

**ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
DEPARTMENT OF PUBLIC ADMINISTRATION AND DEVELOPMENT  
MANAGEMENT**

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**ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
DEPARTMENT OF PUBLIC ADMINISTRATION AND DEVELOPMENT  
MANAGEMENT**

**A Critical Assessment of Actors, Roles and Power in the  
Charities and Societies Proclamation No.621/2009 making  
process in Ethiopia**

Board of Examiners

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## Acronyms

BPR	Business Process Reengineering
CCRDA	Consortium of Christian Relief and Development Association
CRDA	Christian Relief and Development Association
CLB	Cabinet Legislative Bureau
CSA	Charities and Societies Agency
CSO	Civil Society Organization
CSOTF	Civil Society Organizations Task Force
DAG	Development Assistant Group
EBA	Ethiopian Bar Association
EHRCO	Ethiopian Human Rights Council
EPRDF	Ethiopian People's Revolutionary Democratic Front
EWLA	Ethiopian Women Lawyers Association
FDRE	Federal Democratic Republic of Ethiopia
HPR	House of Peoples Representative
HRW	Human Rights Watch
MoFA	Ministry of Foreign Affairs
MoJ	Ministry of Justice
MP	Member of Parliament
NGO	Non Government Organization
OPM	Office of the Prime Minister
PCS	Charities and Societies Proclamation/Law/
PM	Prime Minister
US	United States

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## **Abstract:**

The purpose of this study is to critically assess the roles and power of government and nongovernment actors during the CSOs lawmaking process in Ethiopia. In order to achieve the stated aim, data is collected from the executive, legislatures, Civil Society Organization Task Forces, Civil Society Agency and the academic by using open ended questionnaire and interviews. Then, discussion and analysis is made using descriptive and analytical research methods. Minutes, correspondences and relevant documents are used to substantiate the responses from the primary sources.

Based on analysis and interpretation of the data, the findings of research shows that the CoMs, MoJ, experts from the OPM, Legal Affairs Directorate of the MoFA, FDRE HPRs, CSOTFs, individual CSOs, donors and individual citizens participated during the CSO lawmaking process, the absolute power being in the hands of the executive. CSOTFs made changes on several but less contentious provisions, those that pitted the government with CSOs are not resolved. Too fragmented opposition parties remain minority while the ruling party enjoyed absolute majority vote. MoJ was prompted to initiate the law because of following reasons 1) the lack of trust that existed between the government and CSOs 2) the previous laws (Civil Code 1952 and Regulation No.321/1959) have neither clear legal provisions to support genuine NGOs nor to punish illegal ones 3) the previous laws do not specifically deal about CSOs 4) the previous laws have contradicting definitions and 5) the Business Process Reengineering (BPR) reform.

All actors shared the need for the law despite differences in key provisions. Key areas of concern focus on: restriction on foreign funding and definition of CSOs, restriction on work areas, powers of the CSA and sector administrators and infringements defined as "Criminal Acts". The ratification of the law is not the last stage in lawmaking process.

Therefore, CSOTFs should continue to raise concerns about the proclamation and design a system for reviewing the enforcement and impact of the proclamation with the aim to provide evidence on how its application is affecting their activities. The executive should make continuous reappraisal of the most contentious provisions and provide remedies for each.

# **Chapter 1. Introduction**

## **1.1 Background of the study**

A constitution sets out the relationship between an individual and the government, and it defines the power of the state and agencies. It also forms the very foundation of public life and regulates the relationship between those who govern and those who are governed, and the latter places the former in a position of trust and authority (Wessels, check in Mulugeta, 2005:141). This relationship, therefore, necessitates the participation of civil society organizations and the entire citizenry in the constitution (mega policy) making process.

It is also added that a constitution as a mega-public policy or at the summit of all public policies, not only offers principles and the spirit to steer the policymaking process, but also patterns institutional and state-society relationships with respect to public policymaking. It is thus such a vital issue that it can only be of value when people who live under it establish ownership over it. The constitution making process, therefore, must be able to bring all actors and stakeholders on board, regardless of creed, religion, sex, ethnicity, color and political views.

In any country in the world: poor or rich the need for citizen participation in any of the affairs of the nation is not questionable. Especially in poor countries like Ethiopia, economic development and participatory democracy cannot be fully achieved without popular public participation in socio economic and political life of the country.

Therefore, the Ethiopian constitution was formulated and adopted after a series of discussions among the representatives of the citizenry and this is officially put in the preamble of the constitution and it is stipulated as " Whereas, the Nations, Nationalities and Peoples of Ethiopia have, through their elected representatives, ratified the Constitution of the Federal Democratic Republic of Ethiopia" this indicates not only how the Ethiopian constitution was formulated but also shows the significance of citizen participation and perhaps the time when the light of public participation in Ethiopia (political accountability of the government) was illuminated.

Hence, the FDRE Constitution in article 89(6) stipulates that the "Government shall at all times promote the participation of the people in the formulation of national development policies and programs; It shall also have the duty to support the initiatives of the people in their development endeavors." And this is still more expressed in article 43(2) as "Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community."

It can be deducted from the afore-stated stipulations that, given the constitutional rights nationals are granted to a say to policies/laws affecting their community through democratically and freely elected representatives. This in general entails that the government of FDRE is also responsible to aid and facilitate Charities and Societies (Civil Society Organizations) in the overall development of Ethiopian people, by among other things, consulting them in the process of making the Proclamation to Provide for the Registration and Regulation of Charities and Societies (PCS)-No.621/2009 which are the major stakeholders.

Enormous policymaking powers in Ethiopia are vested in the executive comprised of the Prime Minister and the Council of Ministers. Several literature in the issue of public policymaking in Ethiopia witness that the three critical elements which attest the executive's prime role in the policymaking process are that it: formulates and issues new policies or modifies old ones; sends draft proclamations to be approved by the House of Peoples Representatives (HPRs); issues regulations and publishes them in the official legal reporter-the *Negarit Gazeta* (FDRE, 1995, 2001; PMO, 2003).

The predominance of the party in every sphere of public life, coupled with the zeal with which revolutionary democratic objectives are advocated, generate an exclusive interest in, and claim on, public policies. Party ranks at higher levels primarily decide policy matters, for the most part immediately preceding the adoption of the same by legislative bodies (Mulugeta, 2005).

He (2005) also added that in Ethiopia the legal and political milieus have inhibited critical civil initiative and civil society organizations from thriving, although constitutional pronouncements appear to motivate public participation in the policymaking process. Moreover, these have been more complicated by the fact that state has always been overwhelmingly a dominant actor. The

values it has nurtured and the philosophy that it promotes strengthens its exclusive claims to determine who should participate, how and with what effect.

Literature also provides a picture that the government does not appear to see its citizens working in the various Civil Society Organizations constellations as its citizens, for they are not integral parts of the government civil service, and there are no mechanisms to ensure the loyalty of personnel working in voluntary sector. So their participation in development and policymaking process is regarded with suspicion. On the other hand, government and party sponsored CSOs enjoy better support, access to the conduits of government resources and information, considered from this point of view, the relationship between the government and civil society organizations is a strained one, although it has not been on a collision course (Mulugeta, 2005).

In Ethiopia, participation in policy dialogue forums or discussions is dominated by groups who are more persuaded to participate in policymaking than autonomous and independent civil society groups. This has, therefore, been emerging as a dominant deterrent factor impeding the contributions that independent civil institutions and the public could have made to public policymaking in Ethiopia. Worse still, public hearings have never changed the direction of government policies, nor are they meant to. However hard one tries, however, many new and alternatives and incisive ideas once come up with, at the end of the day the original legislation as drafted by the executive, which more often than not emerges as the final enactments and are published in the *Negarit Gazeta*(*ibid*).

The announcement of the "Proclamation to Provide for the Registration and Regulation of Charities and Societies (PCS)-No.621/2009 in" Ethiopia was greeted with mixed feelings, incomprehension and indifference by the population and various actors in the process.

It is important to recognize that relations between charities and societies and the government vary drastically from region to region and from country to country (even among the charities and societies) on the historical, political and ideological differences.

In general, both government organizations and NGOs often share a mutual suspicious view (Haile, 2007).

In the first place, most NGOs have suspicious of governments; their relationships are "often sensitive, sometimes difficult." On the other side, government actions can range from permitting the third sector considerable operational freedom at one extreme; to view the sector as a threat to national security and actively discouraging it at the other extreme. To substantiate the problem, Edwards and Hulme (1994:16) linked up the relationship of the governments with NGOs, particularly in Africa, as comparable to the cat and mouse game. Similarly, as Landim(1987:36) stated even NGOs themselves criticized in their lack of coordination among the international cooperation agencies, on the one hand, and between them and local NGOs on the other, cited from (Haile ,2007).

Currently, the process of legislative development in Ethiopia operates in such a way that first a certain government agency drafts the law and circulates the draft as a general report among the nongovernmental organizations and the relevant range of stakeholders who according to the vested constitutional rights discuss with the executive and then it is taken to the council of ministers and finally goes to the parliament for first reading. The parliament, after a series of consultations, dialogues and debates with the relevant actors refers it to the concerned Standing Committee. The Standing Committee that the draft bill is referred to contacts the drafters, consults them (technical hearing) and organizes a public gathering to elicit public opinions'. After consultations with the public and the executive, the committee designs the law for the second reading. A third reading will follow if the session fails to achieve complete deliberations on the draft and a third reading brings the legislative process to end. Finally, the law comes into effect after it is signed by the President and published in the *Negarit Gazeta*, the power of not signing by the President could bring nothing more than prolonging the official adoption for fifteen days, and nevertheless the law takes effect with or without his signature.

This again calls for the fact that, policy making process in the public sector should involve the element of bargaining, compromise and cooperation among citizens, groups, legislative bodies, executive departments, regulatory commissions, business entities and many other stakeholders so as to end up with a policy which can bring about a real outcome to the society.

A fragmented opposition in Ethiopian parliament which is different by experiences, programs and opinions seem to exert almost no role in changing the fundamental national policy issues.

Parliamentary deliberations in the House lack the basic essence of participatory democracy, that is consultation, dialogue and debates are not healthy. This is vividly observable. The public at large and the relevant stakeholders in particular are either not interested to participate in public policy issues or less attempt is made on the side of the government to make the public aware of.

Whatever view one holds, the underlying ethos is that popular citizen participation is the most acceptable root to encourage participatory democracy in the hope of making government more directly accountable to the public interest.

## **1.2 Statement of the problem**

Public policy [law] can be analyzed in a number of different ways. For example, one approach would be to analyze the link between aims, actions, and outcomes. Alternatively, one could explore the outputs of public policy [law] and the impact on society. Another would be to explore the inputs in the making of public policy[law], which may include the actors, resources and structures involved (Richards and smith, 2002). This research concentrates on the later.

The researcher believes that whilst it is important to address law/policy issues through all those ways, as lawmaking is mainly political decision and economic indicators measure its outcome, it is too early to study the impact (outcomes) of the charities and societies law. A research on actors, roles, and power leverage in lawmaking process especially in Ethiopian laws is scanty. Specifically, no research is made on the actors, roles and power leverage for the Charities and Societies Proclamation No. 621/2009 since its ratification by the legislature. Thus, the research entitled as “A Critical Assessment of Actors, Roles and Power in the Charities and Societies Proclamation No.621/2009 making Process in Ethiopia” is timely and relevant.

Second, whilst several of the provisions in the proclamation are meant to constructively improve the efficiency, transparency and accountability of the civil society sector, overall the proclamation is considered restrictive by international standards. As a result its ratification was followed by concern from national and international CSOs. The authors’ view is that had there been mutual consensus among the actors during the process of legislative development (input

phase), had full leverage been exercised by the beneficiaries, there couldn't have been such concerns after adoption.

Third, the PCS was aimed primarily to "Provide for Registration and Regulation of Charities and Societies". Both literally and technically, the PCS considers administrative issues but concentrates on legal frameworks (registration and regulation), and law makers seem to take issues of citizen participation as secondary in designing charities and societies proclamation.

Fourth, the author also believes that analysis does not have to wait until an actual law/ policy has been implemented, it can and does occur throughout the process. The significance of studying the role of actors and power during law making process outweighs studying prospects and challenges after implementation in the sense that proactive measurements shall be done first than reaction. At least input comes first to output and outcome.

Next, the CSOs law has become at the center of debates by the public and media including the government, because in the government document '*Building Democratic Governance and the Revolutionary Democracy 2005:66*' the government has clarified such issues as the role of civil societies in building democracy, rent seeking and civil societies and the role of civil societies in Ethiopia. This document was brought to public discussion immediately after the law is adopted by the legislature to create public awareness to the issue if not to change the direction of the law. The author has participated during discussion and noticed that, government officials with a daunting task of defending the queries that comes from participants are not able to persuade; this inspired the author to question the input phase of the law.

Why do these different views come to the stage of public discussion in Ethiopia? The fact that there was no a formally codified proclamation of this type or the charities and societies agency legally established (the history), or very importantly the impact the law has on those actors because some laws can be implemented without public expenditure, or the ideological conflict between actors, or the interaction and interrelationship between the political arena and the economic system and the cultural and social factors or all cannot be divorced from the law making process.

The afore-stated reciprocal views between the government and nongovernment actors indicate that the CSOs law making process in Ethiopia had had its own predicaments. The researcher has taken a view that there exist bottlenecks created during the law making process. In light of the above statements and related reasons, the law as a process requires a balanced participation of the legislature, executive, CSOs and other stakeholders in the scene.

### **1.2.1 Research questions**

This research attempts to answer the following basic questions:

1. Who are the major actors or the leading players that exercise the strongest leverage in the “Charities and Societies Proclamation (*PCS*)-No.621/2009” making process in Ethiopia?
2. Why have the political executive and the ruling party- fused-executive leadership dominating in the CSOs law making process in Ethiopia?
3. What prompted the government to initiate the PCS and to adopt it later in the parliament?
4. What are the key areas of concern by local and international CSOs and the donor community on the law? Why?
5. How can one assess the relative strength, participation of the civil society organizations, and other stakeholder’s role in CSOs law making process versus the executive?
6. What strategies will correct the disparity in the Charities and Societies Proclamation making process in Ethiopia?

### **1.3 Objectives of the study**

The general objective of the study is to critically assess actors, roles and their power leverage during the "*Proclamation to provide for the Registration and Regulation of Charities and Societies (PCS)-No.621/2009*" making process in Ethiopia through an extensive review of literature and empirical evidence. The specific objectives of the study are:

1. to disclose the major actors or the leading players that exercise the strongest leverage in the CSOs law making process in Ethiopia: the key actors who have dominated from its formulation until ratification in the parliament.
2. to examine the relationship between the executive, on the one hand, and the legislatures, on the other, the power that each has brought to put up on the Proclamation making process in Ethiopia;
3. to critically assess the relevant features and problems in Proclamation making process: the clash between proclamation making institutions and the beneficiaries;
4. to disclose key areas of concerns on the Proclamation and reasons behind such concerns.
5. to comment on trends in the lawmaking process in Ethiopia and assess whether the proclamation making processes are participatory and balanced.

## **1.4 Significance of the study**

The research proposes and thus creates a stage for discussion among different stakeholders of same or reciprocal interest in legislative development process especially on the fundamental democratic issue of participation in the political decision process and helps other researchers conduct research of this type so that add new knowledge in the lawmaking process in Ethiopia than merely concentrating on analysis of the output or outcome alone.

From the legal point of view, the study provides insight into executive, legislature, charities and societies and the public on how much major law maker (usually the government) was politically accountable to nongovernment actors during the process of making charities and societies proclamation and take own insight.

The study also enables the lawmakers and development planners to either congratulate for what has been done or revisit the law by reconsidering the voices of the actors in the lawmaking process otherwise.

Apart from this, proper assessment of the type and extent of participation among different actors in the proclamation making process helps domestic and international community understand the political accountability of the FDRE government in relation to Charities and Societies Proclamation making process. Above all, the study is expected to provide for broader evaluation of the democratic or civil society space. It will provide information on whether the proclamation making process, as its preamble says, respected its stated objectives.

## **1.5 Delimitation of the study**

This research is delimited by focusing on the inputs in the making of the law but not all the different ways stated under the “statement of the problem”.

The study is delimited to critically assess the role of institutional actors and their power leverage during the making of the new Charities and Societies Proclamation. Thus, Ethiopian Civil Society Organizations ad-hoc task force that was engaged in developing commentaries for the draft law, the executive (Ministry of Justice), the legislature, the Civil Society Organizations Agency, and the academic are major actors included in the study. Information related to their roles and power during the law making process from agenda setting until its ratification by the HPRs is gathered.

The donor communities are not appropriate because the research specifically addresses the role and power of Ethiopian actors during the law making process and individual citizens are intentionally excluded because they are indirectly represented in the House of Peoples Representatives and they are not institutional actors.

## **1.6 Limitation of the study**

This research has specifically addressed the new CSOs law because of this no research was made on the topic thus getting past research outputs was difficult. Collecting the data especially on HPRs was the most challenging task the researcher faced because they were often engaged in the task of the 2010 national election campaign. Thus, the researcher has spent a lot of time.

## **1.7 Methodology of the study**

### **1.7.1 Method**

In this study descriptive and analytical research methods are used. Descriptive method is used because the research aims to describe, in detail, a situation or set of circumstances. It aims to answer questions like who does what? and what happened? during the lawmaking process. Finally, explanation and analysis is made based on the data collected.

### **1.7.2 Methods of Data Collection**

This research is purely qualitative, which is appropriate to collect subjective opinion from government and nongovernment actors about the roles and power that they exercised as a result of participation in the charities and societies proclamation making process. Because of the qualitative nature of the study, the research relied on interviews, open-ended questionnaire and document review. An open-ended questionnaire response is used because more facts can be collected as it gives detail opinions of the respondents. Interview is used especially on their roles, power and procedures as well as actual practices during the law making process, it is appropriate for collecting data of this nature.

Interviews and questionnaire responses were collected in English. Interviews were tape-recorded, this provided the researcher with opportunity to go through the tapes and carefully transcribe them. Organized by respondents empirical evidences collected through questionnaire, interview and document review are analyzed and summarized.

### **1.7.3 Sources of Data**

Since the research concentrated only on the input stage of the proclamation, it has used an extensive review of past documents created during the process. In addition to primary sources, to substantiate interview and questionnaire responses, the researcher has made a detailed review of the following key documents:

- 1) The Minute of Public Hearing Session of the House of Peoples' Representatives on the "Proclamation to Provide for the Registration and Regulation of Charities and Societies (PCS)-No.621/2009".24 December, 2008.
- 2) An abridged clarification of the Charities and Societies draft Proclamation by Ministry of Justice (Meskerem 2001E.C).
- 3) Concept Note: Monitoring the enforcement and impact of the CSO proclamation.
- 4) Concept Note: Assessment to inform the design and implementation of the adaptation facility for CSO proclamation.
- 5) Briefing notes for the DAG/EPG prepared by CSSG on CSO proclamation.
- 6) Technical analysis of the PCS/CSO law (April 2009).
- 7) Background note for the High Level Forum on CSO proclamation.
- 8) Proclamation to Provide for the Registration and Regulation of Charities and Societies (PCS)-No.621/2009.

#### **1.7.4 Sampling technique and Frame**

Because the research focuses on the whole process of lawmaking from agenda setting until ratification by the legislature, a qualitative study of a purposively selected group of government and nongovernment actors should be studied. Accordingly, this research used a purposive sampling technique to get incisive information from the group of different actors in the process; institutional actors relevant to the study that participated during the law making process are considered as respondents. Again, from each group a representative sample is taken purposively.

Therefore, the sampling frame for this study incorporates: Ministry of Justice (executive) represented by the public prosecutors, the FDRE HPRs (legislature), the Civil Society Organizations ad-hoc Task Forces (CSOTFs) and the Ethiopian academic. .

CSOTFs are composed of 16 network and individual CSOs in Ethiopia, these are

1. Poverty Action Network of Civil Society in Ethiopia (PANE),
2. Consortium Christian Relief and Development Association (CCRDA),
3. Action Professional Association (APA),

4. African Child Policy Forum (ACPF),
5. Basic Education Network-Ethiopia (BEN-E)
6. Code Observance Committee (COC),
7. Ethiopian Bar Association (EBA),
8. Ethiopian Interfaith Forum for Development Dialogue and Action (EIFDDA),
9. Ethiopian Women Lawyer's Association (EWLA),
10. Federation of Ethiopian National Associations of Persons with Disabilities (FENAPD),
11. Oromo Grassroots Development Initiative (HUNDEE),
12. Union of Ethiopian Women Charitable Association (UEWCA),
13. Organization for Social Development (OSD),
14. Pastoralist Forum Ethiopia (PFE),
15. South Ethiopia Civil Society Resource Center Association (SECSRCA) and
16. Union of Ethiopian Resident Charities Consortium (UERC),

### **1.7.5 Sample size**

From the public prosecutors, the researcher selected two lawyers to gather all the necessary information including relevant documents required from the side of the executive branch.

From the FDRE House of Peoples Representatives (legislature) the relevant respondents are members of the Legal and Administrative Affairs Standing Committee and leaders of major Opposition Parties in the HPRs. Thus, the researcher has taken four EPRDF MPs from Legal and Administrative Affairs Standing Committee and four from major opposition party members in the Parliament who are specifically involved during the proclamation making process.

The 16 CSOTF members are organized in such a way that they have a CSOTF Coordinator selected from CRDA, Program Coordinator from CRDA and a lead consultant from Ethiopian Bar Association (EBA). Hence a CSOTF Coordinator, Program Coordinator and CSOTF Lead Consultant are taken as respondents for the study.

These respondents not only represent their organization (CRDA: an umbrella organization of more than 350 CSOs) and EBA but also they are Coordinator, Program coordinator and Lead consultant of all members of CSOTFs mentioned above. They were primarily in charge of

preparing written comments to the draft proclamation and attending face to face discussion with MoJ, the Prime Minister and with the members of House of Peoples Representatives. Thus, they are highly representative of the CSOTF members that have a common objective: Creating an enabling environment for civil society in Ethiopia.

Finally, an expert in FDRE Charities and Societies Agency (CSA), who is also EPRDF MP and two Ethiopian academics are selected as respondents whose information is used to substantiate the data obtained from the major government and nongovernment actors. Table 1 below shows the number of respondents from each frame.

Table 1. Number of respondents

No.	Sampling Frame	Sample Size
1	Ministry of Justice	2
2	House of Peoples Representatives	8
3	Civil Society Organizations Task Forces	3
4	Academic	2
5	Civil Society Agency	1

## 1.8 Organization of the study

The research consists of four chapters. The first chapter provides a brief introduction and presents the background of the study, statement of the problem and research questions, objectives of the study, significance and delimitation of the study. Finally the chapter presents the limitation and methodology of the study.

Chapter 2 consists of the theoretical framework. In this chapter, the nature of the political system, the parliamentary and presidential systems of government, the doctrine of separation of power, the legislative development process in selected parliamentary systems of government in the world, the legislative development process in the FDRE HPRs and the conclusion are treated in that order. The third Chapter contains discussion and analysis of the data. Finally, summary of the findings, conclusion and recommendations are placed under chapter four. The thesis also includes list of references and appendices.

## **Chapter 2. Theoretical perspectives on systems of government, law and lawmaking process**

### **2.1. Introduction**

This chapter provides the dynamics of systems of government in the World within the context of the analytical and theoretical framework of lawmaking process in different systems of the government. It introduces conceptual and analytical tools on the basis of which empirical evidence shall be assessed, examined and analyzed. In an attempt to examine where real lawmaking power resides in each government systems, explanatory variables and conceptual issues concentrate upon the role of major actors such as legislators, executives, political parties and their power to affect the law.

The purpose of this chapter is, therefore, to offer an explanatory framework that draws on many instances in different systems of governments to help us comprehend the dynamics of the Charities and Societies Proclamation No. 621/2009 making process in Ethiopia. It provides a ground for an appraisal of the actors, roles and power in lawmaking process. It also looks the relationship between the government and nongovernment actors during legislative development process, and explores the contentious issue of the concept of absolute separation of power and the executive-legislature check and balance in governance.

In a bid to achieve these, this chapter provides the legislative development processes adopted and the prime movers, architects and players in lawmaking processes in presidential and parliamentary systems of government in the some purposively selected governments in the world putting more emphasis to the system of government and lawmaking process in Ethiopia. Finally, the last section provides the conclusion.

## 2.2. Defining a political system

The Greek philosopher, Aristotle (384-322 BC), said that man was by nature a political animal. he argued that it was within man's natural development to live in some sort of ordered society under a system of government (Denis and Ian, 1999:4)

Denis and Ian noted that to understand the nature of political system, it is necessary to define certain words which are frequently used in every day speech. One of these is "government". For them, government means "an orderly way of running a community's affairs. The absence of government is anarchy, with everyone looking after himself: the law of the judge. In a more specific sense we speak of 'the government' as a body of people who have power to make us behave in certain ways. Because they are the government they have authority as well as power. In other words their power is legitimate".

They continued, another word frequently used in this context is 'state'. And, explained that, the state is often seen as synonymous with government. They added, to some extent this is quiet valid: a government department can also be called a department of state. The word should be used a little more precisely, however. Governments come and go, but the state may be said to be permanent, comprising the whole apparatus by which a community is governed: the armed forces, the police, the civil service, the judicial system, and so on.

Denis and Ian also explained that within the same broad context of a political system, there are 'politicians'. They are the people who achieve, or hope to achieve, power and, in simple terms, run the government. Politicians are the people who occupy positions of power as long as they have the support of the community, or they may be the people who aspire to power but are temporarily out of office.

Like Denis and Ian, Rummel also distinguished state and government as: A state is a formal group that is sovereign over its members and occupies a well defined territory. It is the formal apparatus of authoritative roles and law norms through which that sovereignty is exercised. The state, should not be confused with a specific balance of powers a particular status quo, a government. Governments may effect massive change in laws and roles while the state remains

the same. Changed are the civil order, the polity, the particular law norms and authoritative roles through which the elite manifest their interest (1976:105).

He added, at the outset, then, the political system of a state must be distinguished from the state itself. A political system consists of the formal and informal structures which manifest the state's sovereignty over a territory and people. It is the civil aspect of statehood. But a state through its lifetime may have many different political systems, as have China, Russia, and France, [and the present day Ethiopia]. As the political elite exercise more or less coercive power, we can call a state more or less powerful. As ideologies grant a political system more or less power, we can call these ideologies more or less statist. But this is not to confuse the state as a sovereign group with the particular balance through which this sovereignty is manifest (ibid).

With this in mind, let us focus on the types of political systems. Rummel noted that “Although there is a tendency in modern political science to treat the political system as an abstract one of inputs and outputs, or of functions and institutions (Easton, 1965), we should not forget that a political system constitutes a balance among competing interests, capabilities, and wills, a specific status quo. *And this is a balance among individuals.* A specific political system is a particular definition of authoritative roles and law norms and an allocation of rights and duties historically determined through conflict, a balancing of powers. Those who fill these roles, who have the right to command others, are the political elite (1976:105)

Easton defines the political system as “the system of interactions in any society through which binding or authoritative allocations are made.” Authoritative allocations may be roughly translated as policymaking, although the term may have broader, symbolic implications. In this political system, there are inputs from the various environments and these are converted into outputs, that is authoritative decisions. Feedback mechanisms put outputs back into the system as inputs, thus completing a complex cyclical operation. Many demands will be made, or articulated; but some are lost in the conversation process and do not reach the output stage. If there are too many demands, or particular types of demand, stress arises, and the channels are then overloaded (Easton, check in Ball and Peters, 2005:209)

Most importantly Denis and Ian provided that a country's political system, then, is more than its institutions and more than the formal processes of government. Thus a country's political system includes the dynamic interplay of people's ideas and interests: the whole process of demand and response which politics represents. Even if a government is highly authoritarian, giving little room for a political process to work, there will always be at least an undercurrent of activity which expresses the true aspirations of the people; however subordinated they may be by those with power and authority-the government. For them, government means "an orderly way of running a community's affairs (ibid).

A thorough understanding of a country's political system, therefore, lays a ground for us to understand a government, thus government systems.

### **2.3. The parliamentary system**

The parliamentary system typically has clear differentiation between the head of government and the head of state, with the former being the Prime Minister and the latter, the President. The Prime Minister is the chief executive and, together with the Cabinet, exercises executive power or the authority to form and implement policies and programs. He/she is also usually the leader of the political party that wins the majority of votes in the legislature or parliament, either assuming the post automatically or gets elected by the legislature. The members of the Cabinet are chosen by the Prime Minister from the members of parliament and can come from the same party or from a coalition of parties (Abueva, 2002: 35)

The head of state, meanwhile, is the President, often elected by a designated electoral college as a figurehead with ceremonial powers. In some cases, however, the President could take on a more significant role during a constitutional or political crisis. In the parliamentary system, there is fusion of powers between the executive and the legislative branches. This union serves to facilitate the exercise and coordination of governmental powers and functions to formulate desired policies and implement programs of government. The success of this fusion depends largely, though, on the reform of the country's political party and electoral systems (ibid).

For some parliamentary governments, legislatures can only amend legislation on narrow terms. There are a few permanent or standing committees in the parliament that assist in the drafting and review of legislation. Given its close association with the legislative branch, the executive can be made more accountable for its performance since they are answerable to the members of parliament. There are two ways by which the Prime Minister and the rest of the Cabinet can be asked to step down. The first is through a vote of no-confidence by the legislature often initiated by an opposition party or coalition of opposition parties. This may or may not result in extraordinary elections. The other route is by virtue of a party vote, which does not force a new round of legislative elections. The Prime Minister, as long as he/she enjoys the confidence of the majority of the House, can dissolve the Parliament and call for early elections (ibid).

Green also explains parliamentary government very broadly to mean a form of government which includes a systematic arrangement to obtain the consent of the governed to the actions of the government. Parliamentary government in this broad sense need not be government by elected officials. Rather, parliamentary government is government in which whoever holds power must describe publicly how that power will be used, and the people affected by such use of power must give their permission for it. That is, parliamentary government is government that requires state action to be based on mutually voluntary, two-way communication between the ruler and the subjects (Green: 1993:2)

In a parliamentary system, the head of the government, the prime minister, is chosen from within the ranks of the legislature. He or she must, therefore be supported by, and is dependent upon, the confidence of the legislature. The prime minister can fall and be dismissed from office by the legislature's vote of no-confidence. On the other hand, he or she (normally in conjunction with the head of the state) has power to dissolve the legislature and call for new elections. Because of the need for close collaboration between the executive and the legislature for their mutual survival, parliamentary democracy is referred to as a system of "mutual dependence"(Florencio, 1999: 5)

### **2.3.1 The doctrine of separation of power in governance**

Vile, gave the following definition for the separation of power

A 'pure doctrine' of the separation of powers might be formulated in the following way: it is essential for the establishment and maintenance of political liberty that the government be divided in to three branches, the legislature, the executive and the judiciary. To each of these three branches there is a corresponding identifiable function of government, legislative, executive, or judicial. Each branch of the government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches. Furthermore, the persons who compose these three agencies of government must be kept separate and distinct, no individual being allowed to be at the same time a member of more than one branch. In this way each of the branches will be a check to the others and no single group of people will be able to control the machinery of the state (Vile, 1967:13). He added that, the doctrine is founded upon the need to preserve and maintain the liberty of the individual. The mechanism it adopts is to divide and distribute the power of government to prevent tyranny, arbitrary rule and so on. The essence of the doctrine is therefore one of constitutionalism (ibid).

As the above statement puts, the basic control is vested in the three types of branches of a government, in three separate and independent institutions, the legislature, the executive and the courts, with the personnel of each being independent to each other.

Carney, explains: that there seems to be no current constitutional system which adopts complete separation of powers. For example, some of the early American states and the French constitution of 1791 tried to strictly give effect to this doctrine but failed. The strict doctrine is only a theory and it has to give way to the realities of government where some overlap is inevitable. But while permitting this overlap to occur, a system of checks and balances has developed and needs to continue to develop (Carney, 1993:3)

He (ibid) noted that the *United States Constitution of 1787* incorporates the doctrine of separation of powers with a system of checks and balances and the *Westminster system [United Kingdom]* effects only a partial separation of powers as the following tables illustrate:

Table 2: Separation of Power in the United States Constitution of 1787

<b>Institution</b>	<b>Power</b>	<b>Personnel</b>	<b>Control</b>
Congress	Power to make laws	Elected representatives	Presidential veto; Supreme Court review of validity
President	Executive power	Elected. Cannot be member of Congress	Senate verification necessary for cabinet and diplomatic appointments, and treaties; Judicial review; Impeachment by removal by Congress
Supreme Court	Judicial power including judicial review of legislative and executive activity	Appointed by President with Senate ratification	Impeachment by Congress

Source: Carney, 1993:3

Table 3: Partial separation of power in the Westminster system: United Kingdom

<b>Institution</b>	<b>Power</b>	<b>Personnel</b>	<b>Control</b>
Parliament	Make laws	Representatives elected to lower House. Elected or appointed to upper House.	(Royal Assent) Supervision and/or expulsion by the House.
Executive Council (Cabinet)	Executive power	Ministers appointed by the Crown with the support of the lower House. <i>Must be members of the parliament</i>	Maintain support of the lower House.  Parliamentary and judicial review
The Courts	Judicial power	Judges appointed by the Executive	Superior Court Justices removal by the Crown an address from both Houses on certain grounds

Source: Carney, 1993:3

Carney (1993: 4) states the challenges of the tripartite classification of power as follows; Not all government powers can neatly slotted in to just one of these categories as the pure doctrine assumes to be the case. The inadequacy of this classification has become more obvious in recent times in relation to at least two areas of government activity: rule making and policy making. Both these processes occur in all three branches of government and how they fit in to the doctrine of separation of powers is still being resolved. They certainly challenge the applicability of the pure doctrine today but it is the theory of limited government by division of powers and controls thereon, which helps to determine the appropriate relationship between rule makers and policy makers in the three branches of government. Here, Vile asserts that an informal rule needs to be recognized by the principals of the three branches, namely, members of the Parliament, Ministers and their officials, and judges, that each recognizes the difference between their own respective primary functions and the primary functions of the others.

Denis and Ian(1999:79-80) described the three possible bases on which to examine the assembly-executive relationship. First, the extent to which an assembly can initiate legislation, second, the extent to which an assembly can influence policymaking, third, the extents of an assembly's ability to criticize the executive, block its policies, and even dismiss it. The vast majority of contemporary assemblies are not significant initiators of the legislation. They are mainly amenders and approvers. For this reason they have frequently been categorized as 'reactive chambers'. There are, however, some notable exceptions which stand out as examples of 'active' legislatures. Nonadversarial Sweden, where assembly members are mainly grouped in constituency, rather than party, blocks, is one. So, to an even greater extent is the United States. In Sweden private members' proposals (*motioner*) are ten times as numerous as government bills, although the bulk of the former are amendments or party alternatives to government bills, designed to spark off new discussion and inquiries. In the U.S Congress thousands of bills and resolutions are introduced each year by senators and representatives, several hundred of which ultimately become law.

The ability of the assemblies to influence policymaking is also slight, Sweden, again, being somewhat unusual in this respect. An assembly in a state with a parliamentary executive is in theory, in a strong position to make policy since the executive is drawn from it and responsible to it. In practice, however, an assembly member who has joined the executive to a great extent loses his or her allegiance to the assembly and becomes, psychologically but not physically, separate from it. The third base on which to examine the legislative-executive relationship, is the ability to criticize, block policies and, *in extremis*, to dismiss an executive. Most assemblies in parliamentary executive systems have built-in mechanisms for regular questioning of ministers (ibid).

## **2.3.2. The legislative development process in the parliamentary system of government**

### **2.3.2.1. The legislative process in the Japanese government**

Under this subtopic, the legislative development process of two purposively selected parliamentary systems of government such as that of Japan and the Westminster (United Kingdom) are treated to lay the ground for understanding the legislative development process of the present day Ethiopia.

As far as the lawmaking process of the Japanese government system is concerned, it is reproduced below and can also be viewed at the official website of *Committee on Japanese Materials of the Association for Asian Studies* as written by Bazzel. The subsequent paragraphs are, therefore, taken from the aforementioned source and are described as follows:

Unlike the presidential system in the United States, under the parliamentary system in Japan, the majority of laws are introduced to the legislative branch as Cabinet bills, which are generated by administrative branches. The administrative branches in Japan are roughly equivalent to Federal departments and agencies in the United States. The Cabinet is composed of a Prime Minister and Ministers.

The following explains how the draft bill moves through the system: A draft bill begins its life in a ministry with an interest in a particular issue. Usually in the first stage a ministry bureaucrat drafts up a proposal bill. The draft bill then goes through several rewrites with the agency. The document division within the agency is responsible for reviewing the contents of the proposed bill and negotiating the language between other government agencies and politicians in parliament. If a bill is controversial or high visibility, bureaucrats often form an official advisory council or commission to solicit input and recommendations. An advisory council is ideally composed of outside experts but reality often finds councils top heavy with hand ex-bureaucrats. Issues surrounding the bill are studied and a report supporting agency bureaucrats is generated.

Sometimes instead of using an advisory council an official private study group or ad hoc consultative group may be utilized. These groups are usually chaired by a high profile ex-official.

Once the agency is satisfied with the language of the proposed bill, it is transferred to the Cabinet Legislation Bureau (CLB) for official investigation. The CLB primarily focuses on the bill's legality and the successful passage of the bill often depends on how refined the bill's language is when it arrives at the CLB. When the bill arrives at CLB, the agency simultaneously begins briefing members of the ruling party on the bill to garner support from the ruling party.

If the bill passes the CLB investigation, it will next be presented at a Cabinet meeting. If the Cabinet supports the bill it will go to the House of Representatives as a Cabinet proposed bill, where it will then be passed to the Parliamentary Legislative Committees for review. Originating agency officials [drafters] brief, answer questions, and submit supporting materials to the committee members who are members from both ruling and opposition parties. Once the bill is passed in the committee meeting, it is then sent to the full legislative branch for discussion and vote.

### **2.3.2.2. The legislative process in the Westminster-United Kingdom**

The following note explains the process by which legislation is passed by parliament in the Westminster-United Kingdom. It highlights the dominant role played by the executive and the declining influence of MPs.

As far as the legislative process is concerned Zander, noted that, in practice it is only those proposals which have the strong support of the government which will be passed. Even, some will fail to get through the following long and time consuming process. Most bills must complete all their stages within one session of parliament. However, it is also possible for the government to circumvent the full legislative process and drive through statutes at great speed (1999:55-56).

The following legislative procedures are forwarded as they are described by the same author which was initially taken from the website (the source describes the post 2006 legislative process).

### **The Whitehall stage**

In the Westminster, all acts of parliament starts life as a Bill which must pass through parliament. This stage is the main legislative process. But equally, if not more important, is what happens before a Bill reaches parliament.

Almost all Bills are public, that is, they affect the whole country. But, a few are private and only affect a local area or institution. Public Bills originate from a number of different sources. The majority are proposed by the government departments in Whitehall. Most are devised by ministers and civil servants without having been put to the electorate for a specific approval. Some proposed legislation originates from the findings of special commissions or official inquiries, or from the reports of the Law Commission, which is the permanent body set up to review areas of the law which might need change. The government decides whether or not to agree to these proposals and put them before parliament.

Once a department has decided that it wishes to ask parliament to pass legislation on a certain topic, it will undergo a consultation process with interested parties. The extent of this process will differ depending on the complexity, importance and urgency of the matter. It may take many months or a few days. The first stage is often a consultation document called a Green Paper which sets out in general terms what the government is seeking to do and asks for views. Once these are received and taken account of (or not) the government will produce a White paper, which sets out the proposals decided upon and the reasons for the legislation. These two stages may be contracted into one.

These stages are not fixed by formal rules and are subject to change. For example, it is increasingly common for draft Bills to be drawn up and circulated for consultation before being formally laid before parliament. Occasionally, Bills are scrutinized by parliamentary committees before being formally introduced.

## **Drafting**

At the point where a department has decided on the provisions it wishes to pass these are passed to civil servants called parliamentary council, lawyers who are experts in drafting techniques. A long or complex Bill may take many months to draft, with regular meetings between Parliamentary Counsel and the department responsible for the Bill to ensure that the wording accurately reflects what is proposed. Once the Bill is drafted it is ready to be presented to Parliament.

One effect of the need for Bills to be tightly drafted legal documents is that they are often difficult for non-lawyers to understand. In order to address this problem and so to increase the accessibility of legislation, a plain English summary of the purpose and content of the Bill is now published alongside the more formal and legally drafted overview.

## **The Westminster stage**

In order to be given time in parliament, a Bill must have been approved by the Future Business committee. This is a cabinet committee which decides which Bills will be put before parliament in the following session. Thus, a department wishing to pass legislation must normally seek space in the timetable from the committee the year before it will be ready to be passed. In this way there is a rolling program of proposals and Bills at different stages of preparation. At any one time parliament will know what is due to come before it for the current and future session.

All Bills must be passed by both the House of Commons and the House of Lords. They can start in either, but most start in the Commons and pass through the following stages:

## **First reading**

This is a formal stage whereby the Bill is laid before the House and is ordered to be printed. There is no debate on its content.

## **Second reading**

At this stage, the Minister sets out the policy objectives of the Bill and a debate is held in the House on its merits in broad terms. It is rare for there to be a vote on the Bill at this stage or for a government Bill to be defeated.

## **Committee stage**

The detailed scrutiny of a Bill takes place in a Standing Committee, which, despite its name, is specially drawn up for each Bill. It is made up of about 18MPs selected by another committee called the Committee of Selection.

The purpose of the Committee is not to consider desirability of the Bill in principle, since that has already been approved by the House during the Second Reading, but to scrutinize the workability of the detailed clauses.

The members of the Committee must be in proportion to the representation of each party in the House overall, so that the government will almost always have a majority. Interested parties will lobby the members and amendments will be proposed by both the opposition and government members. In practice, almost all the amendments which are successful are those which are proposed by the government, though sometimes the members can be persuaded of the validity of a proposal for change by an opposite member.

## **Report stage**

Once the Committee has agreed a draft Bill it goes back to the House. The government may reject the changes carried out at Committee stage or, indeed, make further changes.

## **Third reading**

The final stage is another formality, where the Bill is confirmed and is now ready to be passed to the House of Lords. No change can be to the content of the Bill at this stage.

### **Process in the House of Lords**

The formal stages in the Lords are broadly similar to those of the Commons, apart from the fact that the Committee stage is usually carried out in the House as a whole rather than by Committee, and this stage is less tightly controlled, with unrestricted debate allowed on amendments. In addition, changes can be made at the third reading stage. However, the culture of the Lords is rather different because there is less government control of the process. The party system which is enforced through the Whips is weakened by the presence of cross-benchers who do not belong to any party and other Lords such as the Law Lords who may contribute to debate on Bills affecting the legal system.

However, the capacity of the Lords to affect legislation is also limited. It can delay the passage of most Bills for a year, but will only do so in rare cases.

### **Royal Assent**

This is the final stage in the legislative process whereby the Queen signs the Act of Parliament. It may come into force immediately or at a future stage, as stipulated in the Act.

As it is noted above in the Westminster-United Kingdom the key feature of the legislative process is that it is strongly controlled by the government, and the bigger the government's majority the greater the government control. Most legislation is initiated by the government and MPs of the party in power have relatively little scope to influence its content. Through the system of Whips, MPs who enforce party discipline, they are required to support their party line on almost all important legislative decisions.

## **2.4. The presidential system**

Under this political system, the President is both head of state and head of government. The incumbent for the position is elected nationwide on a timing that has been predetermined in the Constitution. Thus, in the presidential system, the President is said to enjoy a direct mandate from the people. There is a fixed term of office for the President, which may be reelected depending on the country adopting the system. The Philippines, South Korea, Indonesia, Nigeria,

most South American nations and the US, which is the pioneer, are the countries with the presidential form of government (Abueva, 2002:39).

In presidential or separation of powers system, the chief executive, or the president, is elected for a fixed, constitutionally prescribed term. He or she cannot be forced by the legislature to resign, except for cause through the highly unusual and exceptional process of impeachment. Being directly elected by the people, the president has full claim to democratic legitimacy. The legislature is an assembly of elected representatives similarly enjoying fixed and constitutionally prescribed terms. As such, it cannot be dissolved by the president and possesses as much democratic legitimacy as the executive (Florencio, 1999:2).

The executive branch, which the President heads, is distinct from the legislative and judicial branches of government, which are all independent of one other. This separation of powers serves to check and to balance certain actuations of either branch of government. While the members of the legislature are elected, the members of the Cabinet are appointed by the President and may require the confirmation or consent of the legislative branch. The formulation, amendment and review of legislation are the sole purview of the legislature. However, on many occasions, the executive could endorse a legislative agenda for consideration and veto a bill that was passed in the legislature. The latter, nonetheless, could overturn it via a two-thirds vote. When it comes to the difficult process of removing a President, often the only legal way is through an impeachment process that is undertaken in the legislative branch (Abueva, 2002:41).

He (ibid) noted that, in theory, the parliamentary and presidential forms of government are on opposite sides of a pole. In practice, however, countries customize their chosen system according to their needs, culture and beliefs resulting in the so-called hybrid model. France, for instance, is a country with a hybrid model cited as a semi presidential system since its President is said to enjoy broader powers than the Prime Minister. In the present state of Philippine affairs, changing its Charter and choosing the most appropriate form of government are of critical undertakings in the political scenario. It becomes even more crucial when one has to bear in mind that institutional development and good governance are the foundations of a viable democratic political system (whatever it may be) and sustainable economic development.

Apart from the above basic differences in the relationship between the executive and the legislature, there are other important differences (ibid):

1. In a parliamentary system, the executive is divided into a prime minister, who is the head of the government, and a monarch or president, who acts as head of state. Unlike a prime minister, a president or monarch has fewer powers and plays an important role as an “above-politics” leader. He or she also plays a stabilizing and mediating role, especially in times of crisis. In a presidential system, on the other hand, the executive is undivided: the head of the government is also the head of the state.
2. In parliamentary government, the prime minister appoints the ministers, but because the government is a collegial body, he or she is merely *primus inter pares* or is regarded as a “first among equals.” In a presidential government, on the other hand, the president is a one-person executive. He or she also appoints the heads of departments, but they are his or her subordinates or alter egos.
3. While ministers are drawn from the elected members of the legislature in a parliamentary system, department heads in a presidential system are constitutionally barred from becoming members of the legislature and vice versa.
4. The president, unlike a prime minister, is not responsible to the assembly; instead, he is ultimately responsible to the constitution by the process of impeachment.
5. The legislature, in a presidential government, is ultimately supreme over the other branches of government. It approves the appropriation of government, may impeach the president if the latter behaves unconstitutionally and, in the event of conflict with the judiciary, may assert its will since it has the right to amend the constitution. In a parliamentary system, the government and the assembly cannot dominate each other. The government depends upon the support of the assembly to stay in power, but if the government chooses, it may dissolve the parliament.
6. The presidential executive, being directly elected by the whole body of electors, is directly responsible to the electorate. The parliamentary government, while being directly responsible to the assembly, is only indirectly responsible to the electorate.
7. Finally in a parliamentary system, the focus of power in the political system is the parliament. In a presidential government, there is no focus of power since power is

diffused in the three co-equal and coordinate branches of government: the executive, the legislative and the judiciary (Florencio, 1999:4)

Florencio noted that a strong case can be made that a parliamentary form of government is a more supportive evolutionary framework for developing effectiveness in governance and for consolidating democracy. From both the standpoints of theoretical predictability and empirical evidence, the parliamentary form of government has shown:

1. Better ability to prevent gridlock and promote a cooperative relationship between the executive and legislature in policymaking.

Under the parliamentary system, the powerlessness and deep frustration that generally characterize presidential government is more exception than rule. The difference lies in the ability of the parliamentary government to muster a majority in the legislature and command support and cooperation from it. More important, the mutual dependency relation in parliamentarism creates effective constitutional devices to break deadlock or remove inefficient governments. Frustrating, unproductive and long impasses are thus avoided. Thus, as a system that can better avoid deadlocks, discourage coup attempts and promote better cooperation in policymaking, a parliamentary democracy is superior and should be preferred over a presidential system.

2. Greater capacity to ensure stability and continuity in governance and prevent military coups and extra constitutional action by the executive.

Even leaders who have lost power do not end up with nothing, unlike in a presidential system. They are practically always assigned seats in the legislature and sometimes have the status of “leader of the loyal opposition.” In presidential elections, defeated candidates, regardless of the number of votes they garnered, are likely to be considered unattractive candidates for the next election and thereby lose leadership position in the party. If they desire to continue with their political career, they will have to wait for the next cycle of election without any access to executive power and to patronage.

3. Better capacity to ensure accountability in governance;

4. Greater propensity to create a political environment conducive to the growth of coherent, disciplined and strong political parties, and
5. Greater ability to encourage a multi-party setting and promote a more open and plural politics (ibid).

## **2.5. The Legislative process in HPRs: Federal Democratic Republic of Ethiopia**

Article 53 of the current Constitution of the Federal Democratic Republic of Ethiopia (FDRE) establishes a two-House Parliament for the Federal Government: the House of Peoples Representatives and the House of Federation.

Although the FDRE Constitution establishes a two-house parliament, the Ethiopian parliament is not bicameral in the strict sense of the term. The highest legislative body is vested in the House of Peoples' Representatives (HPRs), which is comparable to the first or lower chamber of a legislature, normally serving the interest of the people in the federation as a whole. The members of the HPR are elected by a plurality of the votes cast in general elections every five years (Girmachew, 2010:2).

The Ethiopian system is essentially parliamentarian, where the political party or parties with the greatest number of seats in the HPRs shall form and lead the executive and approve the appointment of members for the executive Council of Ministers and the Prime Minister. The HPRs shall also nominate the candidate for the President, who will be accepted by a two-thirds majority of both chambers of the legislature. The President has no real powers, similar to other constitutional presidents and monarchs, formally sign all new laws coming from the HPRs. The Prime Minister has extensive powers, akin to those of presidents in the presidential systems (ibid).

Members of the HPR are popularly elected for a five year term in a "first-past-the-post" electoral system. The most important function of the HPR is to enact laws on matters assigned to Federal jurisdiction and ratify national policy standards. The HPR also exercises other important functions including the appointment of federal judges, the ratification of international agreements

and the investigation of the conduct of members of the executive. The House of the Federation (HOF) is the second or upper chamber in the federal government of Ethiopia. In conventional federal systems, the second chamber serves as the representative institution for the regional units. In the Ethiopian system, the HOF has essentially the same function, but in the FDRE Constitution, this is formulated in a slightly different way: it is not composed of representatives from the federal units, but “of representatives of Nations, Nationalities and Peoples” (Alemayehu: 2001:3).

Each officially recognized ethno-national group should have in principle one representative in the HOF. Additionally, the population number of each nation or nationality is taken into consideration by giving one representative extra for each million of its population. Members of the HOF are elected by the State Councils in each regional state. The HOF is given the most important power of the interpretation of the FDRE Constitution. The HOF is also empowered to decide upon issues related to the rights of states to self-determination including secession, find solutions to disputes between states, and determine the division of joint federal and state revenues and the federal subsidies to the states(ibid).

The FDRE constitution Article 77 stipulates the Powers and Functions of the Council of Ministers. Thus, the Council of Ministers ensures the implementation of laws and decisions adopted by the House of People’s Representatives (Sub article1), shall formulate and implement economic, social and development policies and strategies (Sub article 6), shall ensure the observance of law and order (Sub article 9) shall submit draft laws to the House of Peoples’ Representatives on any matter falling within its competence including draft laws on a declaration of war (Sub article11).

The FDRE HPRs working procedure and members’ code of conduct (Amendment Proclamation) no. 470/2005 puts the legislative development procedures in the HPRs. Thus, according to article 6(2), a) the government, b) the HOF, c) the Speaker, d) the Federal Supreme Court, e) Committees of the House, f) members of the House g) other governmental institutions directly accountable to the House shall have powers to initiate draft law.

The following note, therefore, describes the law making processes followed when the members of the House presents the draft law to the House. Any draft law presented in accordance with article 6(2)(f), i.e. by the Members of the House shall be in writing and supported by the signature of at least twenty members of the House including the initiator and should be submitted to the Speaker, then the first reading follows;

### **First Reading** (Article 7)

The Speaker shall present the summary of the draft law and open the floor for deliberation on the content of the draft law in general (a), unless there is condition to enact the draft law as a law at this level, it shall be numbered and referred to the concerned committee(s) by the Speaker upon winding up the deliberation(b), in case the draft law could not be distributed to members before 48 hours due to its urgency, it shall be deliberated up on after it is fully read to the House(c). The pertinent committee inspecting the draft law referred to shall require at least 20 working days to submit its proposal on the draft law to the House, unless the draft law to be passed is urging for an immediate enactment (article 8).

### **Second Reading** (Article 9)

The Speaker of the House shall cause the Standing committee read the report on the draft law referred to it after the first reading with its recommendations and suggestions (a), the Speaker opens the floor for discussions on the recommendations made (b), final decision shall be passed after thorough discussion on the draft law is completed. If the decision can not be reached the draft law shall be referred to the pertinent committee for further scrutiny(c).

### **Third Reading** (Article 10)

The committee that received the draft law for the second time shall read out the amended version and its final decision to the House (a), the House, after a thorough discussion, shall decide on the final proposal (b).

### **Adoption of laws** (Article 10)

Subject to article 57 of the constitution of FDRE (i.e laws deliberated upon and passed by the House shall be submitted to the Nation's President for signature. The President shall sign a law

submitted to him within fifteen days. If the President does not sign the law within fifteen days it shall take effect without his signature), the Speaker of the House shall transmit the draft law to the President of the federal government for signature suggesting that the House has discussed and approved it.

The HPR legislative procedure states that, representatives could present a bill on any issue to the House provided that they secure endorsement signatures of at least twenty representatives. Elaborating on the procedures, it says the bill should be presented in print to the House of Speaker through the Secretary of the Office. The Speaker of the House could either have that bill presented to the House for a first reading or distribute it to the representatives at an earlier date. Once the House deliberates on the bill, the House of Speaker channels it to the appropriate committee, which in turn reviews the case and presents its recommendations at one of the sessions. After deliberations are once again conducted on the bill, the Speaker of the House would make public the consensus reached by the representatives. The bill could become a law once the President signs it and is published in the *Negarit Gazeta* as stipulated in the HPR's statute. It is also stated in the HPR legislative procedure that the Council of Ministers has the mandate of presenting bills to the HPR.

As far as the legislative procedure is concerned, Fasil noted “a draft proclamation may be submitted by either a member of the HPRs or by the Council of Ministers. Where a member of the House of Peoples Representatives submits a draft proclamation, it has to be submitted in writing and has to be accompanied by the signature of the one who has submitted it and by the signatures of twenty other members. Once a draft proclamation is officially submitted, the Speaker of the House has the duty of making the substance and content known to the House and appointing the date for first reading. A first reading of a first draft proclamation may be waived due to the bulkiness of the draft, in which case copies would be distributed and a date appointed for commencement of discussion (1999:84)

He (ibid) added “the House by a two-thirds majority vote may decide to bypass the sending of a draft to the appropriate committee. Otherwise all drafts, after plenary discussion on the broad spirit of the law in question, are numbered and passed on to the appropriate committee.

Committees then submit their report detailing their investigations and decisions. The plenary on the appointed date considers the committee's proposals and, after debating it, votes to approve, amend, or disapprove the draft law. Within two working days, the Speaker of the House has to send the approved draft proclamation to the President of the Republic for signature. Once signed, or 15 days later irrespective of the signature by the President, the approved draft becomes law and is published in the Negarit Gazeta.

## **2.6. Conclusion**

This chapter assessed and explored various analytical and conceptual perspectives on systems of government and the law making process. It has set the stage for uncovering the actors, roles and power during the Charities and Societies Proclamation 621/2009 making process in Ethiopia. The background information on the meaning/concept of political system, the systems of government such as parliamentary and presidential systems are included in this chapter.

Discussions were also made about law making process in two purposively selected parliamentary government systems in the World- Japan and the Westminster (United Kingdom) primarily to help us understand the lawmaking process in the parliamentary systems of government as a ground to understand the lawmaking process in Ethiopia.

This study commits itself to the explanation of the Ethiopian proclamation making process to uncover the process by which the Charities and Societies Proclamation 621/2009 was made from the very reason that prompted the government to initiate the issue agenda until its adoption by the legislature and finally it assess the roles different actors played vis-à-vis they are supposed to as per the constitutional rights stipulated under the FDRE Constitution article 43(2).

The Federal Democratic Republic of Ethiopia (FDRE) constitution also holds that 'Government shall at all times promote the participation of the people in the formulation of national development policies and programs; it shall also have the duty to support the initiatives of the people in their development endeavors', article 89(6). This has been further illustrated on article

43(2) as ‘Nationals have the right to participate in national development and in particular, to be consulted with respect to policies and projects affecting their community’.

We can deduct from the aforementioned constitutionally granted provision that, given the constitutional rights nationals are granted to a say to policies affecting their community. On top of that, the FDRE government is also responsible to aid and facilitate charities and societies in their attempt to develop the nation among other things through fully participating them in the process of making Charities and Societies Proclamation.

There is an increasing interest by many researchers in Ethiopia to study national policy issues. The exploration of research documents show that major areas of research by most researchers are public service reforms, education and economic policies, foreign relation, legal and governance, monetary and fiscal policies, and almost most of them focus on analyzing the challenges, prospects and outcomes of these policies. Whatever findings are brought up popular citizen participation during the lawmaking process is the most acceptable root to encourage participatory democracy in the hope of making the government more accountable.

Thus, law makers are in charge of developing laws in such a way that the outcome of which can bring a real benefit to the society. All these can happen when nationals have the right to participate in national development and in particular to be consulted with respect to policies or laws affecting them. In this study, therefore, the researcher is aimed to critically assess the role of different actors and their power leverage during the Charities and Societies Proclamation making process and provide recommendations for policy makers and other concerned stakeholders.

## **Chapter 3. Discussion and analysis of the data**

### **3.1. Introduction**

This chapter puts forward the presentation, discussion and analysis of the data/information secured from respondents and document reviews. It evaluates the ruling party and the executives, and the influence they have on nongovernment actors in the CSOs lawmaking process, the major actors or the leading players that exercise the strongest leverage in the making of the Proclamation to Provide for the Registration and Regulation of Charities and Societies No.621/2009, the driving forces that prompted the government to initiate the CSOs and CSOs law as an issue agenda and to adopt it later in the parliament, the key areas of concern by CSOs on the law, the relative strength, participation of the civil society organizations and other stakeholder's role in law making process versus the executive. Finally, it explains how the parliamentary system of government influenced the participation of nongovernment actors and strategies that will correct the disparity in the Charities and Societies Proclamation making process in Ethiopia.

Questionnaire and interview responses from Ministry of Justice (MoJ), Ethiopian People's Revolutionary Democratic Front Members of the Parliament (EPRDF MPs), Opposition MPs, FDRE Charities and Societies Agency (CSA), Civil Society Organizations ad-hoc Task forces and Ethiopian academic are used as sources for data presentation, discussion and analysis. An abridged clarification of charities and societies draft law developed by MoJ and the minute of public hearing session of FDRE HPRs on the draft Proclamation and other documents are reviewed for analysis.

### **3.2. Driving forces that prompted the government to initiate the issue agenda**

What is the political climate that prompted the Ethiopian government to initiate the CSOs as an issue agenda and the CSOs law to come to the scene? Several comments (as described below) have been gathered from document reviews, interview and questionnaire responses from various

actors involved during the lawmaking process. Thus, Human Rights Watch in its official website released a report on 13 October, 2008 as follows:

The climate for independent civil society organizations in Ethiopia has long been inhospitable and the likely impact of this law is still more ominous when understood in a broader context. Ethiopia's limited political space has already been narrowed through patterns of government repression, harassment, and human rights abuse since the controversy that followed the country's 2005 elections (available at [www.hrw.org/legacy/pub/2008](http://www.hrw.org/legacy/pub/2008))

In addition to this, Yalemzewed et.al also demonstrated with examples the climate that prompted the government to initiate the law, as it is described in the subsequent paragraphs;

They demonstrated, 'For many years, Ethiopian human rights NGOs have endured government harassment. The government has frequently used its registration laws to effectively ban the work of human rights defenders. For example, the Ethiopian Human Rights Council (EHRCO), a prominent human rights group that participates in civic education, human rights advocacy and human rights monitoring was denied registration for approximately seven years. EHRCO was formed in 1991, but it was not until 1998 when the organization sued the government that its registration was approved. Similarly, the Ethiopian Free Press Journalists Association, which was formed in 1993, was denied registration until 2001 when it too filed suit against the government (Yalemzewed et.al, 2009:6).

They continued, "In 2001 the Ethiopian Women Lawyers' Association (EWLA) also found itself the subject of government harassment. EWLA advocates for reproductive rights, the elimination of discrimination against women and discontinuation of female genital cutting. In addition, it assists women through a variety of services, including the provision of medical treatment, shelter and legal aid to victims of domestic violence. In September 2001, the Ministry of Justice accused EWLA of partaking in activities beyond its mandate when the organization publicly criticized the Ministry for failing to take measures against persons charged with violations of women's rights. EWLA also criticized the Ministry for the absence of an independent court system in

Ethiopia. Following these vocal critiques, the Ministry closed EWLA's office and banned its work".

They added, "In 2005, the government issued a directive aimed at prohibiting local independent human rights and civic organizations from observing the 2005 elections. Issued only six weeks before the May 15th elections, the directive required Ethiopian civil society organizations to produce evidence that election monitoring was considered part of their mission on the day they were formed and registered. On April 20, 2005, the Organization for Social Justice in Ethiopia (OSJE) filed suit against the National Election Board of Ethiopia (NEBE) on behalf of 35 local NGOs before the Federal High Court. The suit challenged the legality of the directive, alleging it violated the Ethiopian Constitution and several domestic laws. The court ruled in favor of the NGOs on May 3, 2005.

The government's hostility toward NGOs extends to foreign NGOs and is exacerbated by their foreign status. The Ethiopian Ministry of Foreign Affairs (MOFA) has stated that the primary objective of foreign NGOs that come to work in Ethiopia is "the promotion of the agenda of their country." According to the MOFA, foreign NGOs work at their countries' bidding to provide "every kind of information ranging from political to economic and others." And only by default do foreign NGOs provide aid to Ethiopia, which they "will sometimes try to use for political influence." According to the government's paranoid and cynical view, foreign NGOs may occasionally provide assistance to Ethiopians in need, but their true agenda is political manipulation (ibid).

The above examples demonstrate the inherent suspicion and distrust that the Ethiopian government has towards NGOs. This is vividly supported by the Chief of Cabinet for Prime Minister Berhanu Adelo who dismissed criticism of the CSO law stating that; "Protecting the rights of citizens is the role of the government and not the role of the NGOs". Yosef Mulugeta, Director of EHRCO, pointed out in response that "in many countries the government is the biggest violator of human rights and thus there needs to be independent watchers" (ibid).

The fact that the driving force is political is also attested by Minister of MOJ during his speech in the "Ninth Government-Donor High Level Forum" on the charities and societies law. From his

response to the question regarding the *scope of work for CSOs*, one can easily infer that one of the driving forces that prompted the government to initiate the issue agenda is politics. The Minister noted it as:

If a CSO wants to work in the excluded areas it must have a bilateral agreement but all agreements shall be made at federal government level. Regarding the scope of work, while it is difficult to respond to the concerns of CSOs, *if it involves political issue, it would not be accommodated* (the minute of Ninth Government-Donor High Level Forum, 20<sup>th</sup> April, 2009)

The aforementioned exemplary demonstrations are also crosschecked by the data gathered through the questionnaire and interview notes as they are expressed below. Hence, one of the EPRDF MPs has clearly explained through the questionnaire about the driving force: politics is the primary driving force for the new law to come to the scene as it is situated below,

Most NGOs have a political mission; the first side [explicit agenda] of NGOs is development. The second force is religion. The third is *politics*. Therefore, the law ties their hands from the political involvement (questionnaire response from EPRDF MP).

It should be noted that, according to the new Charities and Societies law, NGOs funded by foreign sources may no longer engage in human rights advocacy. The CSO law imposes limitations on the activities of all civil society organizations that do not fit the CSO law's definition of Ethiopian Charities and Societies. Once an NGO is defined as foreign or Ethiopian Resident under the CSO law it is prohibited from participating in many of essential activities reserved exclusively for Ethiopian Charities and Societies, including: j) the advancement of human and democratic rights; k) the promotion of equality of nations, nationalities and peoples and that of gender and religion; l) the promotion of the rights of the disabled and children's rights; m) the promotion of conflict resolution or reconciliation; n) the promotion of the efficiency of the justice and law enforcement services, article 2(3)-(4), art 14(5). For example, article 57(7) provides that: Ethiopian mass-based organizations may actively participate in the process of strengthening democratization and election, particularly in the process of conducting

educational seminars on current affairs, understanding the platforms of candidates, observing the electoral process and cooperating with electoral organs.

As Temesgen Zewde, an opposition MP put it: This is really a domination agenda, a single party agenda, all the other stuff is simply window dressing. The agenda is *to stifle these voluntary public movements that are known to assist the democratic process, the situation of human rights, and all other advocacies that are vital and necessary*(Peter, 2009:2)

The pre existing deep suspicion and distrust between the government and CSOs, as a driving force to enact the new law is still explained by the CSOs themselves, thus the coordinator of Civil Society Organizations Task Force for creating an enabling environment for CSOs in Ethiopia, at CRDA responded through the questionnaire about the driving force as:

*“the lack of trust between the government and the CSOs”* (questionnaire response from CSOTF coordinator).

The Ethiopian government, on the other side, claims that the need to develop the law has arisen due to the following reasons, assumptions and policy rationales. Thus, during the Consultative Forum between CSOs and MOJ on 6<sup>th</sup> May 2008, His Excellency Ato Assefa Kesito, Minister of Justice, and Ato Abadir Mohamed, one of the drafters, provided an extensive explanation of the aims, policy rationales and underlying assumptions of the draft proclamation (Consultative Forum between CSOs and MOJ on 6<sup>th</sup> May 2008, MOJ). Some of the main objectives and rationales of the draft proclamation were:

1. the fact that the current law is outdated and does not correspond to the level of development, characteristics, and activities of civil society in Ethiopia: Following the legislation of the Civil Code of 1960 and the Associations Registration and Regulation of 1966, no other law has been enacted for quite a long time in Ethiopia that takes into account the development of nongovernmental and civil society organizations, their interests and activities, and the level of growth of the sector in general. As the laws issued

earlier were outdated and do not reflect the level of development of civil society's institutions, several problems have been encountered in the registration, control and administration of CSOs/NGOs.

2. the regulations currently in force are too cumbersome and unsuitable for registering the organizations, regulating their operations and ensuring their accountability;
3. the need to facilitate for civil society organizations to become development partners of the government;
4. the need to create a conducive environment to enable citizens to exercise their constitutionally guaranteed right to associate;
5. the need to legislate a law that enables to identify illegal activities within the civil society organizations and to penalize the offenders (Consultative Forum between CSOs and MOJ on 6<sup>th</sup> May 2008, MOJ).

Despite the aforementioned justifications by the government, one of the drafters of the law in the MOJ also gave similar justifications through the questionnaire as follows:

The Ministry initiated to draft the law while conducting Business Process Reengineering (BPR) study. As the Ministry has a legal mandate to register charities and societies (article 23 of proclamation No. 471/2007), it organized an office named *Societies Registration Office* to register societies/NGOs/ operating in Ethiopia. Thus, to reengineer the service rendered by this office, the Ministry conducted a study and the study indicates the need to have a comprehensive legal framework. There was no clear legal framework that helps to encourage NGOs operating in Ethiopia neither any law that helps to punish illegal ones (questionnaire response from the drafters of the law, MOJ).

The respondent's response is, of course, clearly stipulated in the preamble of the law itself: Proclamation No.621/2009 is aimed to provide for the registration and regulation of charities and societies and the law is enacted in order to ensure the realization of citizens' right to association enshrined in the constitution of the FDRE and to aid and facilitate the role of charities and societies in the overall development of Ethiopian people and is adopted in accordance with article 55(1) of the Constitution of the FDRE.

Despite justifications raised by the government, the senior educator explains: “many people in Ethiopia think that the government doesn’t want NGOs receiving a lot of funding from outside: that is more than 10% of their budget; their reason is basically NGOs are the opposition to the current state. Finally, they conclude that the government enacted this law intentionally to weaken the CSOs so that those who are receiving more than 10% of their budget from outside sources cannot participate in human rights, political advocacy and democracy issues. They also argue that the government has learned a lot from the 2005 national election when CSOs were engaged in human rights, political advocacy and democracy issues. Thus, by this law the government is using a defensive attack strategy (pre calculation) aimed to intimidate CSOs from the upcoming 2010 national election. Finally they assert that politics is the driving force behind the law (interview with senior Ethiopian educator).

However, he objected to the aforementioned justifications, and explained the driving force that prompted the government to initiate the issue agenda as,

The government’s motive as far as I am concerned is to encourage indigenous civil society organizations to grow. The whole idea of this law is to promote the ability of indigenous nongovernmental organizations to come to the scene. So the government’s main objective is to promote some organic evolution of Ethiopian civil society independent of international financial system (interview with the senior Ethiopian educator).

The educator also noted that the driving force for the government to initiate the law is to promote organic genesis of CSOs in Ethiopia by establishing a regulatory framework capable of creating an enabling environment for CSOs to flourish. The author believes, if the law was drafted for the benefit of Ethiopian CSOs, its adoption in the parliament would have been supported by CSOs themselves.

The senior educator continues,

Many people talk about different motives the government has, it depends whom you are talking to. So far the history of development of nongovernment organizations has been

that they are technically imported from outside. And most of the people working in these international NGOs would branch out and start their own NGOs. So, the government's main objective is to promote some organic evolution of Ethiopian civil society.

Contrary to the above justification, Yohannes, on his article entitled "*CSO law bites CRDA forced to change*" explains that, "NGOs, foreign governments and human right activists all criticized the legislation as potentially damaging to Civil Society. Local and foreign NGOs have contributed to Ethiopia's political process in the past. Their role, especially during the 2005 nation election period, was not approved of by the government, which prompted the new law, the NGOs claim" (Capital, Volume 12No. 618, October 24, 2010).

The reasons forwarded by MoJ are appealing; it should be understood that in a country where a good number people are deprived of basic needs intimidating CSOs would mean aggravating the situation because that small portion of money is thought to benefit the needy people, thus poverty reducing projects should not be blocked. It should also be remembered that nongovernmental organizations have been assisting the people of Ethiopia with charitable, relief and development activities, especially since the major famine of 1983/85.

EPRDF MPs also described the driving forces that prompted the government to initiate the law. Hence, one of the EPRDF MPs described the situation through the questionnaire as follows:

First of all, there was no proclamation as such binding upon both national and international NGOs. A guideline developed by Disaster Prevention and Preparedness Agency (DPPA) works only for NGOs operating in relief sector. Despite this fact, the contribution of NGOs in poverty reducing projects is found to be very less. People are feeling more and more dependent, working culture is spoiled, farmers intentionally destroy the terrace which was constructed for some good purpose to get additional grain for reconstruction, the same farmer again looks at his land (soil) being eroded doing nothing and asks for the grain just like a needy person, those who are able to work remain idle, become poor and seek continuous support from NGOs. These forced the government

to enact a law to administer the CSOs operating in Ethiopia (questionnaire response from EPRDF MP).

A thorough review of the CSOs law, however, shows that unlike the previous justifications by the EPRDF MP, the most damaging provisions reflect primarily on such aspects as entry barriers (i.e. by classifying CSOs in terms of sources of funding (article 2(2-4)) the law blocks the existing CSOs from registration as well as potential entrants in to the sector. Definition on the scope of work especially affects foreign NGOs not to participate in human rights' advocacy and democracy issues; limitation on the sources of finance in turn limits the productivity of Ethiopian NGOs because it is impossible for these groups to raise sufficient funds from local sources forcing them to change their objectives/names ultimately limiting their work on the advancement of human and democratic rights. So, according to the new law, there is no any provision that restrains NGOs from participating in socio-economic development of the country either by source of funding or by the definition of scope of work.

One of the drafters of the law in MoJ noted that, the law is aimed at:

Realizing the freedom of association enshrined under article 31 of the Constitution: aiding and facilitating the role of charities and societies in the development of the country, creating accountability and transparency on the activities of CSOs. As CSOs are established for the public benefit it has to be assured that the public is beneficial from the activities of CSOs. The previous laws that govern charities and societies are inadequate and non comprehensive (questionnaire response from one of the drafters of the law).

The firm hand of the government behind the adoption of the law is in simple terms explained by the Premier himself, on a Second Round Prime Minister and Civil Society Representatives discussion, the PM noted the following;

“Nevertheless, there are some firm positions of the government that will not change in time or for any reason. These include,

1. Foreign NGOs, unless contracted case by case, cannot engage in *political advocacy or any political matter or human right issues*.
2. Local NGOs financed by foreign sources for more than 10% of their budget cannot be involved in the country's *political matters*.
3. Foreign NGOs will be administered through administrative procedure, *not through prolonged court proceedings.*" (Notes on the second round Prime Minister and Civil Society Representatives discussion, June 4, 2008, prepared by Tafese Refera, head CIMD, CRDA).

The above discussion shows that the new CSOs law is the product of the Ethiopian government's deep suspicion of Civil Society Organizations. The government has a suspicious view that CSOs have hidden political agenda that is if they are left alone or if there is no any regulatory framework they (especially foreign NGOs) will intrude in to the country's political space which they are not supposed to enter. The contribution that CSOs brought to the national economy is also suspected (working culture is spoiled and people are feeling more and more dependent). Worse still they are vulnerable to corruption shifting the budget to one's own pocket at the expense of the needy. Other driving forces are the Civil Service Reform that is the Business Process Reengineering (BPR) which in turn is resulted from the government's intention to reengineer the service it renders to its clients (CSOs) ultimately to the public.

It is also founded that both government and nongovernment actors involved during the charities and societies proclamation making process share the need for the law in common despite differences in certain contentious requirements.

So, the overall context of the Charities and Societies lawmaking can be seen in terms of the context of the legislative development process discussed in literature review(Chapter 2), thus it is made up of such contexts as:

1. The history of past legal frameworks: the previous laws governing the CSOs operating in Ethiopia are unclear; neither is the Charities and Societies Agency (CSA) legally established demanding better legislation.

3. Environmental context: From environment come demand for legislative actions, for example, mere aid by itself doesn't guarantee sustained future, hence the MP claims the deteriorating work culture prevailing as a result of CSOs. The MP reasoned people are getting idle, remain poor and expect more and more (cultural environment). The other environmental factor is the interaction and interrelationship between political arena and economic system. That is CSOs, it is public knowledge, are paying significantly larger salary compared to government civil service this may increase the turnover rate which raises laws to a level of priority. This is explicitly stipulated in article 88(1) as *Any Charity or Society shall allocate not less than 70 percent of the expenses in the budget year for the implementation of its purposes and an amount exceeding 30 percent for its administrative activities.* The government also claims that CSOs are circulating large but unknown money into the economy.
4. The institutional context: Before ratification of the proclamation, Ministry of Justice was in charge of administering the CSOs (CSO Registration Office), however, the Ministry argues CSOs in Ethiopia are so many such that regulation and administration of CSOs is getting more complex demanding not only a comprehensive legal framework (Proclamation) but also the institution responsible to carry out the routine administrative tasks (Charities and Societies Agency).
5. Ideological context: the revolutionary democrats have a suspicious view of the CSOs. They think and affirm that especially foreign CSOs may intrude into the country's political space.

### **3.3. Actors, roles and power leverage in the CSOs lawmaking process**

#### **3.3.1 The role of government and CSOs**

The FDRE Constitution article 43(2) stipulates that "Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community."

Proclamation to Define Powers and Duties of the Federal Executive Bodies (Proclamation No. 471/2007) clearly shows that in Ethiopia, the executive is primarily authorized to make laws; however, the speaker of HPRs, the HOF, members of the House, committees of the House, the Federal Supreme Court and other government organizations responsible to the HPRs and the Council of Ministers have authority to initiate laws. HPRs are the highest authority with a wide range of legislative functions (FDRE, HPRs Working Procedure and members' code of conduct (Amendment Proclamation) Proclamation no. 470/2005). Its powers evolved from the federal jurisdictions assigned to it and the executive.

Several government and nongovernment actors have participated during the Charities and Societies Proclamation making process with varying levels and power leverage to put up their own priorities into the law.

The data collected( described below) shows that actors that are involved from agenda setting until its ratification by the legislature are: Council of Ministers, Ministry of Justice, the FDRE House of Peoples Representatives, Civil Society Organizations in Ethiopia through Civil Society Organizations Task Forces (comprised of 16 network and individual organizations which of course had no any official mandate to represent all civil societies in the country(questionnaire response from CSOTF coordinator), the donor community and individual citizens( questionnaire response from one of the drafter in the MOJ).

The above data/information is gathered through the questionnaire from one of the drafters of the proclamation at MOJ. It is clearly put as follows:

The charities and societies proclamation was initiated and drafted mainly by the public prosecutors of the Ministry of Justice. Then, MOJ made discussions with CSOs. Charities, Societies and donors also discussed on the draft two times with the Prime Minister as a result of which the draft was revised and many amendments were made. The final draft, produced by MOJ, is then sent to the Council of Ministers that approved it with some amendments and decided to be presented before the HPRs. The House sent it for further observation to the Legal and Administrative Affairs Standing Committee. Then, public

hearing is held where a number of stakeholders and interested bodies participated and forwarded their comments. Officials from the Prime Minister's office, MOJ and Ministry of Foreign Affairs defended and gave clarifications to the draft law. Finally, the Standing Committee made some amendments and presented the draft to HPRs, later the law is endorsed on Tahesas 28, 2001 E.C. (questionnaire response from one of the drafters of the law).

A review of a concept note entitled 'Monitoring the enforcement and impact of the proclamation (PCS)-621/2009' attests that donors like Development Assistance Group (DAG) has been at the forefront of efforts to lobby the government to amend key provisions in the proclamation.

In summary, Council of Ministers, '*Ye hig tinat, Markek ena sirstet Kifil*' [in Amharic] to mean *Department of Legal Research, Drafting and Transfer* at Ministry of Justice, experts from the Prime Minister's Office, Legal Affairs Directorate at Ministry Foreign Affairs, FDRE House of Peoples Representatives, Civil Society Organizations Task Force for Creating an Enabling Environment for Civil Society in Ethiopia (CSOTF), Individual CSOs, the donor community and individual citizens participated during the development of the 'Proclamation to Provide for the Registration and Regulation of Charities and Societies (PCS)-No.621/2009' in Ethiopia.

The roles and power of each of these actors (government and CSOs) will be summarized in the subsequent paragraphs.

In Ethiopia constitutional pronouncements provide citizen the right to participate in policy issues; the FDRE Constitution in article 89(6) stipulates that the 'Government shall at all times promote the participation of the people in the formulation of national development policies and programs; It shall also have the duty to support the initiatives of the people in their development endeavors'. Article 43(2) also provides 'Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community'.

The major actors (government and nongovernment) that are involved during the charities and societies proclamation making process have different views towards the legitimacy, adequacy and fairness of their participation. Questionnaire and interview notes (described below) reveal that those governmental and nongovernmental actors listed above had had varying power leverage. For instance, “FDRE House of Peoples Representatives, though it has the power to initiate the policy agenda, to prepare the draft law and finally to ratify it, it is characterized by insufficient capacity” (interview note with EPRDF MP and officer at FDRE CSA).

As a prelude to the CSO-Government dialogue during lawmaking process, the first Civil Society-government dialogue on the new draft (first draft) Civil Society proclamation started after Ministry of Justice sent a letter to CSOs dated 20/08/2000E.C No.11/5634/P-6, Accordingly, Ministry of Justice invited CSOs including the giant Christian Relief and Development Association, one of the member of Civil Society Organizations ad-hoc Task Force (CSOTF) also called ‘Ye etiopia civil mahberat gizeawi astebabari gibrehail’.

The subject of the letter was “To discuss on the newly released draft Charities and Societies Proclamation no. 00/2008: the copy of the draft proclamation was provided to the invited CSOs. As a result, the Ministry launched a forum on 6<sup>th</sup> May 2008 and invited CSOs to its auditorium where His Excellency Ato Assefa Kesito, Minister of Justice, and Ato Abadir Mohamed, one of the drafters, provided an extensive explanation of the aims, policy rationales and underlying assumptions of the draft proclamation and invited the CSOs to provide their comments in writing (see the rationales at 3.2 above).

In response to the MOJ organized discussion on the draft proclamation (first draft), the CSOTFs have written comments a week after the discussion on 13<sup>th</sup> May 2008, the aim of the writing was to convey (situated below) to the government the views of Ethiopian CSOs/NGOs regarding the draft proclamation as well as the concerns raised by government representatives during the discussion” (Comments of Ethiopian Civil Society Organizations on the Charities and Societies Draft Proclamation presented by the FDRE Ministry of Justice, 13<sup>th</sup> May 2008).

Their commentary puts introductory remarks, positive aspects of the law and the provisions that need to be amended respectively. Regarding the assumptions and rationales of the draft proclamation set by the government, the CSOTFs gave written comments as follows:

“Ethiopian nongovernmental and civil society organizations believe that the abovementioned rationales and policy objectives are valid [see 3.2 above] and for the same reasons, the existing old legislations need to be changed: [the consensus on the need for the law is explicit here]. The organizations also appreciate the government’s initiative and effort in this regard. It is therefore the firm belief of the civil society community that the new legislation should create an enabling environment for citizens to exercise their right to organize, engender the prevalence of accountability and transparency, enable the civil society community to become government partners in enhancing development and democratization processes”(Comments of Ethiopian Civil Society Organizations on the Charities and Societies Draft Proclamation presented by the FDRE Ministry of Justice, 13<sup>th</sup> May 2008).

The above statement clearly shows that both CSOs and the government have agreed on the fundamental need to the new law. The interview note with the Civil Society Task Force coordinator, Tessema Mebratu, also shows the same. The respondent explains:

“CSOs have agreed on the fundamental need to adopt the new law despite some contentious provisions” (interview note).

The comments written to MOJ by CSOTFs have then stated the positive aspects of the draft proclamation (first draft) and later the provisions that need to be amended; it is described as follows,

### **3.3.1.1. Concerning the positive aspects of the draft proclamation**

In spite of the concerns of the NGOs/CSOs over a number of the provisions, they also noted that the draft proclamation has several encouraging features, for which they

appreciate the MOJ's efforts. These positive features of the draft proclamations as explained by CSOTFs themselves include the following. (Source: Comments of Ethiopian Civil Society Organizations on the Charities and Societies Draft Proclamation presented by the FDRE Ministry of Justice, 13<sup>th</sup> May 2008).

**a) The drafting of a separate legislation focusing on NGOs/CSOs:** the CSOTFs noted the following:

“Despite general provisions for charities and associations, the existing legislation does not create an enabling environment for their operations because it was not formulated in such a way as to accommodate the diversity of civil society institutions, their operations, and unique characteristics. The government's initiative to address these gaps was both timely and eagerly anticipated. Another positive feature is the establishment of an Agency to undertake the registration and supervision of civil society organizations and a council to handle issues related to charities and societies. In this context, we would like to underscore the need for the proclamation to recognize charities and societies as key stakeholders.

This means making provisions for their representation on the council in sufficient numbers and with a voting power, and putting in place a procedure for the council to supervise the activities of the Agency and address the grievances of the charities and societies”.

**b) The incorporation of specific provisions for different types of NGOs/CSOs:**

“We appreciate that there are specific provisions about charities and societies. While most indigenous organizations are likely to fall under the category of ‘charities’ according to the draft proclamation, however, there is only one article (Art. 50 about ‘charitable societies’ (for example, exemption from income tax).

**c) Making provision for the establishment of consortium of charities or societies:**

CSOTFs commented that “One of the difficulties encountered under the existing legislation is the lack of a provision for the legal status of CSO/NGO consortia. In this regard, the draft legislation’s provision in sub-Article 6(1) for the establishment of such a consortium is one of its main strengths”.

**d) Allowing charities and societies to engage in income generating activities:**

“We strongly support this measure because it helps charities and societies to strengthen their internal capacity and ensure the sustainability of their activities.

*Exemption from income tax for charities:* this is a positive step that is in line with the service they provide to the public and which enhances their financial capacity” (unlike the first draft a review of the final published law does not provide exemption from income tax for charities. This will be explained later).

Following the positive aspects of the proclamation, the Civil Society Organizations Task Force for creating an enabling environment in Ethiopia have put major concerns on the provisions of the first draft proclamation(No. 00/2008) that it said need to be amended. Their written comments and the changes brought to the original CSO law are reviewed and compared against the final published proclamation. The following notes, therefore, describe major changes that are brought as a result of their comments and those that are neglected and remained unresolved since then. In addition to questionnaire and interview responses collected from various actors during the process, the author used the “Comments of Ethiopian Civil Society Organizations on the Charities and Societies Draft Proclamation presented by the FDRE Ministry of Justice, 13<sup>th</sup> May 2008” as source document for all of the comments quoted below.

### 3.3.1.2. Concerning the provisions that need to be amended

#### a. The Preamble of the draft proclamation

The first draft, Charities and Societies Draft Proclamation No. 00/2008 has the following objectives on its preamble,

WHEREAS the existing legal regime has been found inadequate to provide for the proper administration and regulation of charities and societies;

WHEREAS it was found necessary to enact a law in order to ensure the realization of citizen's right to association enshrined in the Constitution.[This establishes that the CSOs law aims to ensure the Constitutional rights of Ethiopian citizen's under Article 31, "Right to Association", which states: Everyone shall have the right to form associations for whatever purposes. 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].

The next paragraph (paragraph 3 in the preamble) has been one of the areas of concern,

*WHEREAS the registration and regulation of charities and societies has been found necessary for the prevention of the illegal acts that are perpetrated in the name of serving it, and for the fulfillment of the government's duty to protect the public against illegal activities contrary to peace, order and morality.*

The last paragraph is: **WHEREAS** it was found necessary to promulgate a law to aid and facilitate the role of charities and societies in the overall development of Ethiopian people.

The above statement [in italic] gives negative impression to the meaning of CSOs and the objective of the law seems to control and punish the CSOs.

CSOTFs have expressed concern for paragraph 3 of the preamble (written in bold above). They expressed the following:

“The Preamble needs to be revised in such a manner as to underscore the partnership between civil society and government and recognize their past constructive contributions to the development and democratization processes. We also believe that creating an enabling legal framework for the operations of civil society organizations should be clearly stated as the main aim of the proclamation. In particular, it is inappropriate that Paragraph 3 of the Preamble negatively portrays the civil society community; it also seems to suggest that the main aim of the draft proclamation is to impose control and penalties. Therefore, this Paragraph should be replaced by another one[written below] which indicates that the main aim of the proclamation is to put in place a system for the self-regulation, transparency and self-control of civil society (comments of Ethiopian Civil Society Organizations on the Charities and Societies Draft Proclamation presented by the FDRE Ministry of Justice, 13<sup>th</sup> May 2008).

The comment of CSOTFs was to replace the previous provision by the following:

*WHEREAS, it is found essential to promulgate a law to aid and facilitate the role of Charities and Societies in the overall development of Ethiopian peoples;* (Comments of Ethiopian Civil Society Organizations on the Charities and Societies Draft Proclamation presented by the FDRE Ministry of Justice, 13<sup>th</sup> May 2008).

In response to this it is founded that the comments of the CSOs on paragraph 3 is replaced and incorporated by the government. This is clearly observable on the preamble of the ratified proclamation No. 621/2009. The current law replaced the objective of the first draft proclamation on its preamble as exactly as CSOs suggested as follows: .... *WHEREAS, it is found essential to promulgate a law to aid and facilitate the role of Charities and Societies in the overall development of Ethiopian peoples;* this comment is incorporated and is a step to their attempt to incorporate own ideas on to the draft law.

In this regard, the coordinator of the CSOTFs for creating and enabling environment also noted that “We [CSOTF] strongly believe that our efforts has brought a lot of change, at least the critical preamble has been changed; there is a big difference between the second and the first draft legislation, it has been toning down and shortened” (interview note with CSOTF coordinator).

**b. Concerning the nationality of NGO/CSO institutions (Art. 2(3))**

A review of the first draft proclamation shows that CSOs were primarily classified in to two as “Ethiopian Charities or Ethiopian Societies” and “Foreign Charities or Societies” and no article is provided to define “Ethiopian Resident Charities or Societies”. Accordingly, the first draft law defines Ethiopian CSOs under article 2(3) as;

*“Ethiopian Charities or Ethiopian Societies” shall mean those charities and societies that are formed under the laws of Ethiopia and all of whose members are Ethiopians and are funded or controlled by Ethiopians. However, they may be deemed as Ethiopian charities or Ethiopian societies if they receive money from foreign not more than ten percent of their asset.*

This definition created a critical question: what CSOs were asking was the issue of ‘citizenship’ based on the constitutional right to organize; they were asking “how it [CSO] could be treated as “foreign” because Ethiopian organizations solicit their project resources from abroad?” (interview response from CSOTF coordinator). This question was raised after the first draft legislation is released and distributed to CSOs;

According to the above definition charities and societies established by Ethiopians under Ethiopian law are deemed to be “foreign” institutions solely for receiving more than 10% of their income from external sources.

According to the CSOTFs, this provision:

- Denies Ethiopian nationality to most indigenous CSOs/NGOs that have been making significant contributions to the development and democratization processes in the country by utilizing funds mostly secured from external sources, and violates their constitutional right to organize;
- Doesn't recognize that the source of income of the institutions has no intrinsic link with citizens' constitutional right to organize;
- When read in conjunction with sub-Article 16(6), it forces most indigenous organizations to abandon their important role in development policy advocacy, promotion of human rights, the democratization process, conflict resolution, citizenship and social development, in short advocacy of policy and good governance, and since this is harmful to the democratization and development processes and contrary to the interest of beneficiaries;
- Reverses the direction of development of civil society in Ethiopia (from relief to social service, and from rights-based development to advocacy), and has the negative impact of restricting them to aid and service delivery;
- When read in conjunction with sub-Article 74(1)(e), denies registration and legal personality to most indigenous organizations in Ethiopia that receive over 10% of their income from external sources;
- Denies these local organizations, in accordance with sub-Article 118(3), the right of appeal to court;

Finally, the CSOTFs concluded their concern as follows “We request that this article be removed and replaced by another article which affirms that any charity or society that is formed in Ethiopia under Ethiopian law shall have an Ethiopian nationality”.

The following amendment was proposed to the definition of Ethiopian Charities and Societies during the lobbying process: *“Ethiopian Charities’ or ‘Ethiopian Societies’ shall mean those Charities or Societies that are formed under the laws of Ethiopia, all of whose members are Ethiopians, and whose governing board and management are wholly controlled by Ethiopian.”*

The above proposal is incorporated but still the 10 per cent threshold exists in the ratified legislation. It is written at article 2(2) as;

*“Ethiopian Charities” or “Ethiopian Societies” shall mean those Charities or Societies that are formed under the laws of Ethiopia, all of whose members are Ethiopians, generate income from Ethiopia and wholly controlled by Ethiopians. However, they may be deemed as Ethiopian Charities or Ethiopian Societies if they use not more than ten percent of their funds which is received from foreign sources;”* This definition has been a major area of concern by CSOs even after its adoption in the parliament.

The questionnaire response from the coordinator of CSOTF also shows the same: the respondent noted that article 2(2) of the new law which defines the CSOs in terms of the source of funds is one of the areas of contention that remained unresolved. The data is put as follows,

The Task Force’s comment on controversial issues such as the 90/10 issue that is stipulated under article 2 which defines Ethiopian Charities or Societies, have not been accepted by the government(questionnaire response from CSOTF coordinator).

It should be noted that unlike the first draft law, the 10 per cent restriction in the ratified law, relates to the *use* of foreign funds (for Ethiopian CSOs) not to the amount of foreign income these organizations are *receiving*. That means “Ethiopian CSOs” are allowed to receive more than 10 per cent of their income from foreign sources by definition and this cannot change their citizenship/nationality but they are not allowed to *use* it for the promotion of human rights and democracy issues.

The reasons given by the government in this regard are described below. For instance, in the second round Prime Minister and Civil Society Representatives discussion, the Primer answered the CSOs concerns as follows;

As regards the nationality of organization; the constitution doesn’t grant citizenship or nationality to organization; it grants nationality to ‘Natural person of either sex’. Thus,

though we might raise subjective judgment of moral aspect, citizens' relationship with their property or any convenient relationship, we can't bring anything contradictory to the constitution, *local NGOs financed by foreign sources for more than 10 per cent of their budget cannot be involved in the country's political matters* (Notes on the second round Prime Minister and Civil Society Representatives discussion, June 4, 2008, prepared by Tafese Refera, head CIMD, CRDA).

While the question of "citizenship" which was affected by *receiving more than 10per cent the income* from foreign funding is resolved; the ratified law, however, impacted Ethiopian CSOs that receive more than 10per cent of their income from foreign sources not to participate in the political affairs of their country. Again, this has created the third classification of CSOs that was not in the first draft proclamation: Hence, according to the ratified law, CSOs formed under the laws of Ethiopia and which consist of members who reside in Ethiopia and who receive more than 10 per cent of their funds from foreign sources are said to be "Ethiopian Resident Charities" or "Ethiopian Resident Societies" (article 2(3)).

Although, CSO's concern that "nationality/citizenship should not be defined in terms of the money received" is resolved due to their participation; this has brought another problem in their scope of work. Therefore, their concern is not fully incorporated. Both CSOs and opposition MPs claim that development activity is sometimes interwoven with human rights advocacy and democratization process, hence, the *use* of this fund must be allowed for such purposes, which the head of the government (the premier) rejected it claiming that;

If foreigners mean that democracy is to grow and last through foreign spoon feeding, we opt to differ. It is 'a contradiction in terms. We can't expect chicken from snake's egg. The former students and civil society movements were not incited by foreign funding. (Notes on the second round Prime Minister and Civil Society Representatives discussion, June 4, 2008, prepared by Tafese Refera, head CIMD, CRDA).

**c. Concerning the power vested in the Agency**

The CSOTFs claim the power assigned to the CSOs Agency is too wide in the first CSOs draft proclamation No. 00/2008 as described below “Since the power assigned to the Agency in the draft proclamation is too wide and allows it to interfere in the operations of civil society institutions, it violates their institutional autonomy and endangers their existence. In particular, in view of the fact that the power assigned to the Agency in regard to registration, supervision, and cancellation of licenses is blanket and open to interpretation, it is not amenable to control and could lead to abuse. For example, the grounds that lead to denial of registration and cancellation of licenses in Articles 74 and 105”.

The review of the first draft proclamation No. 00/2008 under Article 74 shows the following:

Article 74. Refusal of Application for Registration

4. The Agency shall refuse to register a charity or society where one of the following reasons occur; (the contentious provision here is the second reason provided under b.

*b. The proposed Charity or society is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Ethiopia;*

CSOTFs put their comments for the above article as “CSA rules, regulations and/or directives should clearly explicate the grounds for the refusal of applications, as well as detail the criteria and process through which procedural protections are afforded to CSOs in the event their applications are denied” and proposed the following amendment:

*The proposed Charity or Society has been prosecuted and found guilty by a Higher Court of being used for unlawful purpose, prejudicial to public peace, welfare or good order in Ethiopia.*

Despite this proposal, Article 74 1(b) of the first draft proclamation remains one of the major areas of concern throughout the subsequent drafts and appears in the ratified proclamation too. It is provided under article 69(1) of the new CSOs law.

The author believes this provision is significant because it is not clear what purposes constitute a “violation of public peace, welfare or good order in Ethiopia”, the absence of clarity may leave room for bias and refusal of applications that may hinder the legal status and the operations of legitimate applicants. So, from this point of view the powers and roles of CSOs in a bid to change the law is less.

Concerning the dissolution of charities and societies the new law on article 93(1) states that

1. A charity or society may be dissolved by the agency where;
  - a. the appropriate organ of the Charity or Society decides to dissolve it in accordance with its rules;
  - b. the agency cancels the license of the charity or society in accordance with article 92 of this proclamation; or
  - c. the Charity or Society has become insolvent.
  - d. The dissolution of Ethiopian Charities and Societies in accordance with Sub-article (1) of this article shall be effected by the decision of the Federal High Court.

From this provision, CSOTFs claim that “Since the cancellation/involuntary dissolution of associations is intrinsically linked to the right to organize, this power should be given, not to the Agency, but to the court. The broad powers assigned to the Agency in Articles 103 and 104[the first draft] to suspend, remove or appoint officers and employees of charities and societies, on the assumption that there has been mismanagement, create room for the restriction of the right to organize, unwarranted interference in the internal affairs of civil society institutions, and abuse of power by Agency officials”.

Sub article 2 above allows the dissolution of “Ethiopian Charities and Societies” to be effected by the Federal High Court. However, when interpreted with Section 10 Article 104(2) on claims and appeals, which states; *2/ Any person aggrieved by any decision of the Director General may appeal to the Board within fifteen days from the date of the decision. The decision of the Board shall be final.* This implies that the authority to dissolve these organizations is vested solely with the Civil Society Agency Board.

This article has also appeared in the final draft without taking the CSO's proposals, the appearance of this provision on the current law has also triggered CSO to express concerns to put this issue as one of the area of concern during the data collection phase of the study, hence respondent from the Ethiopian Bar Association (EBA) (Member of CSOTFs), Tibebu Gashaw explains: "Excessive power vested to the Charities and Societies Agency, including sector administrators, is also the source of disagreement between CSOs and the government" (interview note with the lawyer).

#### **d. Concerning the right to an independent judicial review**

The concern in this regard is because of article 118. *Claims and Appeals* of the first draft proclamation which states the following:

Sub article 3. Notwithstanding sub article 2 of the article, *Ethiopian Charity or Society or Ethiopians* aggrieved by the decision of the *minister* may appeal to the Federal High Court on questions of *law* within fifteen days from the date of his decision.

For this article, CSOTFs provided the following amendment during the lobbying process:

"Notwithstanding sub article 2 of the article, *any* charity or society or person aggrieved by the decision of the *Board* may exercise a full right of appeal to the Federal High Court on questions either of *law* or *fact* within fifteen days from the date of the decision of the Board".

What is new in the CSOs proposal? CSOs proposal can be deduced into the following,

- 1) the right to appeal to the court to be the full right of *any* charity or society or person,
- 2) the right to appeal to be *both* on questions of law and fact and,
- 3) appeal to be made after the decision of the *Board* not after the *minister's* decisions.

They further argued that “Since the decisions that are made by the Agency over matters of registration, control, and cancellation can violate the fundamental right to organize which is recognized in the constitution and international human rights instruments, the proclamation is expected to provide for a fair mechanism of appeal to the court by the institutions and individuals affected by the decision. However, what is provided for in Article 118 is quite different. In the first place, as provided for in Article 118(3), it is only Ethiopian charities and societies that have the right of appeal. When taken in conjunction with Article 2(3), which deems most of the indigenous institutions as “foreign”, it denies them the right to appeal. This in turn curtails the exercise of the right to access to justice guaranteed in Article 37 of the FDRE constitution, including the denial of adequate guarantee to the right to associate which is also recognized in international instruments. It is necessary to note that according to the International Convention on Civil and Political Rights (ICCPR), the right to associate is a fundamental human right and its exercise shall not be subject to discrimination based on nationality”.

“Secondly, even the right to judicial review accorded to Ethiopian organizations is limited to questions of law. In view of the broad and sweeping powers assigned to the Agency, most of the complaints and issues that may arise will be over questions of facts, rather than errors in law. Therefore, the denial of the right to appeal over issues of facts will nullify the right of appeal provided for in the proclamation. Consequently, the proclamation should clearly recognize *any charity’s or society’s right to appeal to the Agency and Sector Administrator, the Minister and then to the court.*”

The review of the ratified law indicates that Ethiopian CSOs have the right to appeal to the court not only on questions of law but also on fact; in this regard their ideas are incorporated. However, the right to appeal to the court is only granted to Ethiopian Charities and Societies: in this regard both the concerns of CSOs and the donor community are not taken in to consideration. Thus, the first provision provided by the government in the first draft proclamation is changed and described on article 104(3) of the new proclamation except that foreign CSOs have no right to appeal to the board’s decision.

As regards to the claims of foreign CSOs, the premier has put this as;

“Nevertheless, there are some firm positions of the government that will not change in time or for any reason, one of these is ‘Foreign NGOs will be administered through administrative procedure, not through prolonged court proceedings’.” (Notes on the second round Prime Minister and Civil Society Representatives discussion, June 4, 2008, prepared by Tafese Refera, head CIMD, CRDA).

To sum up, out of the three major concerns of CSOTFs described above;

- 1) the right to appeal to the court to be the full right of any charity or society or person is not fully incorporated. The right to appeal to the court is only granted to Ethiopian CSOs,
- 2) the right to appeal to be both on questions of law and fact is incorporated and,
- 3) appeal to be made after the decision of the Board not after the minister’s decisions is also incorporated into the final ratified law.

**e. Concerning Tax exemptions and income generating activities**

Article 114 and 115 of the first draft proclamation provides about “exemption from income tax” and “income generating activities” respectively.

For instance, under article 114 it is provided that; Charities shall be exempted from income tax (sub article 1); however, the next article provides that, notwithstanding article 114(1), for income derived from *“income generating activities that are incidental to the achievement of their purposes and the proceeds of which shall not be distributed among the members or beneficiaries of the charity and are used to further the charitable purpose for which the charity was licensed to operate, Charities and Societies shall not be exempted from income tax.”* These activities shall be done upon a written approval of the Agency (articles 114 (2), 115(1) and 115(4)). Charities and Societies are, therefore, subject to and governed by the same rules that govern for profit making businesses.

Written comments by CSOTFs, in response to the above provisions is situated below, “We believe that recognizing the legality of income generating activities and exempting charities from income tax will enable the organizations to build their capacity; these are hence very useful measures. However, while charities are exempted from income tax, it is unjust that societies, which also make no less contribution to democratization and development, are compelled to pay income tax except on membership contributions. Therefore, this disparity has to be rectified and societies should be equally exempted from paying income tax. Further, charities and societies should be exempted from VAT and customs duty for imports of goods and equipment necessary for their operations”

A review of the published proclamation shows that unlike the first draft, worse still no article is provided for tax related matters in the published proclamation. Implicitly, tax exemption is not provided for any Charity or Society. Exemptions previously provided for the Charity are now installed. The new law has, rather added more other provisions such as requiring CSOs to keep separate books of account with respect to those income generating activities and the Agency shall take appropriate measures for failing to comply with these requirements.

The author believes that, if the spirit of the law is to reduce dependency on foreign sources, as government claims, the law could have introduced some incentive mechanisms, including tax relief.

## **f. Concerning Registration Requirements and Refusal of Application for Registration**

### **1. Registration requirements**

Article 73(2) of the first draft proclamation provides that an application for registration shall be accompanied by; (a) the prescribed fee for the purposes of registration; b) a copy of the rules of the charity or the society and where applicable a document showing the act of constituting a trust or an endowment; c) a declaration in such form as the Agency may require as to the objective, purpose and activity of the charity or society d) a declaration to the effect that the charity shall spend more than 70 percent of its assets on charitable purposes e) where necessary operational project and (f) *such similar documents and duly completed forms as the Agency may require.*

CSOTFs proposal for amendment explains that the provision under (f) “*such similar documents*” is vague and gives unrestricted discretion to the Agency, violates the objective of the proclamation by prolonging the registration process. They proposed either to remove such a provision or to add a phrase that can explain the nature of such documents (CSOTFs comments to the first draft proclamation).

In regards to this provision, review of the subsequent drafts show that their proposal was not incorporated, thus the requirement has appeared at article 68(3) b of the published law.

## **2. Refusal of application for registration**

Article 74(1) of the first draft lists several grounds for the Agency to refuse to register a charity or society where one of the following reasons occur:

- a) The rules of the proposed charity or society are *insufficient* to provide for its proper management and control;

CSOTF’s concern was 1) the draft law does not provide or explain how an Agency decides that the rule of the proposed charity or society is *insufficient* to provide for its proper management and control; 2) if the rules of the proposed charity or society are found insufficient to provide for its proper management and control, the harsh control mechanisms provided in this law can fill these gaps; therefore, the reason by itself should not lead to refusal of application for registration; 3) if the rules are found insufficient to provide for the applicant’s proper management and control, it is better for the Agency to ask an applicant to provide necessary modifications before denial.

The author also believes that this reason is vague, open to subjective interpretation and abuse. The review of the published law reveals that the above reason is removed and replaced by better provision under article 69(1), which is consistent with common practice as follows ;

- (1) the rules of the proposed Charity or Society do not comply with the necessary conditions set by *this Proclamation*;

The second, perhaps the more contentious reason is provided under article 74(1) (b) of the first draft, it is provided as;

- b) The proposed charity or society is *likely* to be used for *unlawful purposes* or purposes prejudicial to public peace, welfare or good order in Ethiopia:

The CSOs concern is that 1) the word *likely* is vague; 2) how can an Agency decides that a CSO is likely to be used for unlawful purposes before it is registered? 3) what connotes *public peace*? CSOTFs argued that “This article is subjective and ambiguous as the reasons that deem charitable purposes to be unlawful are not defined or explicated. This does not provide the Agency with legitimate grounds and clearly articulated criteria for refusing registration to civic organizations” and provided the following proposal for amendment;

*The proposed Charity or Society has been prosecuted and found guilty by a Higher Court of being used for unlawful purposes, prejudicial to public peace, welfare or good order in Ethiopia.*

Their proposal is not incorporated into the law, thus, what is provided under the first draft law has appeared under article 69(2) of the final legislation; in this regard the CSOs concerns are not incorporated.

The third reason for denial of registration is provided under article 74(1)(c) of the first draft, hence, it is provided as; “the Agency does not have jurisdiction to register the applicant”. The CSOs argued against this provision as; 1) if the Agency is established to supervise the charities and societies, in what ground does the agency lacks the jurisdiction to register them? 2) It is unrealistic to expect a political party or a labor union to apply for registration at the Civil Society Agency. This provision is removed from the published legislation.

**g. Concerning a Branch of a Charity or Society**

Article 77(1) to (3) of the first draft, provided following provisions;

1. No charity or society may establish a branch or society *without the prior approval of the agency*,

In regards to sub article (1) above, CSOs proposed to amend the *prior approval* into “*based on its rules by giving prior notice*” hence, their proposal is incorporated and the above provision is amended to “*Any charity or society may establish a branch based on its rules by giving prior notice to the Agency*” available at article 72(1) of the published proclamation.

The amendment made for article (1) above also cancels out sub article 2 (a) (b) and 3 below. For instance,

- 2) The Agency may refuse to approve the establishment of a branch of the charity or society if; a) The rules of the charity or society do not provide for the establishment of a branch of the charity or society; or b) The powers of the branch of the charity or society are such as to make it an independent charity or society not adequately under the control of the charity or society; as well as,
- 3) Where a charity or society establishes a branch without the prior approval of the Agency the branch so established shall be deemed to be an *unlawful* charity or society as defined in this proclamation; are removed from the published proclamation.

**h. Concerning Change of Name, Place of business or Rules**

Article 78 of the first draft legislation under sub articles 1 and 2 provides about “Change of Name, Place of business or Rules,” hence it states the following 1) No charity or society shall change its name, place of business or amend its rules, *without the prior written approval* of the Agency. 2) If a charity or society *fails to comply* with the requirement of sub article (1), the *charily* or *society* or *every officer* of the charity or society shall, without prejudice to the provisions of the Criminal Code be liable to *administrative penalty* to be determined by regulations

The CSOTFs concern was that 1) one of the manifestations of “Freedom of Association” stipulated under the constitution is the right to decide on the internal affairs of the society or charity. So, the prior approval required to change the name and rules do not comply with constitutional provisions. 2) Concerning change of place, it may be adequate for the agency if it is noticed of the new place after setting a reasonable time limit.

A thorough review of the published legislation shows that unlike the above provisions, a CSO is given freedom to change its name, place of work or amend its rules and get registered under article 68 of the final legislation (article 73(1)).

**i. Concerning “Unlawful Charities or Societies”**

Article 82(1- 4) of the first draft proclamation provides the following about “Unlawful Charities or Societies” “Any person or group of persons acting as a charity or society while not being registered within the time limit prescribed by this proclamation shall be deemed to have formed and participated in an unlawful charity or society(sub article 1). Any person who participates in the management of unlawful charity or society shall be punishable with a fine not exceeding birr 10,000.00 or to simple imprisonment for a term not exceeding 5 years or both unless the criminal code prescribes greater penalty (sub article 2). Any person who is or acts as a member of an unlawful charity or society or attends a meeting shall be punishable with a fine not exceeding birr 5,000.00 or to simple imprisonment for a term not exceeding 2 years or to both unless the criminal code prescribes greater penalty (sub article 3). Whosoever provides fund to an unlawful charity or society whether as a donation or a subscription or membership fee or in any other way shall be punishable as an accomplice (sub article 4).

Similarly, article 83-85 of the first draft proclamation provides fines and imprisonments for conducting “unlawful assembly in premises” (article 83); for “Procuring subscription or aid for unlawful charity or society” (article 84); and for “disseminating information about unlawful charity or society” (article 85).

In response to these provisions, CSOTFs on their proposal mentioned the following; “The implication of the above law is to deny unregistered groups. This entails that; a constitutional right of “Freedom of Association” cannot be a reality unless the Agency issues the certificate of legal personality; the law also tries to refer to Ethiopia’s oldest and traditional societies and charities to be unlawful for being not registered by the Agency. It denies the democratic rights of “right of thought, opinion and expression” by making a person liable for imprisonment and fine for disseminating information of unregistered charity or society without considering the contents of the information.

The aforementioned articles (82-85) and all sub articles are totally removed and do not appear in the current Charities and Societies Proclamation 621/2009.

To sum up, from a thorough review of the proposals provided by CSOTFs, one can easily understand that, while the most significant provisions related to *restriction on sources of funding, definition of CSOs based on sources of funding, restriction on work areas, the power vested to the Agency and sector administrators, administrative infringements defined as “criminal acts”, the nationality of CSO institutions, tax exemptions* remain unresolved, some perhaps less contentious provisions such as Change of Name, Place of work or Rules, Branch of a Charity or Society, Registration Requirements and Refusal of Application for Registration, the right to an independent judicial review, the objectives written on the preamble of the draft proclamation were either modified or removed from the published proclamation.

As far as the challenges that CSOTFs face, the CSOTF coordinator noted that “We do not have any challenge, I mean; we have been working so hard. Of course, in the meetings there may be different views and some challenges. When we see it, we have different opinion but what matters is what comes out of the meeting, not the fact that having different opinions. Thus, the task force has not faced as such critical challenges”(interview response with the CSOTF coordinator).

As far as the legitimacy of the Task force the respondent noted that “there are no other kinds of task force who worked on the draft legislation. So, the government, I believe, have respected the task force and this has been a reality when we submitted our comments to MOJ and the same

documents have reached to the PM and, when the PM came to the meeting he has come with our documents at hand, thus, I believe that we have the audience from the PM's office and this is one of the successes of the Task Force. At least the CSOTF has done something and it has been recognized" (interview response with CSOTF coordinator).

### **3.3.2. Power Leverages of government and CSOTFs**

The coordinator of CSOTFs noted that the Ethiopian government was a leading player with the highest power leverage followed by the Ethiopian Civil Society Organizations and the Donor community respectively.

Regarding their roles and power during the proclamation making process, the CSOTF coordinator through the questionnaire noted that:

The CSOTF brought several changes but not on major contentious issues. Several comments of the Task Force have been accepted by the government and there were a lot of improvements in the legislation. In my opinion, had it not been for the CSOTF, the legislation may have been more restrictive than the one we have. However, the TF's comments on main/controversial issues, such as the 90/10, the judicial review and the limitation of the activities under article 14 and 70/30 administrative costs are not accepted by the government. The task forces have done a lot of things. However, it was not adequate. But, at all times it was legitimate. It was a good effort taking the democratic development of the country in to consideration (questionnaire response from CSOTF Coordinator).

The review of documents also show that, the roles and powers CSOTFs exerted is relatively better compared to other nongovernment actors but usually inadequate,

1. They had had a one day face to face communication with the officials of Ministry of Justice (Explanation on Charities and Societies draft proclamation, Meskerem 2001, MOJ).

2. They had a face to face communication with the Prime Minister of the country (two times) (Explanation on Charities and Societies Draft proclamation, Meskerem 2001, MOJ).
3. The CSOTFs delivered comments during the public hearing session in HPRs better than other participants do (25 per cent of CSOs raised their comments).
4. Preparing written comments for each phase of the draft proclamation was one of the major roles of the CSOTFs.

Mere participation of CSOTFs in any discussion points or preparation of written comments by itself does not necessarily mean their comments are taken into account, what matters is whether the stakeholders brought substantial changes or if there was meaningful participation or not.

The interview response and a review of documents show that( described above), though usually inadequate, CSOTFs played by far better roles than other nongovernment actors, the following is taken from their written comments:

...However, all this does not mean that the draft doesn't have brighter sides. The fact that the Ministry has taken an initiative to draft a new law to regulate the CSOs is by itself a major step forward. Likewise, the Ministry's decision to consult CSOs on the draft needs to be highly appreciated though there is still a need for continued and broad based dialog on the law. The recognition by the draft of the right of CSOs to engage in income generating activities and the tax exemption it provides for charities are measures which will, if applied to both societies and charities, greatly help CSOs to sustain themselves financially. The current drafting process showed a *major deviation* from the tradition of continued dialog and consultation between MOJ and CSOs during the preparation of draft CSO laws in the past. Unlike previous processes, *CSOs were given a very short time to submit their comments in writing, making a wider consultation of CSOs and legal professionals difficult if not impossible*. The Ethiopian Civil Society is still hopeful that the MOJ will, with give an adequate opportunity for continued dialog and constructive engagement on the drafting process.

As can be noted above, the CSOTFs were given a very short time to submit their comments and this has made consultations among the task force group and legal professionals difficult, this entails the lesser attention given by the government to CSOs ultimately affecting CSOs ability to propose persuasive arguments against draft legislation. It also signifies the effort the government exerted to accommodate stakeholder's opinion in to the law, as well as the absolute power the executive has over lawmaking in Ethiopia.

On the flipside, a public prosecutor in MOJ through questionnaire explains the roles of the stakeholders as follows:

I believe the role of different actors in the making of charities and societies proclamation was fair, legitimate and adequate. It was the first occasion in Ethiopia lawmaking process that different interest groups and stakeholders discussed exhaustively on the draft law. One of the evidences for this was a two times discussion with the Prime Minister of the country (questionnaire response from the public prosecutor in the MOJ).

A two times discussion between the Prime Minister (PM) and the CSOs notify a lot: it should be noted that in poor countries like Ethiopia the contribution of CSOs is tremendous. Nongovernmental organizations have been assisting the people of Ethiopia with charitable, relief and development activities, especially since the major famine of 1983/85. So, because poverty reducing projects undergoing in Ethiopia by a range of NGOs, international and national should not be closed, the Prime Minister's effort shall be cherished.

### **3.3.3. Roles and power of Opposition and EPRDF MPs during the law making process**

Interview notes and questionnaire responses as well as documents reviewed on the opinions of the opposition MPs show that, their comments and suggestions are not taken in to account and their ideas are rejected by the government.

For instance, Lidetu Ayalew (opposition MP) puts his comments regarding the objective of the Proclamation written on the preamble of the first draft proclamation during the public hearing session in the House;

He noted that the comments and justifications that should be raised by any MP should not be in terms of whether the law harms the CSOs, but whether it affects the nation and the public at large. His reasons are; if ratified the law will have negative impact on the country's foreign relations, foreign exchange, money inflows in the form of donations, thousands of Ethiopians employed by CSOs, and millions of needy Ethiopians (The Minute of the Public Hearing Session of the House of Peoples' Representatives on the Proclamation to provide for the Registration and Regulation of Charities and Societies (PCS)-No.621/2009, (Tahsas15, 2001 E.C).

Regarding the objective of the law, unlike the CSOs, he said that "due to the prevailing disorder and mismanagement on the side of CSOs he is not surprised by the control mechanisms situated in the preamble, according to him unless the 10 per cent restriction is removed the debate on the control mechanism is insignificant (ibid). It should be remembered that the third paragraph which is "*WHEREAS the registration and regulation of charities and societies has been found necessary for the prevention of the illegal acts that are perpetrated in the name of serving it, and for the fulfillment of the government's duty to protect the public against illegal activities contrary to peace, order and morality.*" was opposed by CSOs claiming that this statement gives negative impression to the meaning of CSOs and the objective of the law seems to control and punish the CSOs(see 3.3.1). Despite, the support on the side of the prominent opposition leader, this provision was excluded from the published law as a result of the proposal provided by CSOTFs (see 3.3.1 above).

The leader of the opposition party, Lidetu, strongly opposes the 90/10 issue that is stipulated under article 2 which defines Ethiopian Charities or Societies to mean those Charities or Societies that are formed under the law of Ethiopia, all of whose members are Ethiopians, generate income from Ethiopia and wholly controlled by Ethiopians, however, *they may be deemed as Ethiopian Charities or Societies if they use not more than ten percent of their funds which is received from foreign sources.* His reasons are:

1. Sources of funding should not be the only base for defining the CSOs;
2. In the situation where 10-20 per cent of government budget is from donations, even this government cannot be called as “foreign” rather it is “Ethiopian”
3. Currently questions pertaining to democracy and human rights are not seen separately from development. He asks, although the issue of democracy and human rights are primarily the affairs of Ethiopian, what is wrong if this is carried out through foreign funding?(ibid)

Like opposition parties, the issue of 90/10 is also questioned by CSOTFs. In either of the cases their proposal is not incorporated. This law has many related implications damaging the works of the CSOs, thus by restricting the sources of funding it restricts the scope of work which in turn excludes foreign CSOs from participating in the promotion of democracy and human rights. Those which are allowed by the definition (Ethiopian CSOs) are again seriously jeopardized due to the fact that if they obtain more than 10 per cent of their funding from foreign sources they cannot be engaged in political matters. As a result this has been one of the most contentious provisions that pitted the government with CSOs, opposition and even the donor community.

Lidetu continues; another objective written on the preamble which says “*WHEREAS it was found necessary to promulgate a law to aid and facilitate the role of charities and societies in the overall development of Ethiopian people.*” is right. But, he questioned that in his opinion if the law is adopted there may not be any organization that can survive as a result of which CSOs will change their objectives, perhaps more than 95 per cent of domestic NGOs will disappear simply because of 90/10 provision provided under article 2(2). He pointed out, if CSOs are administered by the law of the land and control mechanisms are installed, getting funds from foreign sources do not have any problem (ibid).

Gebre Gebre Mariam, Chief Whip for one of the opposition parties in the parliament, through the interview evaluates the role and power opposition MPs played during the CSOs law making process as follows:

Ethiopian parliament is dominated by the ruling party, and opposition in this country is a fragmented opposition. It is not a united opposition by itself. The opposition has different programs, come up with different opinions and backgrounds, therefore, the role of the opposition in the CSOs lawmaking process is not as such significantly observable although there are debates: We debate whatever the legislation comes to the House, at the end of the day we are outvoted and the ruling party passes the legislation the way it wants to. We do oppose, our votes are counted and we remain minority (interview with Gebru Gebre Mariam, opposition MP).

Another Opposition MP, Wondimu Ebsa criticized the draft law during the public hearing session as follows;

Because the law is politically articulated, it damages not only the opposition parties and the public but also the government itself, as chief whip of the opposition and people's representative I do not oppose all of the provisions but what I oppose is the heart of the law and the tube that pumps blood to different parts of the body (ibid), Like Lidetu, by this analogy, Wondimu opposes the 10 per cent restriction on foreign funding, which of course was neglected by the government.

He (ibid) added that 'this law is not aimed at solving problems, I think the law is adopted on the pseudo ground that NGOs supported the opposition during the 2002 national election. Thus, this law should consider the national interest first'.

Nongovernment actors especially the CSOTFs and the opposition had less power leverage during the law making process, the former have no any official mandate to represent all CSOs in Ethiopia as a result they were unable to change more contentious provisions that pitted the government with them despite several changes on less contentious issues but they still argue that their role was inadequate, the later being extremely fragmented is neither able to initiate agenda nor table strong challenges against the ruling party always remaining with a minor vote.

Another opposition MP clearly shows this fact as follows:

The constitution may say something, which EPRDF MPs do something different. If the executive or Council of Ministers send a bill, it is certain that it will receive 100 percent votes from such MPs. This includes the "Proclamation to Provide for the Registration and Regulation of Charities and Societies No.621/2009(questionnaire response from opposition MP).

However, the executive (MOJ) argues on the reverse side. For instance, one of the public prosecutors at Ministry of Justice through the questionnaire replied:

I believe the role of the different actors in the making of charities and societies proclamation was fair, legitimate and adequate: according to the respondent "It was the first occasion in Ethiopia lawmaking process that different interested groups and stakeholders discussed exhaustively on the draft law. The respondent also argues that "during the lawmaking process, representatives of all CSOs were invited by MOJ to provide their written comments, the PM of the country has given due attention and responded their questions one by one, and the law was drafted and redrafted by incorporating the stakeholder's opinion( questionnaire responses from one of the drafters in MOJ).

Opposition MPs also evaluated their participation as follows:

EPRDF measures suggestions against its benefits. If the suggestion is useful to the party it accepts and if not it will be out of consideration. If the executive refers a bill, it is certain that it will receive 100 per cent votes from EPRDF MPs. The HPRs had no practical power (questionnaire response from opposition MP). EPRDF MPs are set up to vote to what they are told to by the party leadership. There is also control not to promote own ideas (interview with Gerbru Gebre Mariam, opposition MP).

Despite efforts by CSOs, the final legislation remains the same [contentions provisions still exist]; as a result, the ratification of the law by the legislature is followed by resistances from

both national and international CSOs. The opposition had of course their own predicaments during the law making process. Thus, the heterogeneous opposition (with different programs and experiences) contributed a lot to this. They themselves admit and described the situation, while the ruling party in the parliament always enjoys the majority vote during the ratification of the law; the nature of opposition in Ethiopia had an impact on their roles to change the major contentious provisions of the proclamation. The EPRDF MPs are not in its strict sense free to express their will and table challenges to their own party sponsored legislation, neither is the opposition.

The minute of public hearing session by the FDRE Legal and Administrative Affairs Standing Committee in the House of Peoples Representatives on the Charities and Societies draft law also attests this fact. One of the participants during public hearing session (from Ethiopian Women Lawyers Association) suggested that the ‘government did not invite any stakeholder before public hearing session’, for this the Minister of Ministry of Justice systematically admitted it as:

This is true. During the initial phase of the lawmaking process we admit, we did not invited any stakeholder but, the Minister assured that they [the executive] know the desires, current status, nature and activities of NGOs in Africa.

The above justification attests that the Ethiopian government was initially reluctant to accommodate the CSO’s ideas and has a suspicious view over CSOs. The perception of the government about CSOs primary motive in Africa was cross checked through the questionnaire response from another EPRDF MP, the respondent noted:

NGOs are the lords of poverty; they are richer in the name of the poor. Most NGOs have political mission, the first side [explicit agenda] of NGOs is development. The second force is religion. The third and their hidden agenda is politics. Therefore, the law ties their hands from the political involvement (questionnaire response from EPRDF MP) also (see driving forces that prompted the government to initiate the law, at 3.2 above).

As far as international community is concerned, CIVICUS: World Alliance for Citizen Participation based in South Africa working to support and strengthen civil society and citizen action around the world has also placed “Restriction on foreign funding and definition of Charities and Societies based on sources of funding” as one of the major areas of concern(<http://www.civicus.org/press-release>).

DAG (Development Assistant Group Ethiopia) and GTWG (Governance Technical Working Group) commented about the nationality of CSOs as;

The gross majority of Ethiopian CSOs are not only implementing agents for government and donor programs, but recipients of significant capacity building support to develop their own internal capacity as effective development agents/partners. In many instances, this support is realized through partnerships with international NGO partners. Generally, it is inappropriate legislative practice to make distinctions between foreign and domestic CSOs based on their sources of funds. Income from foreign sources should be a secondary consideration (<http://www.norway.org.et/News>).

The concerns of the international community focus on five key aspects of the proclamation (Source, “Concept note: Monitoring the enforcement and impact of the proclamation which provides for the registration and regulation of Charities and Societies”):

1. The prohibition that Ethiopian Charities and Societies cease to be ‘Ethiopian’, and become ‘Resident’ if they acquire more than 10 per cent of their income from foreign sources. That is if they become resident, they are prohibited from engaging in advocacy and human rights work. This provision still exists in the published legislation; thus, their proposal is not incorporated by the government.
2. The prohibition of foreign civil society organizations and those of Ethiopian Residents from engaging in a number of advocacy and human rights-related work, including activities to promote the rights of vulnerable group(women, children, disabled people). This provision still exists; thus their proposal is not incorporated in by the government.

3. The operations of the prospective Charities and Societies Agency with (CSA) with extensive powers to intervene in the day- to- day administrative affairs of civil society organizations.
4. The potential application of criminal sanctions for arguing for arguably minor administrative irregularities, such as failure to prepare and submit accurate accounts on time
5. The granting of a limited right to appeal to the High Court to Ethiopian Charities and Societies only, but only on points of law not facts and decisions taken by the CSA.

The aforementioned concerns are basically similar to the concerns of the CSOTFs described in the previous sections of this chapter.

In summary, the data described above shows that public prosecutors in the Ministry of Justice at the department of '*Ye hig tinat, Markek ena Sirstet Kifil*' [in Amharic] after BPR study to mean department of *legal research, Drafting and transfer* had a daunting task of drafting and redrafting the legislation the absolute power being in the hands of the executive.

The Minute of the public hearing session on the Charities and Societies draft proclamation shows that the Minister of MOJ, Acting Officer of CSO Registration Office and a Public prosecutor from MOJ, Minister of the Cabinet Affairs as well as the Legal Affairs Directorate from MoFA had a daunting task of defending the Charities and Societies draft proclamation during the public hearing session in the parliament.

The study also shows that CSOTFs had comparatively fair but inadequate roles thus lower power leverage during the charities and societies lawmaking process, although the CSOTFs are composed of network organizations which are composed of hundreds of CSOs in the country it can be assumed that the task force has the larger representation.

EPRDF MPs especially those in Legal and Administrative Affairs Standing Committee were in charge of designing the referred draft law after technical hearing session and in consultation with the executive.

The above data obtained from the actors attests that the government exercised absolute power leverage during the charities and societies proclamation making process largely due to the majority vote it has in any meeting and very importantly the more fragmented nature of the opposition in the parliament. It is founded that although CSOTFs represent a network of CSOs in the country, they had no any official mandate to represent all CSOs; their contribution during the lawmaking process was highly indispensable.

### **3.4. Executive-legislature relationships during the lawmaking process**

In Ethiopia, where as the principal body of draft law initiator is the government, the House of Federation, The Speaker, the Federal Supreme Court, the Committees of the House, members of the House, and other governmental institutions directly accountable to the House have powers to initiate draft laws (FDRE HPRs working procedures and members' code of conduct (Amendment Proclamation) Proclamation no. 470/2005).

The Standing Committee has the duty to exercise oversight over the executive, each standing committee instructs a head of a respective ministry or government agency to deliver an annual report to committee members and the executive also initiates the policy agenda and drafts laws and refers it to the pertinent committee. The Standing Committee that the draft bill is referred to contacts the drafters, consults them and organizes a public gathering to elicit public opinions'. After consultations with the public and the executive, the committee designs the law for the second reading. A third reading will follow if the session fails to achieve complete deliberations on the draft and a third reading brings the legislative process to end. Finally the law becomes law after it is signed by the President and published in the *Negarit Gazeta*, the power of not signing by the President could bring nothing more than prolonging the official adoption for fifteen days, nevertheless the law takes effect with or without his signature.

Whatsoever procedure one holds there must be checks and balances between the three branches of the government: the executive, legislature and the judiciary.

Data/information collected from different actors that participated in the charities and societies lawmaking process reveals that the checks and balances between the executive and the legislator are not fully maintained, for instance,

The opposition MP, through the interview, clearly puts the executive-legislative checks and balances during the Charities and Societies Proclamation making process as follows:

In the constitution it has been plainly stipulated that there should be application of balance of power between the three wings of the government but in this country we have got what they call a party fused executive system [executives were ruling party affiliates]. Party and the state are not clearly separated. Because of that the executive is dominated by the party which in turn dominates the legislature. The executive through the so called majority seat in the parliament always legislates whatever it wants. So, the domination of the executive over legislator is clearly observable in Ethiopian political system if one has to speak one's wits clearly (interview with opposition MP).

Another MP (opposition) also replied the power that the legislature exercised during the charities and societies lawmaking process as:

The constitution may state something which EPRDF MPs do something different. This includes the said legislation (Charities and Societies Proclamation). It is the executive that dominate in the legislative development process starting from drafting to adoption (questionnaire response from opposition MP).

The above data shows that the executive dominated the legislator due to the following reasons. First, executives are the ruling party affiliates, second in Ethiopia the head of the executive is often the member of EPRDF and still member of the parliament then the executive, probably its head in the parliament enjoys the majority vote. In other words, the executive is dominated by the party which dominates the legislature.

It should be understood that, twenty members of the parliament can initiate a law and set agenda for discussion in the parliament, however, the fragmented opposition with different experiences

and opinions have contributed a lot to the imbalance created between the legislature and the executive during the charities and societies lawmaking process.

Opposition MP evaluates the roles of the opposition throughout their stay in the parliament as;

Our stay in the parliament was so challenging. The attitude prevailing in our country and in developed ones is so different. According to our country's rules and code of conducts for MPs, the ruling party imposes more on us. Draft laws coming from the Council of Ministers are referred to the Standing Committee. Because the Standing Committee is dominated by the ruling party and out of twenty members of the committee the opposition is not more than two or three. Hence, the ruling party passes draft laws by first reading (Addis Press, April 20, 2010).

However, questionnaire responses from the executive and the EPRDF MPs are on the reverse side claiming that all government and nongovernment actors participated in the process, their comments are considered and checks and balance between the executive and the legislator is maintained and the role of the government, stakeholders and interested bodies was in line with national lawmaking principles.

For instance, one of the public prosecutors in the MOJ expresses the executive-legislative relationships prevailing during the charities and societies lawmaking process through the questionnaire as follows:

It is a mere fact that the government of a country has a duty to formulate national policies and strategies. Regarding the civil society policy or legal framework of Ethiopia, the lions share to formulate lies under the government. But, the government, after producing the draft presents the document to the public and stakeholders for discussion and collects opinions. In the charities and societies proclamation making process, the civil society organizations task forces have presented comments which had a substantial role in the lawmaking process. Besides the CSOs task forces, CSOs privately, opposition party members and donors participated in giving comments on the draft produced by the

government. Generally, the role of the government, stakeholders and interested bodies was in line with national lawmaking principles (questionnaire response from one of the drafters of the law in the MOJ).

The respondent continues,

What MoJ or the executive did is just presented a draft to the legislator, the HPRs have power whether to adopt or reject the draft. And all what was done is based on the constitutional mandates of the executive as well as the HPRs.

### **3.5. Problems in CSOs lawmaking process**

The Charities and Societies Proclamation No.621/2009 is greeted with mixed feelings, incomprehension and indifference by the population and various actors in the process. While the government argues that the law ensures the realization of citizens' right to association enshrined in the constitution of FDRE, aids and facilitates the role of charities and societies in the overall development of Ethiopian people in accordance with article 55(1) of the constitution of FDRE, CSOs say the law violates citizens right to association and guides people for what purpose they should establish associations and finally its outcome is imposition.

Documents reviewed and websites explored verify that except EPRDF, international organizations like CIVICUS: World Alliance for Citizen Participation based in South Africa working to support and strengthen civil society and citizen action around the world; Human Rights Watch, US government as well as CSOs in Ethiopia criticized the legislation as potentially damaging to Civil Society. These actors assert that basic human rights such as the freedom of association, assembly and expression are devalued (Capital, Volume12 No.618, October 24, 2010).

Interview notes with the coordinator of CSOTFs and document review indicates that one of the problems during the law making process is: CSOs and MOJ had open face to face discussion only for a single day; the proceeding communications were made through writing. Because the

law concentrates on administrative and legal frameworks; consultations, dialogues and debates could have been made to make participation adequate and fair. The charities and societies law, among other things require the participation of CSOs. This shows that, the relative participation of civil society organizations against policy elites is less significant despite the fact that commentary and suggestions are forwarded through correspondences.

The other problem is that, CSOTFs which are composed of network and individual CSOs do not have any official mandate to represent all the CSOs operating in the country. This also affects their power to modify the contents of the law. This is clearly explained by the CSOTF coordinator (questionnaire response) as follows.

The task force is composed of network organizations representing hundreds of CSOs working in the country; it can be boldly assumed that it has the larger representation of CSOs. The CSOs roles were giving comments on the draft legislation before its ratification. CSOTFs believe that all actors have not played their roles efficiently and effectively in the way they were thought to play. The task forces have tried to ensure that it represents all CSOs in the country, however, it does not have official mandate to represent all CSOs. Others may not have direct participation in the policymaking which I think is not necessary. However, since our comments and comments of other actors have been accepted in certain circumstances, there was an indirect involvement in the lawmaking process (questionnaire response from CSOTF coordinator).

In addition to the above problems, a thorough review of the Minute of Public Hearing Session of the House of Peoples' Representatives on the Proclamation to provide for the Registration and Regulation of Charities and Societies (PCS)-No.621/2009, held on Tahsas15, 2001 E.C) shows the following features, problems and gaps:

1. MPs, executives from MOJ, Legal Directorate of the Ministry of Foreign Affairs (MOFA) and the Cabinet Affairs Minister in the PMO, COSs operating in Ethiopia, donors, individual citizens as well as reporters from national and international media have participated during the public hearing session.

2. Out of 223 representatives (exclusive of 7 donors and few media reporters), 159(29.2 per cent) MPs attended public hearing session while a significant number 384(70.7 per cent) MPs were absent out of which nearly 200 are EPRDF MPs. Although public announcement was made through television only nine individual citizens (private) which are extremely negligible number of the Ethiopian population appeared during the session, 44 are CSOs in Ethiopia, and 11 are executives from MOJ, Ministry Foreign Affairs (MOFA) and Prime Minister's Office (PMO).
3. Out of 159 MPs who attended the public hearing session (see no.2 above) only 5 MPs(3 per cent) presented their observations out of which 2 EPRDF MPs (supported the draft law) and 3 opposition MPs raised concern to the draft proclamation. Despite differences in certain provisions both EPRDF and opposition MPs shared the fundamental need for the law.
4. Out of 44 CSOs (individual and network) that attended the public hearing session 11 (25 per cent) gave comments during public hearing session, which is fair proportion compared to others.
5. Executives from MoJ, MoFA and PMO had a task of defending the draft law.

The opposition MP evaluated the public hearing session in the HPRs as:

The public hearing of the standing committee are definitely taken place. One good thing is creating such type of atmosphere to the public. But things are not being changed whatever golden idea is being brought by the public. Public hearings are held but we don't see such influential changes. I have never seen (interview with Gebru Gebre Mariam, opposition MP).

The minute shows that all EPRDF MPs who participated during public hearing session did not expressed any concern against the contents of the law, tabling challenges against one's own party sponsored agenda is unthinkable in Ethiopia. So, how do EPRDF MPs reach in to agreement during parliamentary deliberations? The EPRDF MP through the questionnaire explains the procedures that EPRDF MPs follow to bring consensus among them on the draft law as follows:

The EPRDF MPs voted for the proclamation after a series of deliberations made on the bill draft. There were ideas like the law may obstruct the genuine NGOs and limit capital inflow. Finally, it was decided by EPRDF MPs that a legal framework should be established to administer NGOs so that the country can benefit, hence EPRDF members of parliament voted for the proclamation (questionnaire response from EPRDF MP).

The problem is that, whatever law is referred to the parliament, if it is government sponsored all EPRDF MPs vote for that and the law deserves 100 per cent support from EPRDF MPs. If the party supports the law, all members do the same following the opinions of party leadership.

To end up, the views of major opposition leader (Temesgen Zewdie) in the HPRs is situated below:

There is no way for a draft law to be modified as a result of our roles or we had no any condition to negotiate with the ruling party. The draft, if supported by the EPRDF will get ratified, the whole EPRDF MPs vote all in all. No difference exists between them; this makes our parliament different from others. In other countries, even if there is a party with more members in the parliament, there is a situation where the minority's voices are considered through negotiation. In our parliament strong opposition parties are not considered necessary. This is what I observed through my experience in the parliament. To be frank I don't have any positive thing to talk about. I think it could have been better if our ideas had been included in the draft laws because all of us talk about a country (Addis Press, April 20, 2010).

### **3.6. Key areas of concern and reasons in the wake of CSOs law**

The adoption of Charities and Societies Proclamation No.621/2009 is greeted with diverse feelings. It is a plain fact that except EPRDF (the ruling party) nearly all actors in the scene expressed their worry thus the law is followed by national and international resistance.

Why do these different views come up to the stage of public discussion in Ethiopia? The answers can be many and varied. The fact that there was no a formally codified proclamation of this type

or the charities and societies agency legally established, or very importantly the impact the law have on the actors because some laws can be implemented without public expenditure, or the ideological conflict between actors, or the interaction and interrelationship between the political arena and the economic system, and the cultural and social factors or all cannot be divorced from the lawmaking process.

For instance, CIVICUS: World Alliance for Citizen Participation based in South Africa working to support and strengthen civil society and citizen action around the world expressed its concern.

The main areas of concern were:

- 1) Arbitrary limitations on domestic organizations' that receive funds from abroad and discriminatory treatment of foreign organizations'
- 2) Excessive governmental discretion and interference in the registration and functioning of CSOs,
- 3) Excessive reporting requirements, penalties, harsh punishments and red tape,
- 4) Exclusion of judicial oversight in certain cases: the proclamation limits judicial oversight of executive actions in the case of the Ethiopian civil society organizations' and unfairly discriminates against foreign civil society organizations' by denying them recourse to judicial remedies (<http://www.civicus.org/press>).

CIVICUS continues,

The proclamation permits excessive government interference in the functioning of CSOs, through the power to carry out random investigations at will. Among other requirements, CSOs must provide the government with seven days notice of any general meeting. Thus by creating a web of exhaustive reporting procedures, the proclamation gives the government a convenient way to intimidate CSOs.

Government and nongovernment actors that were involved in the charities and societies proclamation making process have different views towards the reasons behind such opposition. Hence, according to the senior Ethiopian lecturer the reasons for such contentions are described as follows:

The prime contestation in the wake of the law is the fact that any association: civil society or charity that receives more than 10 per cent of its budget from international funding should not be permitted to work on human, governance, democracy, women and children's rights issues. Everyone believes this should not be blocked so this is the main area of contention. And the other reason is that the law imposes heavy penalty on nongovernment organizations that are not following the procedures in terms of registration, re-registration, presenting documentation like audit reports, and sticking to the provisions of the law (interview with a senior Ethiopian educator).

The EPRDF MPs, however, distinguished the reasons for the CSO's objection to the new law as follows,

Firstly, those that have extraordinary benefit to obstruct in the domestic issues of the state via the shelter called international NGO dislike the law because it creates conflict of interest; NGOs are the lords of poverty. They are wealthier in the name of the deprived. Second, most NGOs have political assignment, the first side of NGOs is development, the second force is religion, the third and their hidden agenda is politics. Hence, the law ties their hand from the political connection or intrusion on to the government. Finally, EPRDF MPs reasoned that, those used to use the fund coming from overseas with no any perimeter (sometimes 90 per cent for administrative costs) are shocked. These NGOs hire their family on top misusing the money. Losing all these must in actual fact drive they mad incontestably (questionnaire response from EPRDF MP).

Thus, the statement by the coordinator of civil society organizations task forces clearly attests this fact and is situated as follows:

However, the TF's comments on main/controversial issues such as the 90/10 issue(see 3.2 above) that is stipulated under article 2 which defines Ethiopian Charities or Societies, and the judicial review issue and the limitation of activities under article 14 and the 70/30 administrative and operational costs as it is stipulated in article 88(1) *Any Charity or Society shall allocate not less than 70 percent of the expenses in the budget*

*year for the implementation of its purposes and an amount exceeding 30 percent for its administrative activities(area of concern) have not been accepted by the government.*

In summary the key areas of concern by Ethiopian CSOs (including foreign COSs) focus on the following aspects of the proclamation:

- **Restriction on foreign funding and definition of Charities and Societies based on sources of funding:** the PCS retains a ten percent threshold on foreign funding, as a basis for defining "Ethiopian Charities and Societies". The prohibition that Ethiopian Charities or Societies cease to be 'Ethiopian', and become 'Resident' if they acquire more than 10% of their income from foreign sources. That is if they become 'Resident', they are prohibited from engaging in human rights and related work, including activities to promote the rights of vulnerable groups (women, children, disabled people). CSOs still argue: it is inappropriate legislative practice to make distinctions between foreign and domestic CSOs based on their source of funds; income from foreign source should be secondary consideration.
- **Restriction on work areas:** When combined with the restriction on foreign funding, the PCS excludes "Foreign" CSOs, as well as Charities and Societies of "Ethiopian Residents" and "Religious Organizations" from the rights-based and advocacy work.
- **Powers of the Charities and Societies Agency and sector administrators:** The scope of authority of the CSA has been diluted to some degree, however it retains the final authority to deny registration and dissolve CSOs as these CSOs have no right of appeal under the proclamation.
- **Administrative infringements defined as "Criminal Acts"** the PCS prescribes a penalty of imprisonment for minor administrative irregularities such as failure to prepare and submit accurate accounts on time.

## **Chapter 4. Summary of the findings, Conclusion and Recommendations**

In view of the theoretical context and the empirical evidences discussed in the preceding chapters, this chapter sums up the findings, provides conclusion and recommendations.

### **4.1. Summary of the findings**

Based on the analysis and interpretation of the data, the findings of research shows:

1. The Council of Ministers, department of "*Legal Research, Drafting and Transfer*" at the Ministry of Justice, experts from the Prime Minister's Office, the Legal Affairs Directorate of the Ministry Foreign Affairs, FDRE House of Peoples Representatives, Civil Society Organizations Task Force on Enabling Environment for Civil Society in Ethiopia (CSOTF), Individual CSOs, the donor community and individual citizens participated during the Charities and Societies Proclamation making process in Ethiopia.
2. From those actors Council of Ministers and the lead department (MOJ) had absolute power leverage in the Charities and Societies Proclamation making process in Ethiopia. '*Ye hig tinat, Markek ena sirstet Kifil*' [in Amharic] to mean "*Department of Legal Research, Drafting and Transfer*" at the Ministry of Justice (executive) were responsible for the task of drafting and redrafting the draft legislation.
3. Civil Society Organizations Task Force on Enabling Environment for Civil Society in Ethiopia (CSOTF) made changes on several but less contentious provisions. More contentious provisions that pitted the government with CSOs and other international organizations are not yet resolved. Too fragmented Opposition parties with different experiences and programs remain minority while the ruling party enjoyed absolute majority vote.
4. The political executive and the ruling party fused executive leadership dominated the Charities and Societies Law making process in Ethiopia, due to the following reasons:

First, the party philosophy that is revolutionary democracy and its objectives provides interest in every field of public policies; this allowed the government to draft a law that

grants the executive primary authority to make laws through Proclamation to Define Powers and Duties of the Federal Executive Bodies, (Proclamation No.471/2007), Constitutional stipulations also paved the way to executive dominance.

Second, most experts in the executive division of the government are party fused, in Ethiopia the head of the executive is most often a member of ruling party (EPRDF) and often a member of the parliament. This entails that, the executive its head is also in the parliament enjoys the majority vote. In other words, the executive is dominated by the party which again dominates the legislature.

5. As far as the power of the executive and the legislature is concerned, during the charities and societies law making process in Ethiopia, the process had had unbalanced power between the executive and the legislature. The executive hence, the Ministry of Justice, played the major role (the highest power) during the charities and societies law making process. The executive which of course is dominated by party affiliated elites is considered as the soft ware to initiate the agenda, to draft and re-draft the law, an expert and trend setter with the highest power leverage during presentation to the council of ministers and later to the legislature, the legislature has a mere power to enact it by the majority vote provided the law is party sponsored and credited by the party-fused elites (executives) and later by the Council of Ministers.
6. Ministry of Justice was prompted to initiate the CSOs law, Primarily because of the lack of trust that existed between the government and CSOs: the government has a suspicious view that CSOs have hidden political agenda and if they are left alone or if there is no any regulatory framework they (especially foreign NGOs) will intrude in to the country's political space which they are not supposed to enter.

The other forces are gaps on the existing laws: the previous laws (Civil Code 1952 and Regulation No.321/1959) are not capable of supporting the CSOs in their development activities. These laws have neither clear legal provision to encourage genuine NGOs nor to punish illegal ones operating in Ethiopia. There was no as such a law that specifically deals about CSOs in Ethiopia, there were mere guidelines or operational agreements. The existing laws governing the sector have contradicting definitions.

The other force is the Business Process Reengineering (BPR) reform. It is founded that because of increasing involvement of Charities and Societies in the social and economic development of the country, administering Civil Society Organizations become complex. Therefore, MOJ, to reengineer the service it provides to its clients including administration of Charities and Societies was prompted to develop a comprehensive legal framework to register and regulate the Charities and Societies in Ethiopia.

7. In regards to the role of CSOs, the civil society organizations (CSOTFs) that are involved in developing comments and that participated in face to face discussion with the relevant government bodies including the Prime Minister did not have any official mandate to represent all civil society organizations in the country, this highly affected their power and resource leverage to debate especially on the major contentious provisions. Some CSOs attended public hearing session privately.
8. All actors that are involved during the charities and societies law making process shared the fundamental need for the law to govern CSOs in Ethiopia despite differences in key provisions.
9. Key areas of concern by Ethiopian CSOTFs focus on the following aspects of the proclamation: restriction on foreign funding and definition of Charities and Societies based on sources of funding, restriction on work areas, powers of the Charities and Societies Agency and sector administrators and Administrative infringements defined as "Criminal Acts".

## **4.2. Conclusion**

The " Charities and Societies Proclamation" in its preambles, states two main objectives for the need for a proclamation: (i) to aid and facilitate the role of Charities and Societies in the overall development of Ethiopian peoples and (ii) ensure the realization of citizens' right to association enshrined in the Constitution of the Federal Democratic Republic of Ethiopia.

On the flipside, whilst several of the provisions are meant to constructively improve the efficiency, transparency and accountability of the civil society sector, overall the proclamation is

considered restrictive by international standards. The key concern is that it may not foster an enabling environment that would allow the constructive role of civil society organizations in national development.

In light of the above statements and related reasons the PCS as a process requires a balanced participation of CSOs, legislature, executive and other stakeholders in the scene.

The following conclusions are drawn based on the finding and analysis of the data.

1. The proclamation ended an era of ambiguity that governed the establishment, registration and activities of international and local NGOs in Ethiopia and replaced with more explicit controls and requirements in all of these areas.
2. Efforts made on the side of the government to raise awareness of civil society rights, roles and power in the Charities and Societies Proclamation making process are encouraging.
3. CSOTFs effort in institutionalizing democratic culture, transparency and accountability; capacity to integrate with and mobilize Ethiopia CSOs to undertake rights activities, to disseminate information and to negotiate with law makers to impact on the law making process is a way forward to public participation in the legislative development process in Ethiopia.
4. The Current Ethiopian Constitution consists of democratic provisions that help to empower citizens to actively and freely participate in democratic governance in Ethiopia. However, attempts made to increase active engagement of citizens in the making and shaping of Charities and Societies Proclamation is in its infant stage, due to the limits imposed by the revolutionary democracy ideology, the lack of trust between the government and the CSOs and the highly fragmented political parties in the parliament.
5. Though, the government played a tremendous role in bringing change to the level of public participation and citizen action in Ethiopia, and CSOTFs participate to promote an enabling legal environment for Ethiopia civil society the fundamental aspects of the proclamation remain unchanged, important, but relatively minor amendments were made as a result.

6. The "Proclamation to provide for the Registration and Regulation of Charities and Societies (PCS)-No.621/2009" as the name itself indicates considers administrative issues but concentrates on legal frameworks, national law makers seem to take issues of citizen participation as secondary in designing the proclamation.
7. Legal provisions, for example the "Proclamation to Define Powers and Duties of the Federal Executive Bodies (Proclamation No. 471/2007)" and the Constitution of the FDRE article(72) paved the way for the executive dominance over the legislature in the PCS making process in Ethiopia.
8. The participation and roles in PCS making process is considered inadequate by CSOTFs and opposition parties, the government seems to take democratic governance (public participation) secondary and peace and development primary, while in actual fact they are complementary.

### **4.3. Recommendations**

Based on the research objectives, analysis of data and findings suggestions are made as follows:

1. Charities and Societies Proclamation making process in Ethiopia has involved executives, the CSOTFs and the ruling party dominated legislating body. The legislature is usually criticized for and even admits that it is not well staffed, thus to create a practical checks and balances between the two bodies, the government has to increase its capacity through strategic management of human capital.
2. Considering the plurality of interest, formulating sound laws in Ethiopia demands well staffed MPs that can maintain check and balance between the executive and the legislature with real separation of power, therefore, political parties have to recommend candidates on the basis of educational standards so that MPs can be equipped with full resource to be able to draft laws and maintain checks and balances with the executive.
3. The role of CSOTFs, during the law making process did not bring changes on the fundamental aspects of the proclamation. All CSOs should work together to create an enabling environment for CSOs in Ethiopia through their network organizations and strengthen the institutional capacity of CSOs.

4. The government should continue promoting independent legal consultants and researchers (policy think tanks) to flourish in Ethiopia, that can initiate, supplement and consult the House of Peoples Representatives on lawmaking and other policy issues by producing more scholars in the field of public policymaking.
5. CSOs in the country did not have a Task Force that have an official mandate to represent all of them, the reluctance in this regard would finally result in adaptation problems, and thus they should establish an alliance-a corporate agent that can work solely on creating an enabling environment for all CSOs in Ethiopian, where all CSOs can be provided with opportunities to participate effectively and influence policies to help them articulate their social demands very well. This can also help to create a balance between the government and the beneficiaries.
6. 70.7 per cent of the FDRE MPs were absent in the house during the public hearing session for the charities and societies draft proclamation. MPs should show the public their commitment not only during parliamentary deliberations but also during public hearing session; on top of that the government and other political advocates should work on increasing public awareness in any policy issues.
7. The ratification of the law is not the last stage in law making process. Therefore, CSOTF members should continue to raise concerns about the proclamation and design a system for reviewing the enforcement and impact of the proclamation with the aim to provide evidence on how its application is affecting their activities. The executive should make continuous reappraisal of the most contentious provisions and provide remedies for each.

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## Appendices

### A. Questionnaire 1

ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
FACULTY OF BUSINESS AND ECONOMICS  
DEPARTMENT OF PUBLIC ADMINISTRATION AND DEVELOPMENT MANAGEMENT

Questionnaire to be filled by EPRDF MPs

1. How do EPRDF MPs discuss and take a stand of a policy/legislation to endorse it at the plenary session in the HPR?
2. In draft laws (policies) even party members may table challenges to the proposals of the party for which they are the members. Do you have had such opportunities especially during the adoption of the Charities and Societies law? Comment
3. Apparently the executives propose the bulk of policy and legislative proposals but not the HPR. The HPR only approve detailed policy and legislation when the executive sends them to the parliament. What is your opinion about this as a member of EPRDF MP?
4. The recognition of the *plurality* of interest is an extremely essential issue in public participation in policymaking in Ethiopia. What is the reality in Ethiopian public policymaking in general and the Charities and Societies Proclamation in particular?
5. Is there anything that may affect the free expression of wills during the parliamentary deliberations? If any, would you explain these factors in relation to CSO Proclamation
6. During the Charities and Civil Societies Policy making process how do you evaluate the role of the ruling party against the legislative body (the parliament). Were they as separate as the constitution stipulates? If so how do you explain that?
7. The Civil Society Task Forces who were engaged in the proclamation making process expressed "*The previous policy is extremely better than the current policy*". What are your comments?
8. What were the major powers exercised by the EPRDF MPs during the adoption of the Charities and Societies Proclamation making process?

9. It is clear that after the adoption of the Charities and Societies proclamation except EPRDF almost all of the interest groups expressed their concerns upon the contents of the policy. Why do you think the reasons for such contests?
10. EPRDF MPs are barely allowed to promote ideas other than those of their party. How do you evaluate this statement especially in relation to the Charities and Societies proclamation making process?
11. Overall how do you evaluate public participation and their roles in public policymaking in general and the charities and civil societies in particular? Comment on this

## B. Questionnaire 2

ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
FACULTY OF BUSINESS AND ECONOMICS  
DEPARTMENT OF PUBLIC ADMINISTRATION AND DEVELOPMENT MANAGEMENT

Questionnaire to be filled by CSOs task force who participated during CSOs Proclamation making process

1. How many members do a CSO task force comprised of during the preparation of the draft CSO proclamation?
2. Did the task force and the CSOs themselves believe that the task force is a representative of the CSOs in the country? Comment on this
3. What were the tools used to transfer information (the draft policy) among the group of policy makers (open face to face discussions, debates, and letters (a draft in the form of a text ... or what?) do you it is relevant? Why
4. The CSOs task force has noted at the footnote of their commentators on the draft law as “the previous law was in many terms generous “my emphasis added. Why the task force said so?
5. Do you think that there was meaningful participation during the CSO proclamation making process especially in bringing change and exercising the roles deemed to? Write your comments
6. How do you measure the roles the task force played during the process of policymaking? Was it adequate, legitimate and fair participation?
7. What do you think are the motives that prompted the government to initiate the policy agenda and to adopt it later?
8. How do you as a member of the CSO task force and CSOs in general evaluate the role and level of participation of the government against the major beneficiaries of the policy- CSOs and the Public?
9. During the making of the draft law and immediately after the proclamation is adopted by the parliament, International and national institutions including the CSOs themselves and even individuals have expressed their concerns upon the policy. Does

it mean that the Task forces commentaries are not yet fully incorporated? If yes.  
Why

10. Among the actors involved in the Charities and Civil Societies (CCS) policy making process which actor(s) exercised the strongest power to incorporate own ideas in to the final policy? Why?
11. Do you share the idea that EPRDF MPs are exercising relatively less power in the party sponsored legislations and motions than the constitution stipulates? Comment in relation to civil societies law making process.
12. How do you as a member of the CSO task force and CSOs in general evaluate the role and level of participation of the government against CSOs and the Public?
13. There were no conditions where independent and autonomous CSOs participate in the charities and civil societies policymaking process and debate on policy issues. Explain your view on this regard.
14. Overall how do you comment on Ethiopian public participation and their roles in public policymaking in general and the charities and civil societies in particular? Comment on this.

C. Questionnaire 3

ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
FACULTY OF BUSINESS AND ECONOMICS  
DEPARTMENT OF PUBLIC ADMINISTRATION AND DEVELOPMENT MANAGEMENT

Questionnaire to be filled by Opposition MPs

1. Do you think that there was a meaningful public participation during the Charities and Civil Societies proclamation making process? Comment on this.
2. Do you believe that public hearings (open discussions) can bring significant changes upon the final text? What is your opinion on this?
3. In any of the public policies it is clear that government should play its own role during policymaking process. How do you measure its role against the role of the opposition and other actors such as Civil Society Organizations? Is the government dominating? If yes how?
4. Do you think the balances of power and checks and balances that dictate separation of power between the legislatures and the executive is maintained during the charities and societies policymaking process? Comment on this.
5. EPRDF MPs are barely allowed to promote ideas other than those of the party. How do you evaluate this statement especially in relation to the Charities and Societies proclamation making process?
6. Do you share the idea that EPRDF MPs are exercising relatively less power in the party sponsored legislations and motions than the constitution stipulates? Comment in relation to civil societies law making process.
7. What roles did opposition party play in the charities legislation making process to change the contents of the draft law done by the ruling government - EPRDF?
8. Overall how do you comment on Ethiopian public participation and their roles in public policymaking in general and the Charities and Civil Societies in particular? Comment on this

## D. Questionnaire 4

ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
FACULTY OF BUSINESS AND ECONOMICS  
DEPARTMENT OF PUBLIC ADMINISTRATION AND DEVELOPMENT MANAGEMENT

Questionnaire to be filled by FDRE Ministry of Justice (MoJ)

1. Who were the actors who participated during the Charities and Societies Proclamation making process? List them.
2. In any public policymaking process usually the government takes the highest power to draft policy issues and finally to adopt it. How do you measure the role of the government against the role of other actors such as Civil Society Organizations Task Forces, Opposition Members of the parliament and other?
3. What are the motives that prompted the government to initiate the policy agenda to adopt it later?
4. Apparently the executives – MoJ in this case propose the bulk of policy and legislative proposals but not the HPR. The HPR only approve detailed policy and legislation when the executive sends them to the parliament. What is your opinion about this?
5. What were the roles exercised by the Ministry of Justice during the making the draft of the Charities and Societies proclamation and during its enactment by the parliament?
6. It is clear that after the adoption of the Charities and Societies proclamation except EPRDF almost all of the interest groups expressed their concerns upon the contents of the policy. Why do you think the reasons for such contests?
7. The Civil Society Task Forces who provided comments to the draft legislation expressed “*The previous policy governing CSOs is extremely better than the current policy*”. Why do you think they said that?
8. Overall how do you explain the role of different actors during the charities and societies proclamation making process? Do you think there was adequate, fair and legitimate participation by all actors, how do you explain that?

## E. Interview guide 1

ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
FACULTY OF BUSINESS AND ECONOMICS  
DEPARTMENT OF PUBLIC ADMINISTRATION AND DEVELOPMENT MANAGEMENT

### Interview for opposition MP

1. Do you think that there was a meaningful public participation during the Charities and Civil Societies proclamation making process? Comment on this.
2. Do you believe that public hearings (open discussions) can bring significant changes upon the final text? What is your opinion on this?
3. In any of the public policies it is clear that government should play its own role during policymaking process. How do you measure its role against the role of the opposition and other actors such as Civil Society Organizations? Is the government dominating? If yes how?
4. Do you think the balances of power and checks and balances that dictate separation of power between the legislatures and the executive is maintained during the charities and societies policymaking process? Comment on this.
5. EPRDF MPs are barely allowed to promote ideas other than those of the party. How do you evaluate this statement especially in relation to the Charities and Societies proclamation making process?
6. What roles did opposition party play in the Charities and Societies legislation making process to change the contents of the draft law done by the ruling government-EPRDF?

F. Interview Guide 2

ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
FACULTY OF BUSINESS AND ECONOMICS  
DEPARTMENT OF PUBLIC ADMINISTRATION AND DEVELOPMENT MANAGEMENT

Interview for Ethiopian Academics/Senior educators

1. How do you explain the legislative - executive relationship in the public policymaking in Ethiopia in general and during the charities and societies policymaking process in particular? That is do you think there had been real separation of power between the two in practice?
2. Civil Society Organizations (CSOs) say that the previous law governing CSOs is by all means better than current legislation. Would you explain the reasons in relation to such contexts as governments' ideology, the policy history and the level of citizen participation in Ethiopia?
3. Would you explain the stage public participation in Ethiopia has attained in general and during the charities and civil societies proclamation making process in particular?
4. After the adoption of the Charities and Societies proclamation except EPRDF almost all of the interest (pressure) groups expressed their concerns upon the contents of the policy. Why do you think the reasons for such contests?
5. What do you think are the motives that prompted the government to initiate the policy agenda and to adopt it later?
6. Overall how do you comment on Ethiopian public participation and their roles in public policymaking in general and the charities and civil societies in particular? Comment on this.
7. Finally if you have any comments about citizen participation and their role in public policymaking in Ethiopia in general and the charities and civil societies in particular write it below.

### G. Interview Guide 3

ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
FACULTY OF BUSINESS AND ECONOMICS  
DEPARTMENT OF PUBLIC ADMINISTRATION AND DEVELOPMENT MANAGEMENT

Interview for FDRE Charities and Societies Agency

1. How do EPRDF MPs discuss and take a stand of a policy/legislation to endorse it at the plenary session in the HPR?
2. In draft laws (policies) even party members may table challenges to the proposals of the party for which they are the members. Do you have had such opportunities especially during the adoption of the charities and societies law? Comment
3. Apparently the executives propose the bulk of policy and legislative proposals but not the HPR. The HPR only approve detailed policy and legislation when the executive sends them to the parliament. What is your opinion about this as a member of EPRDF MP?
4. The recognition of the *plurality* of interest is an extremely essential issue in public participation in policymaking in Ethiopia. What is the reality in Ethiopian public policymaking in general and the Charities and Societies Proclamation in particular?
5. Is there anything that may affect the free expression of wills during the parliamentary deliberations? If any, would you explain these factors in relation to CSO Proclamation
6. During the Charities and Civil Societies Policy making process how do you evaluate the role of the ruling party against the legislative body (the parliament). Were they as separate as the constitution stipulates? If so how do you explain that?
7. The Civil Society Task Forces who were engaged in the proclamation making process expressed "*The previous policy is extremely better than the current policy*". What are your comments?
8. What were the major powers exercised by the EPRDF MPs during the adoption of the Charities and Societies Proclamation making process?
9. It is clear that after the adoption of the Charities and Societies proclamation except EPRDF almost all of the interest groups expressed their concerns upon the contents of the policy. Why do you think the reasons for such contests?

10. EPRDF MPs are barely allowed to promote ideas other than those of their party. How do you evaluate this statement especially in relation to the Charities and Societies proclamation making process?
11. Overall how do you evaluate public participation and their roles in public policymaking in general and the charities and civil societies in particular? Comment on this

**DECLARATION**

I, the undersigned, declare that this thesis is my original work and has not been presented for a degree in any university and all the sources of materials used for the thesis are duly acknowledged.

Declared by:       Getinet Fantahun  
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Date:               \_\_\_\_\_

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Date:             \_\_\_\_\_

Place and date of submission \_\_\_\_\_



