations:

- a. **Revise Article 77 the draft CSO Proclamation to provide precise and limited grounds under which the CSOs Agency can investigate CSOs and to ensure that searches can only be conducted if ordered by a court of law.**
- b. **Ensure the law only allows asset freezes of CSOs in limited circumstances defined by law, when absolutely necessary and if ordered by a court of law.**
- c. **Include procedural protections allowing a CSO to challenge the Agency’s decision to initiate investigations and the Director’s actions to freeze asset at the time it is still under consideration.**

E. RESTRICTIONS ON ADMINISTRATIVE COSTS

Draft CSO Article 64: Freedom of operation

9. The administrative cost of an association established to promote public interest, or interest of third parties shall not exceed 20 percent of its income. The Agency shall issue a Directive regarding Associations that are exempted of the application of this provision. For the purpose of this provision, administrative cost refers to expenses that are not related to the implementation of projects, but administrative functions that are necessary for the sustainability of the association. The Council of

²⁰ ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, 60th Ordinary Session, Niamey, Niger, 8-22 May 2017, para. 21, http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf (accessed 30 October 2018).

²¹ UN, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, Maina Kiai, Human Rights Council Twentieth Session, A/HRC/20/27, 21 May 2012, para. 65, https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf (accessed 30 October 2018).

Ministers shall determine the details.

The ability to seek and use resources is crucial to the effective functioning of CSOs and to the development of civil society. While it is positive that the draft law lifts restrictions on receiving foreign funding, this provision would place excessive controls on use of resources by capping administrative costs at 20% of income (compared to 30% in the current CSO Proclamation). While this may be designed to ensure funds benefit beneficiaries, in practice, the distinction between administrative and programmatic costs is subjective and varies from one CSO to another. The lack of clarity on the definition of 'administrative costs' falls short of the principle of legality, as it is not sufficiently precise enough for CSOs to understand how to regulate their conduct to avoid breaching the law.

It could also expose CSOs to arbitrary intrusions that are disproportionate to the legitimate aim pursued by the CSO Agency and other government bodies. More importantly, restriction on expenditure appropriation limits the financial autonomy of CSOs and goes against established norms under international law, including as reflected in the ACHPR's Guidelines on Freedom of Association and Assembly in Africa which provides "the law shall clearly state that associations have the right to seek, receive and use funds freely in compliance with not-for-profit aims".²²

Instead, Amnesty International would recommend that the draft law tasks the CSOs Agency with designing strategies to encourage the use of funds for beneficiaries through non-mandatory best practice standards. This could include for instance rating CSOs based on the proportion of funding used for administrative and programmatic costs.

Recommendation:

- a. Revise the mandatory cap on administrative costs at 20% of income replacing it with a non-mandatory best practice standard.**

²² ACHPR, Guidelines on Freedom of Association and Assembly in Africa, 60th Ordinary Session, Niamey, Niger, 8-22 May 2017, para. 37, http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf (accessed 30 October 2018).