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Global Perspectives on Freedom of Association: Ethiopia

Kelali Kiros Negesse

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The Purpose and Potential of Freedom of Association in Ethiopia

Kelali Kiros Negesse[*]

I. Introduction

The freedom of association is one of the rights recognized in the Constitution of the Federal Democratic Republic of Ethiopia (FDRE), 1995. In addition, the country is party to some of the major international conventions which recognize the 'right to freedom of association'. In the Constitution, the right is recognized under article 31 which provides the general content of the right, and under article 42 which recognizes the freedom of association of workers. The constitution, under article 31, provides that every person has freedom of association for any cause or purpose. However, organizations formed, in violation of appropriate laws are prohibited which signifies that the law maker, the House of Peoples Representatives,[1] is in charge of delimiting the content of the right in action. The constitution except for recognizing the freedom of association does not provide sufficient guiding details regarding the exercise of the freedom. This makes the provision subject to manipulation by the government. The repressive nature of the government in Ethiopia would mean that the enjoyment of this right by civil societies, political organizations, workers, employers, etc is in jeopardy.

Despite its pivotal significance, freedom of association is one of the least studied subjects in Ethiopia. This article seeks to patch a gap in the research on the freedom of association in Ethiopia by examining the purpose and potential of the right revisiting its legislative history, discussing relevant cases, statutory laws , and other sources. In order to properly address the

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[1] The House of Peoples Representatives is the law making organ of the government in Ethiopia. It enacts law that is published as a Proclamation. A Proclamation comes into effect after the President, the head of the state, puts his/her signature and is made published in the official law gazette. However, the law would be proclaimed in the absence the signature of the President if for any reason s/he fails to sign it within fifteen consecutive days. The conformity of any law enacted by the legislature is reviewed by the Council of Constitutional Inquiry (CCI), the Ethiopian variant of a constitutional court, upon the complaint of any party with vested interest. The decision of the CCI becomes final upon the approval of the House of Federation (HoF), a body composed of elected representatives of each ethnic community. Each ethnic community is represented by at least one member, and each ethnic community is represented by one additional representative for each one million of its population.

subject matter, the paper is structured into five parts. The first part of the paper outlines the origin and development of freedom of association in the historical, cultural, and political context of Ethiopia. In the second part, the paper provides a review of the major contents of national and international legal norms governing freedom of association in Ethiopia. In part three, the article critically evaluates the restrictions to freedom of association in light of the rationale for protection of the right. Part four makes an analysis of the major court decisions concerning freedom of association. In this part, the paper provides an extensive critique of the compatibility of court decisions with the constitutional protection of the freedom of association and reviews their impact on the protection of freedom of association in Ethiopia. The paper culminates with a conclusion.

II. History and Evolving Political Context of Freedom of Association

Ethiopia is one of the oldest countries in Africa, if not in the world. The formation of modern Ethiopia is associated with a Solomonic Dynasty, an imperial administration which governed the country from 12th century to the end of 20th century. The Emperor claims the perpetually of its line without interruption from the dynasty of Menelik I, son of King Solomon of Jerusalem and the Queen of Ethiopia, known as the Queen of Sheba.[2] During the Imperial era, the emperor claimed to be the lawful descendant for the throne. The line survived for almost a millennium without any real continuous threat to take power from the hands of the emperors. During this time, the state religion was Christianity and any other belief or traditional practice was prevented by brutal force.

The last emperor, Haile Selassie I, gave the first written constitution on the 16th of July 1931, introducing a semblance of a constitutional monarchy. The constitution simply codified the absolute power of the emperor over all subjects with little attention to the rights of his subjects. After the reunification of Eritrea, a former territory of Ethiopia under Italian colonial rule, the emperor ordained the revised constitution of 1955. This constitution unlike the 1931 constitution contains provisions on the enjoyment of all civil rights without discrimination to all Ethiopian subjects.[3] The constitution recognized for the first time "…the

[2] The Constitution of the Empire of Ethiopia, 1931, Article 3 <ethiopian-constitution-of-1931.pdf (ethcriminalawnetwork.com)> accessed 1 February 2024.
[3] The Revised Constitution of the Empire of Ethiopia, 1955, <1955 revised constitution of Ethiopia (wordpress.com)> accessed 1 February 2024.

freedom to form or join occupation associations, in accordance with the law".[4]It also guarantees freedom of speech, the press, and assembly throughout the Empire in accordance with the law.[5]

After surviving for such long period of time, the emperor was overthrown in 1974 by the Derg regime, a military junta. The end of the imperial regime gave rise to the taking over of state power by a military regime that decreed a Marxist-Leninist socialist government. Workers were normally allowed by law to organize themselves and to collectively bargain in the now nationalized factories. Organizing to practice religion was discouraged and in some cases prohibited. Any form of political association was forbidden. This gave rise to popular discontent which resulted to the beginning of an almost two-decade civil war in the northern parts of the country. The Derg regime came to an end with its defeat in the civil war in 1991 which also led to the succession of Eritrea from Ethiopia.

In the remaining parts of Ethiopia, a coalition of political parties from all corners of the country agreed to establish a multinational federal arrangement. A Transitional Charter was enacted in 1991 as a roadmap towards the drafting and ratification of the current constitution. Among the few rights that were recognized in the Charter includes freedom of association.[6] After the end of a short Transitional Administration, a constitution which contains a chapter on fundamental rights and freedoms was ratified in 1995. The Federal Democratic Republic of Ethiopia constitution, 1995, guaranteed freedom of association "…for any cause or purpose".[7] But the minutes of the Constitution Drafting Commission and the Constituent Assembly provides no information about its drafting history. But the fact that Ethiopia was under strict military regime could signify that inclusion of the right in the constitution was to signal the promise for democratization of the country.

The constitutional recognition is the foundation for the creation of thriving political parties, civil societies, religious institutions, labour unions etc. The existing associations plays active role in the alleviation of poverty and advocacy of civil and political rights. However, the scope of the right is a contested issue. The compatibility of some of the draconian legislations

[4] ibid, Article 47
[5] ibid, Article 41 cum 45.
[6]The Transitional Charter Proclamation of Ethiopia, 1991, Article 1(a) <Print Service (peaceagreements.org)> accessed 1 February 2024.
[7] The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 32.

with the constitutional recognition of freedom of association has been and still is subject to fierce legal battle.

III. The Legal Recognition of Freedom of Association in Ethiopia

3.1. The Legal Landscape

In Ethiopia, freedom of association is one of the rights recognised by the Constitution under the chapter dealing with fundamental rights and freedoms. Article 31 of the Constitution recognises that 'every person has the freedom of association for any cause or purpose'. Similarly, Article 42(1a) protects the right to employees working for private and government institutions to form trade unions and other associations. Moreover, Article 27 recognises freedom of association for religious purposes. The Constitution, under Article 13, provides that the fundamental rights and freedoms specified in the Constitution are 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. This provision provides sufficient room for protection of freedom of association in a manner that conforms to the international practice.

The Constitution categorises fundamental rights and freedoms in two respects, as human rights and democratic rights. Freedom of association is one of the rights under the category of democratic rights. In policy debates, the government contends that the exercise of democratic rights is primarily reserved to citizens, not for foreigners. This line of understanding was clearly visible in the preamble of the repealed Civil Societies and Charities Proclamation which provides that the major rationale of protection of freedom of association is to ensure the realisation of citizens' right to association.[8] Thus, foreign entities are not entitled to enjoy freedom of association unless the law permits them.

The Constitution considers all international agreements ratified by Ethiopia to be an integral part of the law of the land. The executive is responsible for the conclusion of international agreements. But the power of ratification of agreements is given to the House of Peoples Representatives (HPR), a federal law-making organ.[9] Ethiopia has ratified the ICCPR and ICESCR which recognises freedom of association under Article 22 and 8 respectively. The

[8] Proclamation of Charities and Societies No. 621/2009, Preamble, Para 1 <Refworld | Ethiopia: Proclamation No. 621/2009 of 2009, Charities and Societies Proclamation> accessed 1 February 2024.

[9] The Constitution of 1995 (n 7) Article 55(12).

African Charter on Human and Peoples' Rights also contains the right to freedom of association under Article 10. In addition, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87) is one of the international treaties ratified by Ethiopia. The Convention recognises the right to freedom of association to all workers irrespective of whether they are in the public or the private sector.[10]

Although the Constitution and international treaties to which Ethiopia is a party protect freedom of association of civil servants alongside with employees of the private sector, there is no specific legislation that provides the modalities of association for civil servants. The ILO supervisory bodies have made repeated comments to rectify the challenges to the realisation of freedom of association of civil servants in Ethiopia. The ILO has documented serious violations of trade union rights including continuous interference in the internal affairs of associations preventing it from functioning normally, and interference by way of threats, dismissals, arrest, detention and maltreatment of trade union members.[11]

In addition to the Constitution, the content and nature of freedom of association is also regulated by other subsidiary legislation. The major pieces of legislation that regulate freedom of association include the Organisation of Civil Societies Proclamation No 1113/2019, the Ethiopian Electoral, Political Parties Registration and Elections Code of Conduct proclamation No 1162/2019, Labour Proclamation No 1156/2019. The Civil Service Proclamation No 1064/2017 which serves as the major statute for the administration of government employees has not recognised the right of workers to form trade unions. The fact that there is no enabling legislation that ensures freedom of association of government employees may degrade the constitutional recognition of trade unions.

The CSO's proclamation provides the major rational for its enactment is to promote the instrumental role of freedom of association in the full exercise of other rights recognised in the Constitution, to ensure the existence of an active and freely organised society that would oversee government affairs are conducted in transparent, accountable and participatory manner, and to open the door for Civil Society Organisation to play an active role in the

[10] International Labour Organization, Freedom of Association and Protection the Right to organize Convention , 1948
<Convention C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ilo.org)> accessed 1 February 2024.
[11] International Labour Organization, 'ILO Interim Report' Report number 348, November 2007: Case No 2516 (Ethiopia) <FOA case text (ilo.org)> accessed 1 February 2024.

development and democratisation of the country.[12] The proclamation provides two goals for protection of the right, i.e. to serve as an instrument for the advancement of other rights and to protect freedom of association as a standalone right to allow people to organise themselves for other purposes.

Unlike the current proclamation, the repealed CSO proclamation prohibits international NGOs from working on issues such as the advancement of human and democratic rights, the promotion of the rights of persons with disabilities and children, or on issues such as gender, religion, and the promotion of the efficiency of the justice and law enforcement services.[13] The main justification provided by the government to curtailing foreign NGOs from engaging in human right advocacy activities is to protect the country from foreign interference.[14] Thus, restricting foreign activities in human rights awareness creation and advocacy activities was believed to be the solution for the proper functioning of the country.

The new proclamation also avoided the classification of associations as local and foreign to determine their scope of competence. The repealed proclamation protects the right for the sake of realisation of citizens' right to association. In this respect, the proclamation considers freedom of association as an independent or standalone right worthy of protection. But its scope is limited to Ethiopia citizens only. In this respect, the new proclamation is broad in scope compared to the repealed proclamation. Another point we can observe is that the rationale for protection of the right is not uniform which could show that there is no consistent jurisprudence on this subject in Ethiopia.

3.2. The Content of the Right

The Constitution is silent as to the content and nature of freedom of association although subsidiary legislation enacted following the Constitution has provided some information about its content and scope. In this regard, freedom of association has three pillars, i.e., freedom to join an association, freedom not to be forced to join an association, and the right to organisational autonomy.

[12] Organization of Civil Societies Proclamation No. 1113/2019, The preamble.
[13] Ibid.
[14] Mizanie Abate, 'The Implication of 2009 Ethiopia CSOs Law on the Right to Freedom of Association' (2015) 27(1) Journal of Ethiopian Law 91.

3.2.1. Freedom to Associate and Disassociate

The right to freedom of association is one of the pillars of the Constitution. It is stipulated that any person can form an association for any cause and purpose. However, the content of the right has been elaborated in the statutes promulgated to implement it. The proclamation issued to regulate civil societies and organisations provides that associations can be formed for a definite or an indefinite period.[15] Membership of an association is voluntary and members are free to withdraw from membership at any time.[16] An association formed by law has the right to freely determine the criteria for membership. Any person who has fulfilled the membership criteria has the right to join the association.[17]

It is prohibited for an association to admit or dismiss members except in accordance with its rules.[18] The Agency, the government institution responsible for the registration and oversight of associations, is responsible for the preparation of model rules that would be used by the associations.[19] In practice, the model rule provides the grounds and procedure of admission and dismissal of members. It is rarely possible to change the model rules or add rules which are inconsistent with the model rules. Thus, the model rule is in fact a uniform rule that would be used by all associations. However, there is a small opportunity for associations at the time of formation to supplement the model rules by adding provisions which are not covered by the model rules provided that they are consistent with existing government regulations.

The decision to admit or expel members is made by the General Assembly of the association, as duly empowered by the law. Anyone dissatisfied with the decision of the General Assembly has the right to file a lawsuit at the appropriate court. The decision of the judiciary on the matter is final and conclusive. The judiciary has an unlimited power of making a decision on the merit of the case. However, empowering the judiciary to make the final decision on admission and expulsion of members of an association might be against the freedom of the association. There are cases whereby the General Assembly of an association decides not to admit a member and the court reverses the decision which would finally amount to forcing the association to admit undesirable members. Similarly, we have observed

[15] Proclamation No. 1113/2019 (n 12) Article 16(1).
[16] ibid, Article 16(2).
[17] ibid, Article 16(4).
[18] ibid, Article 16(9).
[19] ibid, Article 16(10).

decisions which force associations to continue accepting the membership of persons expelled by unanimous decision of the General Assembly.

In the absence of a freedom to decide on the persons who would join and leave an association, it is difficult to contend that freedom of association is respected. Although we can agree that judicial intervention is necessary to settle disputes concerning admission and expulsion, the mandate of the judiciary should not compromise freedom of association. There should be a criterion that would strike a balance between the right of individuals who are aggrieved of the decision of the association on the matter and the institutional right of the association to make its own decision.

3.2.2. A Right to Organisational Autonomy

The preservation of organisational autonomy is one of the pillars of freedom of association. The right recognises self-government and it protects associations from intrusive regulation by the state.[20] The existing legislation provides that an association is entitled to self-regulation and self-administration of its internal affairs, in principle.[21] The government is required by law to provide the necessary support to associations to enable it to have systems of internal governance and self-regulation that ensure transparency and accountability.[22] In this regard, an association is free to engage in any lawful activity, operate in any part of the country or abroad, implement project activities on its own, collaborate with other associations etc.[23]

However, the government undertakes strict oversight of the activities of associations. It is a common trend to monitor and supervise associations to ensure that they undertake their activities in compliance with the law. In this regard, the government examines the annual activity and financial report of the associations, registers the number of beneficiaries and members of the association, provides policy guidance to ensure that the activities undertaken by the association are aligned with the priority areas determined by the government.[24] An association registered with the responsible organ is required to keep accounting records and submit the annual statement of accounts prepared in accordance with acceptable accounting

[20] Hugh Collins, KD Ewing, and Aileen McColgan, *Labor Law* (Cambridge: Cambridge University Press, 2012) 490.
[21] Proclamation No. 1113/2019 (n 12) Article 5(7).
[22] ibid, Article 6(4).
[23] ibid, Article 62.
[24] ibid, Article 6 (5) cum 6(10).

standards.[25] The government is empowered to inspect into the activities of an association to check whether it is carrying on its activities in accordance with the law.[26]

Concerning associations formed by political parties, the government is empowered to monitor the income source, expenditure, and assets of a political party.[27] In addition, the party is required to submit an annual report of its assets and liabilities, certified by a qualified auditor.[28] A political party is also required to submit its annual report that outlines the number of its members, their gender, age, distribution and their place of residence.[29] The political party is also required to notify the Board if it intends to conduct a meeting for the purpose of creating a front, merger, or coalition with other parties.[30] When conducting an election for leadership position, the party should ensure gender representation.[31] In addition, a party under formation is required to reflect gender consideration and the contribution of members of the local community.[32]

Organisational autonomy is an important element of freedom of association. As shown in the above analysis, the existing legislation seems to intrude into the autonomy of the association. As far as there is no reasonable suspicion that some counterfeit activity is being undertaken, it is undue interference with the autonomy of an association to inspect every source of income, assets and expenditure. The government is interested in placing associations under its direct watch. This makes the associations subjugated to an excessive government oversight thereby affecting their privacy and proper functioning.

In Ethiopia, the government is always cautions that its security might be at stake if it allows the associations to work without any supervision. In some circumstances, the combined budget of the associations operating in the country might exceed the annual budget of the government. One of the reasons why the government in Ethiopia enacted draconian legislation amidst the bloody 2005 election was to preserve itself from a possible interference of foreign funded associations in advocacy activities. However, putting in place legislation

[25] ibid, Article 72(1).
[26] ibid, Article 77.
[27] The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation, Article 68(7) <Ethiopian-Electoral-Proclamtion-No-1162.pdf (nebe.org.et)>accessed 1 February 2024.
[28] ibid, Article 78(1d).
[29] ibid, Article 78(1a).
[30] ibid, Article 78(1c).
[31] ibid, Article 74(4).
[32] ibid, Article 64(6).

that would place associations under the direct watch of the government has also its own side effects on their organisational autonomy. Thus, in order to comply with the constitution and international norms, it is necessary to frame a standard where interference is compatible with the organizational autonomy of associations.

3.3. Registration of Associations

In Ethiopia, registration is a prerequisite to operation as an association. Depending on the type of association, the registration process is conducted in various government offices. In this regard, civil societies and charities, trade unions, religious associations, political parties, are registered by the Civil Societies Organizations Agency,[33] the Ministry of Labour and Skill,[34] the Ministry of Peace,[35] the Electoral Board of Ethiopia[36] respectively. It is illegal to operate as a political party in Ethiopia unless it is registered by the Board and a certificate of registration is issued.[37]

When an association is registered, the government issues a certificate of registration.[38] An association is required to provide the minutes of the formative meeting, the identity of its members, the objectives of the organisation, the area of its operation, its rules and addresses, among other things.[39] If an association makes any changes concerning the information provided during registration, it is required to inform the changes to the concerned government organ.[40] The minimum number of persons required to form an association is set to be two.[41] However, associations can be as big as possible, in terms of the size of its members.

When the government finds the existence of a grave violation of the law, it has the power of suspending or dissolving the activities of an association depending on the gravity of the offence.[42] The court can dissolve an association, among other things, if it is convicted of a

[33] Proclamation No. 1113/2019 (n 12) Article 6(1).
[34] Definition of Powers and Duties of the Executive Organs Proclamation No 1263/2021 Article 25(1k) cum 25(1m) <Proclamation No. 1263-2021 Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia (efda.gov.et)>accessed 1 February 2024.
[35] ibid, Article 41(1m).
[36] The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation (n 27) Article 66.
[37] ibid.
[38] Proclamation No. 1113/2019 (n 12) Article 57.
[39] ibid, Article 58(1).
[40] ibid, Article 68(1).
[41] ibid, Article 17.
[42] ibid, Article 77(4) cum 78.

serious criminal offence or is repeatedly found guilty of a minor criminal offence.[43] The National Electoral Board is empowered to cancel the registration of a political party when its name, emblem, document, leadership, head office and other similar changes have been made without its knowledge.[44] In addition, the Board can cancel registration if the political party fails to submit its annual performance report, audit report or other periodical reports, delayed in conducting its general meeting, or fails to compete for two successive elections, among other things.[45]

If a party engages in violent rebellion, crimes related to corruption or fraudulent activities, it may be cancelled from registration.[46] The Board has an extensively broad power and it can cancel the registration of a political party if the Board forms an opinion that it has contravened any of the provisions of the proclamation.[47] This is an opaque provision that could open the door for the Board to cancel the registration of a political party without due cause. A provision that gives unchecked power to the Board can be counterproductive of the development of thriving associations.

IV. Limitations and Restrictions to Freedom of Association

The protection of fundamental rights including freedom of association is an essential feature of democratic government. However, enacting legislation that arbitrarily or excessively infringes a given constitutionally protected right is counterproductive to the proper enjoyment of the right. Thus, restrictions and limitations should be necessary and reasonable in a democratic society for the realisation of certain common goods such as social justice, public order and effective government, or for the protection of the rights of others. In line with this idea, there are limitations and restrictions on the enjoyment of freedom of association in Ethiopia.

Article 31 of the Constitution provides that organizations formed in violation of 'appropriate laws' are prohibited. This expression could open the room for manipulation by the government to restrict the constitutional protection by enacting laws or executive order

[43] ibid, Article 83(2a).
[44] The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation (n 27) Article 98(1a).
[45] ibid, Article 98(1b-d).
[46] ibid, Article 98(1f).
[47] ibid, Article 98(2).

circumventing constitutional provisions and international norms provided for in international and regional instruments to which Ethiopia is a party. This is particularly essential in light of article 13 of the constitution which provides the manner of interpretation and application of the fundamental rights and freedoms recognized in the constitution to be in conformity to the principles of the UDHR, international covenants on human rights and international instruments adopted by Ethiopia.

The ICCPR is one of the instruments ratified by Ethiopia. The ICCPR has provided a better guideline on how the right can be restricted. Article 22(2) of the Covenant provides that:

> 'No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.'

The Human Rights Committee established to supervise the implementation of the Covenant has also come up with a general comment on the nature of the legal obligation imposed on the state parties.[48] Another important instrument worth considering in understanding the manner of restriction of the right is the African Charter on Human and Peoples' Rights. The grounds for restriction of the right are to pursue collective security, morality, common interest, and the protection of other persons.[49]

In general the requirements for restriction for the right are legality, justification and necessity, proportionality, and non-discrimination. The principle of legality requires restrictions to be prescribed in a law enacted following due procedure and in a manner widely accessible to the public. The requirement for legitimate justification requires the government to provide a legitimate aim such as to promote national security, public order and safety, protection of the rights and freedoms of others, and the protection of public health and morality. The measure taken for legitimate aim should be proportionate. Applying disproportionate measures to pursue a legitimate aim is against the right. The

[48] Human Rights Committee, 'General Comment No 31 on the nature of the general legal obligation imposed on States Parties to the Covenant' (CCPR/C/21/Rev.1/Add.13)
[49] African Charter on Human and Peoples' Rights, Article 27(2) <African Charter on Human and Peoples' Rights | African Union (au.int)>accessed 1 February 2024.

last principle of non-discrimination requires that measures taken to limit the right should not be discriminatory.

The limitations on freedom of association in Ethiopia are related to the freedom to engage in certain activities and to collect and spend income. In this regard, the target of the government is to limit the free exercise of foreign association and local associations with a foreign element. The government is wary of foreign associations due to the riots and civil disobedience experienced following the 2005 General National Election. The government believes that foreign funding and associations were behind this unrest. Thus, the government enacted a draconian law that banned the use of foreign associations and foreign funding to promote human and democratic rights. Although the existing legislation was repealed, the limitations that were imposed are not totally abolished.

In particular, the government has continued the limitation placed on foreign association and local associations established by foreigners from engaging in lobbying political parties, in voters' education or election observations.[50] Another limitation to associations is related to income source and the freedom of spending an income generated through various mechanisms. An association formed for the benefit of the general public cannot spend more than 20 percent of its income for administrative purposes.[51]

There is also a limitation on the source of income political parties can acquire. In this regard, the permissible sources of income of a political party are limited to membership dues, donations or grants by Ethiopian nationals or companies, fundraising conferences, sale of paraphernalia, and government grant, and it is prohibited for a political party to accept donation or grant from foreign institutions, corporations, governments, political parties, NGOs, religious organizations, among other things.[52] It is noted elsewhere that foreign election interference presents a significant threat to electoral fairness, democratic legitimacy, and public confidence in elections.[53] The prohibition placed on accepting donations or gifts from prisoners serving sentence seems strange. It is not clear how an income derived from prisoners can impact on the overall political space of the country.

[50] Proclamation No. 1113/2019 (n 12) Article 62(5).
[51] ibid, Article 63(2).
[52] The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation (n 27) Article 108(1) cum 109(1a-d).
[53] Yesmin Dawood, 'Combating Foreign election interference', (2021) 20:1 Election Law Journal

A reasonable limitation on income source is imposed when a political party accepts a donation or gift from organised groups or a person planning to assume state power through violence or an organisation designated as a terrorist organisation.[54] In addition, it is not allowed to accept donations or gifts from unknown sources.[55] It is understandable that some people may want to support an association without making this known to the public. In this regard, as far as the amount of income derived from such persons is not impactful or very large, it would be reasonable to allow such funding. But it is also important to note that unknown sources could open the door for illicit money transfer such as money laundering.

The Ethiopian Constitution, after recognising the right to freedom of association, has included some restrictions. In this regard, organisations formed in violation of appropriate laws, or to illegally subvert constitutional order, or which promote such activities, are prohibited.[56] In line with the restriction placed on freedom of association, the legislature has enacted a legislation which requires the refusal of registration of civil societies if the aim of the organisation or its activities description is contrary to law or public morality.[57] It is also impossible to operate as an association when the founding document or rules of the association aim to foment conflict and violence based on ethnicity, religion and other differences and by spreading hatred and enmity among ethnic groups.[58] In addition, an association which aims to fulfil its purpose through armed struggle[59] or is formed for the purpose of pursuing unlawful activities is prohibited.[60] Needless to mention, an association which excludes people from membership on the basis of ethnicity, religion or identity cannot be registered.[61]

It is debatable whether it is legitimate to deny the exercise of freedom of association on the mere reason that it is formed with the aim of undertaking illegal activity such as fomenting conflict or armed struggle. Some observers claim that it seems premature to deny the right to freedom of association based on the aim of an association. As far as the association is not

[54] ibid, Article 109(1f and g).
[55] ibid, Article 109(1h).
[56] The Constitution of 1995 (n 7) Article 32.
[57] Proclamation No. 1113/2019 (n 12) Article 59(1b).
[58] The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation (n 27) Article 69(1c).
[59] ibid, Article 69(1d).
[60] ibid, 69(1f).
[61] ibid.

actually engaged in violence, it is difficult to agree that the aim of a given association could play a negative role on the free exercise of freedom of association. In addition, banning an association from registration because it intends to exclude some people from membership on the basis of their ethnicity, religion or identity also seems so farfetched. It is understandable that some associations might be formed to advance the cultural, political, economic, etc. interests of a given ethnic group or religion. As a matter of fact, most of the political parties operating in Ethiopia are formed based on ethnic lines. Their members also hail from the same ethnic group.

Another important piece of legislation concerning banned association is the Criminal Code of Ethiopia. In this particular instrument, participation in the meetings of secret societies is prohibited.[62] It is also prohibited to participate in unlawful armed societies and armed bands established especially for military training or shooting, or ostensibly sporting in character.[63] Participation in a society, band, meeting or assembly forbidden by the appropriate law or providing material support such as meeting places either for free or consideration is made punishable.[64]

V. Judicial Opinion and Evolution of Legal Interpretation

The practical application of freedom of association to real cases and controversies is not as such developed. However, there are few important cases that could provide a glimpse of the content and scope of freedom of association in Ethiopia.

In the case of *Mr Solomom Eshetu and others v Seada Getu and Associates Partnership*,[65] the respondent dismissed the applicants from membership on the allegation that they were involved in the misappropriation of the money collected from the services provided by the association. In addition, when dismissing the application, the respondent mentioned that the applicants were given reprimand and written warning for involvement in riots and disrespecting their colleagues before they were finally dismissed from membership. The

[62] The Criminal Code of the Federal Democratic Republic of Ethiopia, Article 483 <Refworld | Ethiopia: Criminal Code>1 February 2024.
[63] ibid.
[64] ibid, Article 482.
[65] *Mr Solomom Eshetu and others v Seada Getu and Associates Partnership,* Federal Supreme Court of Ethiopia, Case No 216384 (23 June 2014).

applicants on the other hand pleaded the court that the dismissal is unjustified and they requested the court to order their reinstatement.

The court, after investigating the evidence provided by the parties to the dispute, concluded that the applicants were given warnings before they were dismissed from membership for the reasons mentioned by the respondents. However, the major reason for the ultimate dismissal of the respondents was said to be misappropriation of the funds of the association. The applicants had agreed during the court hearing that they were willing to refund the misappropriated money. In this regard, the major reason for the dismissal of the applicants being misappropriation and considering that the applicants are willing to refund, the court ruled there was no reason for dismissal of the applicants.

As per the decision of the court, the respondent was forced to reinstate the applicants. There was no doubt that the court has jurisdiction to hear and decide on the matter. However, it is debatable whether the decision of the court to reinstate the applicants is in line with the constitutional right of the respondent to organisational autonomy. The respondent, as an association formed according to the Constitution, has the right to decide on its internal affairs although the members also have the right not to be expelled without good cause. In the case under consideration, the court had ample evidence that the applicants were dismissed because they misbehaved and the association decided to expel them from membership. In this regard, the decision of the court to reinstate them was not justified and could amount to interference in to the affairs of the association.

In the case of *Mr Seyume Teklebrehan v Oriental Ethiopia Patriots Association*, the respondent dismissed the applicant for defaming the association in a broadcast media interview. The applicant on the other hand challenged the dismissal to be unjustified because he had the right to engage in broadcast media. In addition, the respondent submitted that the dismissal was illegal because the measure was taken by an unelected administration. The court after investigating the evidence provided by the parties concluded that in the bylaws of the association, a member would be dismissed if he intentionally defamed the association and the dismissal was justified.

It is true that the bylaw of the association provided that defamation results in the dismissal of a member. But freedom of expression is one of the rights recognised under Article 29 of

the Constitution of Ethiopia. Thus, the fact that applicant's expression is in fact defamation should not outrightly result in his dismissal. There are various civil and criminal measures that could be taken to punish the applicant for his act but dismissal from membership might not be a necessary and proportionate measure. The court, except for making reference to the bylaws of the association, does not evaluate the necessity and proportionality of the measure in light of the applicant's right to association. If we are going to take rules at face value, the right of the applicant to association could be at stake in this scenario.

In the case of *Unity for Justice and democracy Party v Blue Party*[66] the respondent alleged that the applicant had accepted the membership of certain individuals who are also active members of the respondent organisation. The respondent on the other hand rejected the allegation of the applicant by providing that its new members had terminated their membership with the applicant upon an oral notification. The court, after investigating the matter, decided that the new members of the respondent organisation were required to give a written notification to the applicant before leaving. Thus, the fact that they had given oral notification would not exonerate them from becoming a member of the applicant. Therefore, the court decided the respondent could not register them as its new members.

In this it is clear that the new members of the applicant had made their intention clear by giving an oral notification of their withdrawal from membership. Thus, as far as they made their intention clear, the fact that they did not provide a written notification could not be a ground to force them to continue as members of the respondent against their will. One of the pillars of freedom of association is the right to disassociate at any time. Assuming the members are not interested to give any written notification to the respondent for an indefinite period of time, they will be required to continue membership against their will.

From the above cases, it is clear that there is an insufficient understanding of the content and scope of freedom of association by the judiciary. Although freedom of association is recognized in the constitution, its full application is not realized. But this does not mean there is an insufficient normative framework on the subject. Compared to other rights recognized in the constitution, there is sufficient legislation that is promulgated to protect and defend the right. But the content of the legislations and their proper interpretation is at

[66] *Unity for Justice and Democracy Party v Blue Party*, Case No 112091 (28 May 2007).

stake. In order to avoid the difficulty and ambiguity in the proper interpretation and application of the right to freedom of association, it will require a lot of work and effort in awareness creation towards its purpose and the proper implementation of the right in the Ethiopian polity.