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**ADDIS ABABA UNIVERSITY**  
**COLLEGE OF LAW AND GOVERNANCE**  
**STUDIES**  
**SCHOOL OF LAW**

**The Formation and Registration of Civil  
Society Organizations under Proclamation  
1113/2019**

By: Yosalem Negus (GSR/5364/12)

Addis Ababa, Ethiopia

July 2021

**ADDIS ABABA UNIVERSITY**  
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**The Formation and Registration of Civil Society  
Organizations under Proclamation 1113/2019**

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A thesis submitted in partial fulfillment of the requirements for a Master of Laws degree in Human Rights Law at the School of Law, College of Law and Governance Studies of Addis Ababa University.

Addis Ababa University

Addis Ababa, July 2021

### **Declaration**

I, hereby, declare that the study on “The Formation and Registration of Civil Society Organizations under Proclamation 1113/2019” is my own work, and the sources used are duly cited and acknowledged.

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## **Acknowledgment**

First of all, I would like to thank Almighty God who is the source behind every intellectual comprehension. Most importantly, I would like to thank my parents for their love, encouragement, and prayers.

My heartfelt thanks goes to My Advisor, Dr. Girmachew Alemu Aneme for his kindness, understanding, and genuine support. This thesis would not be possible if it was not for his advice, patience, and friendly approach.

## **Acronyms**

ACHPR	African Charter on Human and Peoples' Right
Art.	Article
ACSO	Agency for Civil Society Organizations
CSO	Civil Society Organization
CSOs	Civil Society Organizations
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
No.	Number
Para	Paragraph
P.	Page
UDHR	Universal Declaration of Human Rights
UN	United Nations
Vol.	Volume

## **Abstract**

*Ethiopia is one of the countries working towards developing enabling laws, regulations and directives to support civil society organizations. The adoption of liberal and progressive laws forms the basis for the emergence and consolidation of a strong and independent civil society. The promulgation of the CSO Proclamation 1113/2019 offered an opportunity to open up civic space. The proclamation has overcome numerous legislative restrictions on CSO activity which were introduced by the repealed Charities and Societies Proclamation 621/2009. Several legislative restrictions which were embedded in the repealed legislation have been abandoned. Major among such changes pertain to the formation and registration of civil society organizations. The purpose of this study is to canvas and flesh out the substantive issues relating with the incorporation, process of formation and registration of CSOs under the new Ethiopian CSO legal regime. The study will not only guide researchers but also those wish to set up a new civil society organization, modify existing ones, or compare conditions of incorporation.*

**Keywords:** Human rights, freedom of association, civil society organizations, formation of civil society organization, registration of civil society, Proclamation No. 1113/2019

## Table of contents

Contents	Pages
Acknowledgement	i
Acronyms	ii
Abstract	iii
Table of contents	iv
<b>Chapter one</b>	<b>1</b>
<b>Introduction</b>	<b>1</b>
1. Background of the study	1
2. Statement of the problem	2
3. The research objective	3
3.1. General Objective	3
3.2. Specific Objectives	3
4. The research question	4
5. The research hypothesis	4
6. Significance of the study	4
7. The research methodology	4
8. The literature review	5
9. Limitation of the study	6
10. The organization of the study	7
<b>Chapter Two</b>	<b>8</b>
<b>General theoretical background on civil societies</b>	<b>8</b>
2.1. Definition of Civil Society organization	8
2.1.1. Definitional Features of CSOs	8

2.2.	The Roles of Civil Society organizations	9
2.3.	Legal framework of CSOs: International, regional and Ethiopian laws	10
2.3.1.	International	10
2.3.1.1.	The Scope of the Right of Freedom of Association	11
2.3.1.2.	Permissible Purposes of Association	11
2.3.1.3.	Eligibility of Founders	12
2.3.1.4.	The right to associate without legal entity status	13
2.3.1.5.	The right to seek and obtain legal entity status	13
2.3.2.	Regional CSOs legal framework	14
2.3.3.	Ethiopian CSOs legal framework	15
2.3.3.1.	Scope of application	16
<b>Chapter Three:</b>		<b>18</b>
<b>Formation of CSOs in Ethiopia</b>		<b>18</b>
3.1.	Principles Governing the Formation of CSOs in Ethiopia	18
3.2.	The main legal forms of Civil Society Organizations (CSOs) in Ethiopia	18
3.2.1.	Foreign Organizations	18
3.2.2.	Charity organizations	19
3.2.3.	Professional association	19
3.2.4.	Local Organizations	19
3.2.4.1.	Types of local CSOs and their process of formation	20
<b>Chapter Four:</b>		<b>30</b>
<b>Registration of CSOs in Ethiopia</b>		<b>30</b>
4.1.	Regulatory Requirements for Civil Society Organizations (CSOs) in Ethiopia	31
4.1.1.	Requirement of Mandatory Registration	31
4.1.2.	Registering organ	31
4.2.	Requirements and Conditions for registration	32

4.2.1. Registration procedure and required registration documents for local CSOs	32
4.2.2. Registration procedure and required registration documents for Foreign CSOs	33
4.2.3. Registration procedure and required registration documents for a Consortium	34
4.2.4. Specific requirements of registration relating to different types of local organizations	34
4.2.5. Application fee	35
4.3. Time frame for Registration	35
4.4. Evaluation of Application for Registration	36
4.5. Refusal of registration and remedies	37
4.6. Effects of Registration	38
4.7. Current available data on the registration and formation of civil society organizations in Ethiopia	39
4.8. The extent to which the system of formation and registration creates enabling legal environment for CSOs	40
Conclusion and Recommendation	42
Bibliography	43

## Chapter one: Introduction

### 1.1. Background of the study

Different researches witness that formal and modern civil society organizations started to appear in Ethiopia 50 years ago. The registration was handled by the then Ministry of state administration. The registration was also based on the civil code no. 321/1966. From the time the Derg dictatorship came to power in 1975 until its overthrow in 1991, there had been almost no civil society organizations, both domestic and foreign, that were registered and carrying out their functions. This was as a result of the ban on freedom of association. However, after 1991 the Transitional Government Charter and subsequently the Constitution of the Federal Democratic Republic of Ethiopia (hereafter FDRE Constitution) recognized the freedom of association. As a result, a large number of charities and societies have been registered and licensed to carry out their activities. From 1991 up to 1995, the Ministry of Interior Affairs licensed civil society organizations.

Proclamation No.471/2005 empowered the Ministry of Justice to register and license <sup>1</sup>faith-based and non-profit non-governmental organizations. There were around 3822 civil society organizations that existed in the country throughout the last 50 years; however, a research of the Civil Society Organizations Agency shows that from a randomly selected 1918 (50.2 percent) sample only 739 (38.5 percent) were active and reported to the Ministry of Justice association registration office. The remaining 1119 (61.5%) were inactive and disconnected from the office.<sup>2</sup>

As the majority of scholars agree, the 2005 general election was a negative turning point in the civil society history of Ethiopia.<sup>3</sup> The active participation of CSOs in that election was perceived as a threat by the government. Consequently, the Ethiopian government issued the Charities and societies proclamation 621/2009. Most scholars argue that this law was meant to curtail CSO activity. Some argue that the government issued the law due to the need to

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<sup>1</sup>Proclamation No.471/2005, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, article 23(8)

<sup>2</sup><https://www.devex.com/organizations/agency-for-civil-society-organizations-acso-ethiopia-151974>, last accessed on February 28, 2021

<sup>3</sup> See Mizanie Abate Tedesse, The Implications of 2009 Ethiopian CSOs Law on the Right to Freedom of Association, *Journal of Ethiopian Law*, Vol.27, No.1, (Fall 2015), Sisay Alemahu Yeshanew; CSO Law in Ethiopia: Considering its Constraints and Consequences, *Journal of Civil Society* Vol. 8, No. 4, 369–384, (December 2012) and Tsehai Wada; The Regulatory Framework for Civil Society Organizations in Ethiopia, *Civil Society at the Cross Roads: challenges and prospects in Ethiopia*, Forum for Social Studies, 2008, available on <https://addisababa.academia.edu/TsehaiWada> accessed on 10/10/2021

monitor civil society embezzlement of financial resources and lack of accountability.<sup>4</sup> Other scholars argue that the government used the need for accountability as a pretext to deliberately weaken CSOs.<sup>5</sup> At any rate for the past two decades, the CSOs in Ethiopia have been suffering due to the closed civic space as a result of the rules under the Charities and Societies Proclamation 621/2009. In 2019, the government issued Proclamation 1113/2019 Organizations of Civil Societies Proclamation (hereinafter the proclamation or Proclamation 1113/2019). The objective of this new law as evidenced in its preamble is to address the shortcomings of the Charities and Societies Proclamation 621/2009.<sup>6</sup> This research attempts to explain the new law and assess whether it has created an enabling environment for civil societies.

## **1.2. Statement of the problem**

According to the freedom house international 2021 index, Ethiopia stands as a nation labeled ‘not free’.<sup>7</sup> Its 2021 overall ranking (including freedom of association) is 22<sup>nd</sup> out of 100. This even gets lower when it comes to civil liberties (13/100) and political rights (9/100).<sup>8</sup> The previous legal regime governing civil societies (i.e. proclamation 621/2009) has been severely criticized by scholars as repressive and with a crippling effect on civil society activities. From registration all the way to operation, civil societies have reported being unduly limited and the essence of their rights being trampled upon. For decades, many scholars have made evidence-based complaints that the CSO sector was deliberately handicapped in Ethiopia. Markedly, after the 2005 election and after the coming of the 2009 CSO law the civic space was almost closed. Such institutionally entrenched and legally backed repression continued until the issuance of proclamation 1113/2019.

After decades of shackled existence in the dark, it appears that freedom of association is seeing a beam of light in Ethiopia. The adoption of proclamation 1113/2019 connotes a landmark period for the Ethiopian civil society legal regime. However, Ethiopian Civil society legal scholarship mainly hinges upon academic criticisms of the previous CSO legal framework. As much as this has been important in the process to midwife the new legal regime, it is now less relevant. With changing times new research and assessments of the new

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<sup>4</sup> Yntiso Gebre, Reality Checks: the state of civil society organizations in Ethiopia, *African Sociological Review*, Vol. 20, No. 2 ,(2016),p.4

<sup>5</sup> Sisay Alemahu Yeshanew, CSO Law in Ethiopia: Considering its Constraints and Consequences, *Journal of Civil Society* Vol. 8, No. 4, 369–384, (December 2012), p. 2

<sup>6</sup> Proclamation no. 1113/2019,Preamble,para. 7

<sup>7</sup> <https://freedomhouse.org/country/ethiopia/freedom-world/2021>,last accessed, March 1, 2021

<sup>8</sup> Ibid

CSO legal framework is needed more than ever. Even though much research has been done on the previous CSO law and how badly it repressed civil societies, there is scanty available research about the new civil society law (i.e. proclamation 1113/2019). This knowledge gap is profoundly immense and justifies the need for research. This research is written with the intention of contributing to the legal scholarship in the area. It will address the legal, normative, and some practical issues relevant to the formation and registration of civil societies under the new Ethiopian CSO legal regime.

### **1.3. The research objective**

The research has general and specific objectives.

#### **1.3.1. General Objective**

Broadly, the paper will analyze the formation and registration of CSOs under the new Ethiopian organization of Civil Societies Proclamation No. 1113/2019.

#### **1.3.2. Specific Objectives**

1. To identify and explain the rules for the formation and registration of civil society organizations under Proclamation No.1113/2019;
2. To evaluate the changes on the formation and registration of civil society organizations under Proclamation No.1113/2019 in light of the required international standards.
3. To contribute to the scholarship of Ethiopian Non-profit law and produce a work that will serve as a go-to practical guide on the formation and registration of civil societies in Ethiopia.

### **1.4. Research questions**

The study attempts to respond to the following research questions:

- i. What are the requirements to form a new civil society organization under the Ethiopian Civil Society Organizations Proclamation No. 1113/2019?
- ii. What are the conditions of registration under the Ethiopian Civil Society Organizations Proclamation No. 1113/2019?
- iii. Does the system of formation and registration under the Ethiopian Civil Society Organizations Proclamation No. 1113/2019 create an enabling legal environment for CSOs?

### **1.5. The research hypothesis**

This research is based on the hypothesis that the current civil society organizations proclamation creates an enabling legal environment for civil societies.

In comparison to the previous civil society proclamation 621/2009, the researcher hypothesizes that the current CSO proclamation is more empowering for CSOs in terms of formation and registration procedures.

### **1.6. Significance of the study**

Quite clearly, civil society is the most important sector for social progression and human rights protection. The private sector consisting of the economic forces and the public sector mainly composed of political groups is highly partisan and inclined to interest groups. The civil society is the only balancing force in between. Even more precisely, the CSO sector is the reconciling force between the two polarized factions. This is so because civil societies by their very nature are non-partisan. However, it seems less attention is given to the study of CSOs. Even though highly important the CSO sector in Ethiopia remains weak and at times even not functional. It seems the public and private sectors are relatively over empowered and the CSO sector less empowered. This problem makes a strong case to closely examine and study civil societies and the legal regime governing them.

Moreover, if seen from an academic perspective, there are relatively many resources for teaching and research of Ethiopian private/business law & political law. But, when it comes to non-profit law there are only a few materials. There are ample resources on how a new business is incorporated-what legal frameworks and regulations exist. However, when it comes to the incorporation of a new CSO, the required procedures, and process there is little to no resources to look up to. The study will be an important source for teaching non-profit law according to the new Ethiopian CSO legal framework. It will also be significant input for researchers, civil society organizations, individuals, and groups of individuals who want to incorporate a new CSO or reframe existing ones. The study will also serve as an entry point for future comparative research on CSO legal frameworks.

Hence, in order to close the aforementioned knowledge gaps, it is highly important to closely study the Formation and registration of civil society organizations under the new civil society proclamation 1113/2019 and whether it creates an enabling legal environment for CSOs beyond mere perception.

## **1.7. The research methodology**

The study is a doctrinal legal research. It provides a systematic exposition of the rules governing the formation and registration of civil society organizations and analyzes the relationship between the rules. As a doctrinal research, it will mainly focus on analyzing legal instruments, concepts, theories, and principles concerning the Ethiopian CSO proclamation 1113/2019 and the relevant regulations and manuals. Accordingly, the research methodology will be a qualitative research method whereby non-quantitative information is gathered and a conclusion is inferred using scientific logic. The substantive dimension of the Ethiopian CSO legal regime will be assessed to facilitate an understanding of the legal framework through which the human right of freedom of association is protected. As a doctrinal legal research, the letter of the law is the primary source, and books, journal articles, and web pages are used as secondary sources. Doctrinally, the main basis of analysis will be the relevant laws pertaining to the formation and registration of CSOs in Ethiopia including the Organizations of Civil Societies Proclamation 1113/2019, the Registration and Administration of Charities and Societies Regulation (Regulation 168/2009), applicable directives issued by the former Charities and Societies and Agency, directives issued by the Civil Societies Organizations Agency and other relevant items of legislation. Even though the study is purely doctrinal the researcher have interviewed the legal expert as well as the registration and documentation team leader of the Agency for Civil society organizations in an effort to shed light and compliment the doctrinal research.

## **1.8. Literature Review**

It is part of the collective academic memory of Ethiopians on how the previous civil societies and charities proclamation 621/2009 was subject to scholarly criticisms. Tsehai Wada in an article entitled “The regulatory framework for civil society organizations in Ethiopia, civil society at the crossroads: challenges and prospects in Ethiopia” warned against the promulgation of the previous law at its draft stage stating that it will be very difficult for Ethiopian CSOs to easily come into being as well as operate freely.<sup>9</sup> Mizanie Abate in his article entitled “The implications of 2009 Ethiopian CSOs Law on the right to freedom of

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<sup>9</sup> Tsehai Wada; The Regulatory Framework for Civil Society Organizations in Ethiopia, Civil Society at the Crossroads: challenges and prospects in Ethiopia, Forum for Social Studies,(2008), p.17, available on <https://addisababa.academia.edu/TsehaiWada> , last accessed on June 20,2021

association”<sup>10</sup> characterized the proclamation as restraining and restrictive. Fasil Mulatu and Rubiyat Mohammed in their article entitled “Revitalizing the roles of non-governmental human rights organizations in Ethiopia ” explained that the law has turned CSOs into a survival mode.<sup>11</sup> Sisay Alemahu in his article “CSO Law in Ethiopia: Considering its Constraints and Consequences” affirms that the old CSO law had the effect of pushing CSOs out of operation in some areas notably human and democratic rights.<sup>12</sup> Tewodros Woldearegay in his study entitled “Civil society under assault in Ethiopia” concluded that the role of CSOs in enhancing democracy and good governance in Ethiopia was insignificant due to the extreme pressure of the EPRDF regime since the aftershock of the 2005 National Election.<sup>13</sup>

The new CSO law proclamation 1113/2019 since its inception had a positive reception from scholars and international rights-based organizations such as Amnesty International, Human Rights Watch, and International Center for Not-for-profit Law. Yet still, there are more blog articles, news paper articles, and expert opinions than academic research on the new CSO law. Even the few academic researches so far focus on general matters including the implication of the new CSO law to human rights protection and democratization. In this regard, it is imperative to look at the research by Tiso Gobena entitled “The implication of the organizations of civil societies proclamation no. 1113/2019 on the promotion and protection of human rights in Ethiopia”<sup>14</sup> and Kidan Dires Demissie’s thesis entitled “The 2009 and 2019 CSO laws in Ethiopia: from hindrance to facilitator of CSO activities? ”.<sup>15</sup> While the former concludes the new proclamation has a positive prospect and implications as it is in line with international standards. The latter broadly discusses the potential effect of the new civil society proclamation on CSOs that carry out human rights-based activities. Previous research on the Ethiopian civil society law focuses on the repercussions of the

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<sup>10</sup> Mizanie Abate Tadesse, The Implications of 2009 Ethiopian CSOs Law on the Right to Freedom of Association, *Journal of Ethiopian Law*, Vol.27, No.1, (Fall 2015)

<sup>11</sup> Fasil Mulatu Gessesse and Rubiyat Mohammed Seid; Revitalizing the roles of Non-governmental Human Rights Organizations in Ethiopia, *EJHR* Vol. II December (2014),p.55

<sup>12</sup> Sisay Alemahu Yeshanew CSO Law in Ethiopia: Considering its Constraints and Consequences, *Journal of Civil Society* Vol. 8, No. 4, (December 2012),p.380

<sup>13</sup> Tewodros Woldearegay ,Civil society under assault in Ethiopia, *African Journal of Political Science and International Relations*. Vol. 12, (2018),p.131

<sup>14</sup> Tiso gobena, The implication of the organizations of civil societies proclamation no. 1113/2019 on the promotion and protection of human rights in Ethiopia, a research paper submitted for the partial fulfillment of the requirements of masters of laws degree in international human rights law, Addis Ababa University (January,2020)

<sup>15</sup> Kidan Dires Demissie ,The 2009 and 2019 CSO Laws in Ethiopia:From Hinderance to Facilitator of CSO Activities?, in partial fulfillment of the requirements for obtaining the degree of master of arts in development studies, The Hague, Netherlands, (December 2019)

proclamation 621/2009 or a cursory review of 2019's law and its impact on human rights and democracy. However, this researcher did not find a research with a specific focus on the formation and registration of civil societies under proclamation 1113/2019. This evinces a clear legal research lacuna and justifies the conduct of this research.

### **1.9. Scope and limitation of the study**

It is evident that some of the regional states in Ethiopia have their own CSO proclamation. However, the scope of the research is limited to the process of formation and registration of CSOs under the federal CSO proclamation 1113/2019 and does not concern itself with the registration of CSOs under the laws of regional states in Ethiopia.

As the CSO proclamation and the subsequent new legal regime is a recent one, this research could not benefit from using practical cases on its implementation that would ensue through time. The researcher also faced time and financial resource limitations while conducting the research.

### **1.10. The organization of the study**

This study has four chapters and a conclusion. The first chapter introduces the background of the research in terms of the research problem, objectives, research questions, method, literature review, and scope and limitations. The second chapter gives a general theoretical background on civil societies. It discusses the definition of civil society organizations and their role within the public sphere. The legal framework on the right to form, join and participate in CSOs internationally, regionally, and nationally under Ethiopian laws will also be closely examined. The third chapter delves into the formation of civil society organizations in Ethiopia. In doing so, it first outlines the principles governing the formation of CSOs in Ethiopia. It, then, explicates the main legal forms of the CSO sector in Ethiopia. The process of formation and internal structure for each type and sub types of CSOs in Ethiopia will be critically assessed. The fourth chapter expounds on the registration of civil society organizations in Ethiopia. It discusses, in detail, the requirements and conditions of registration and the evaluation process of application for registration. Finally, the paper closes up with conclusion and recommendation.

## **Chapter Two: The Conceptual and Legal framework on Civil Society Organizations**

### **2.1. Definition of Civil Society Organization**

Civil society is a sphere of the general public that is separate from the private sector and the government. It is not part of the private economy and/or the for-profit economy. Civil society revolves around the actions and organization of individual citizens around shared goals, interests, and values. As a result, civil society is referred to as the third sector independent from government and businesses. Civil society is distinct from civic society. The latter pertains more to the political participation of citizens while the former relates to the voluntary organization of citizens for a charitable and public service purpose.

Lexically, civil society is defined as a society considered as a community of citizens linked by common interests and collective activity.<sup>16</sup> Legally, civil society organizations are defined as non-state, not-for-profit, voluntary entities formed by people in the social sphere that are separate from the State and the market.<sup>17</sup> Ethiopian law also ascribes a specific definition to Civil Society Organizations (CSOs). The Civil Society Organizations Proclamation (hereinafter CSO Proclamation) defines CSOs as non-governmental, non-partisan entities established at least by two or more persons on a voluntary basis and registered to carry out any lawful purpose, and includes non-government organizations, professional associations, mass based societies, and consortiums.<sup>18</sup>

#### **2.1.1. Definitional Features of CSOs**

The definition of the term CSO as provided in the CSO proclamation shows that CSOs have distinct identifying marks.

- CSOs are separate from the state in that they do not form part of governmental administration mechanisms. CSOs do not represent the government. Instead, CSOs represent their organization which is registered as a non-profit private entity.<sup>19</sup>
- CSOs have autonomy. As autonomous and independent entities, CSOs should be entitled to broad discretion to regulate their internal structure and

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<sup>16</sup> Oxford English Dictionary Online, Oxford University Press, (2021)

<sup>17</sup> <https://www.un.org/en/civil-society/page/about-us>, last accessed on March 26, 2021

<sup>18</sup> Article 2(1), Proclamation no. 1113/2019

<sup>19</sup> Linh H. Dang, Non-governmental Organizations (NGOs) and Development: An Illustration of Foreign NGOs in Vietnam, (June 2009), p.15

operating procedures.<sup>20</sup>

- CSOs undertake their activities voluntarily.
- CSOs perform their activities on a not-for-profit basis. CSOs are not intended to generate revenue. In other words, profit-making is not their goal.<sup>21</sup>
- The definition also implies that CSOs need to be legally established.

## **2.2.The Roles of Civil Society Organizations**

CSOs are established for a variety of purposes. CSOs are mostly engaged in activities aimed at meeting the basic needs, alleviation of poverty and social development. There are also CSOs whose purpose of operation includes political and philosophical objectives. The activities of CSOs are quite diverse and may revolve around sports, politics, hobbies, belief systems, community groups, and self-help groups. Civil society groups play a key role in the protection and promotion of human rights. The roles of civil society organizations in the promotion and protection of human rights are multi-layered. Civil society entities play a key role in the promotion of human rights and fundamental freedoms amongst the public. They also engage in the delivery of legal aid services and other forms of services to victims of human rights violations.<sup>22</sup> They play a pivotal role in terms of empowerment and capacity building by way of human rights education and awareness raising. Civil society groups are engaged in the provision of relief and development assistance. Civil Society groups are also used as watchdogs for monitoring observance of human rights obligations by governments. Among others, they have an important role in the resolution of conflicts and reporting of human rights violations. Their role in the promotion of the good governance agenda complements the work of governments.<sup>23</sup>

Civil society organizations play a major role in the protection and promotion of human rights. They also play a vital role in the implementation of a human rights based approach to

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<sup>20</sup> European Center for Not-for-Profit Law (ECNL), Handbook on Civil Society Organizations Registration and Operation: Comparative Aspects,(2015),p.45

<sup>21</sup> Hooman Dadkhah and Maryam Samari, Attracting Donations: How Iranian Charity Organizations Promote to Attract Donation?, available at <[www.diva-portal.org/smash/get/diva2:1020738/FULLTEXT02.pdf](http://www.diva-portal.org/smash/get/diva2:1020738/FULLTEXT02.pdf)>,last accessed on December 23, 2020

<sup>22</sup> NGO Laws in Sub-Saharan Africa, Global trends in NGO Law, Volume 3, Issue 3,(June 2011),p.1

<sup>23</sup> Ibid

development.<sup>24</sup> The role of civil society extends to that of holding governmental organs accountable for violations of human rights commitments. Consequently, the role of civil society organizations in ensuring the observance of national and international human rights standards is multi-fold.

### **2.3. The legal framework of CSOs: International, regional and Ethiopian laws**

#### **2.3.1. The International legal framework on CSOs**

The right to form, join and participate in a CSO is predicated on the right to freedom of association. The ability of civil society organizations to effectively contribute to the development of their country is contingent upon respect for and upholding of fundamental rights that allow people to organize and participate in development. The right to freedom of association is enshrined in a number of other human rights instruments. The Universal Declaration of Human Rights (UDHR) asserts the right of everyone to form and to join trade unions for the protection of his or her interests.<sup>25</sup> The UDHR also affirms the right to peaceful assembly and association.<sup>26</sup> Freedom of association is also affirmed under the International Covenant on Civil and Political Rights (ICCPR).<sup>27</sup> According to these major international treaties, the right to freedom of association belongs to everyone without discrimination. Restrictions on the right to freedom of association must be provided by the law and necessary in a democratic society to achieve legitimate aims.

The ICCPR protects the right to form and join any associative group or membership organization.<sup>28</sup> Freedom of association is also protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>29</sup> Trade union rights are predicated upon the right of freedom of association.<sup>30</sup> The U.N. Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (also known as defenders declaration) states that ‘everyone has the right, individually and in association with others, at the national and

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<sup>24</sup> Louise Coventry, Menh Navy and Alison Hillis, Assessment of the Enabling Environment for Civil Society, available at: <[https://www.civicus.org/images/EENA\\_report\\_FINAL-CCC-CIVICUS\\_EN.pdf](https://www.civicus.org/images/EENA_report_FINAL-CCC-CIVICUS_EN.pdf)> last accessed on December 14, 2020

<sup>25</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UN GA Res 217A (III) (UDHR), Article 23(4)

<sup>26</sup> Id, Article 20(1)

<sup>27</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Article 22

<sup>28</sup> Ibid

<sup>29</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), Article 8

<sup>30</sup> Declaration on Fundamental Principles and Rights at Work (adopted 18 June 1998)

international levels...to form, join and participate in non-governmental organizations, associations, or groups.”<sup>31</sup>

Article 15 of the Convention on the Rights of the Child and Article 26 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families also guarantees freedom of association. The former protects the rights of children to association and peaceful assembly and the latter recognizes the right of migrant workers to join associations or trade unions freely and to seek the assistance of any of such organizations.

### **2.3.1.1. The Scope of the Right of Freedom of Association**

Freedom of association includes the right of individuals to interact and organize among themselves to collectively express, promote, pursue and defend common interests.<sup>32</sup> As to the scope of this substantive right, the following outstanding issues are worthy of discussion.

### **2.3.1.2. Permissible Purposes of Association**

The right of individuals to organize for a broad range of objectives is recognized under international law.<sup>33</sup> The term permissible purposes refer to all ‘legal’ or ‘lawful’ purposes including the promotion and protection of human rights and fundamental freedoms.<sup>34</sup> The protective scope of Article 22 of the ICCPR extends to religious societies, political parties, commercial undertakings and trade unions, cultural or human rights organizations, soccer clubs, or associations of stamp collectors.<sup>35</sup>

The UN Human Rights Council underscored that “the rights to freedom of peaceful assembly and of association are essential components of democracy, providing individuals with invaluable opportunities to, inter alia, engage in literary and artistic pursuits and other cultural, economic, social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold

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<sup>31</sup> UN General Assembly, Human rights defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms : resolution / adopted by the General Assembly, 10 February 2016, A/RES/70/161, available at: <https://www.refworld.org/docid/56dd31954.html>, last accessed 5 December 2020]

<sup>32</sup> International Center for Not-for-Profit Law (ICNL) and World Movement for Democracy Secretariat at the National Endowment for Democracy (NED), ‘Defending Civil Society’ (2012), p.6

<sup>33</sup> ICNL and World Movement for Democracy Secretariat, p.38

<sup>34</sup> Ibid

<sup>35</sup> Commentary to the Declaration on Human Rights Defenders, UN Special Rapporteur on the Situation of Human Rights Defenders, available at <https://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf> , last accessed on December 12, 2020

them accountable.”<sup>36</sup> The Inter-American Commission on Human Rights Council also underscores that freedom of association refers to the right to join with others for the common achievement of a legal goal.<sup>37</sup> Furthermore, the Council of Europe underlines that NGOs should be free to pursue their objectives in so far as these objectives and the means employed to achieve these are legal.<sup>38</sup> The Council of Europe further added that NGOs should be free to undertake research, education and advocacy on issues of public debate irrespective of the fact that the position taken is consistent with government policy or requires a change in the law.<sup>39</sup> The United Nations Declaration on the Rights and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms also states that NGOs should be free to promote and protect human rights.<sup>40</sup>

### **2.3.1.3. Eligibility of Founders**

International human rights law makes it clear that all persons, including non-citizens, enjoy certain rights including freedom of association.<sup>41</sup> The UDHR also asserts the right of everyone to all the rights and freedoms outlined in the Declaration without distinction of any kind.<sup>42</sup> The ICCPR also extends the enjoyment of certain rights to non-citizens by requiring states to ensure the rights to “all individuals within their territory and subject to their jurisdiction.”<sup>43</sup> The Human Rights Committee has also underscored that “aliens receive the benefit of the right of peaceful assembly and of freedom of association.”<sup>44</sup> The Human Rights Council has also called upon states “to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections, and including persons espousing minority dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or promote these rights, and to take all necessary measures to ensure that any restrictions on the free

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<sup>36</sup>UN Human Rights Council, Resolution 15/21 (October 2010)

<sup>37</sup>The International Journal of Not-for-Profit Law, Vol. 14, Number 3, (September 2012),p.38

<sup>38</sup>Ibid

<sup>39</sup> The International Journal of Not-for-Profit Law, Volume 14, Number 3 (September 2012)

<sup>40</sup> UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms : resolution / adopted by the General Assembly, 8 March 1999, A/RES/53/144, available at: <https://www.refworld.org/docid/3b00f54c14.html>, last accessed 18 July 2020

<sup>41</sup> The International Journal of Not-for-Profit Law, Volume 14, Number 3 (September 2012),p.39

<sup>42</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UN GA Res 217A (III) (UDHR), Article 2(1)

<sup>43</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered in to force 23 March 1976) 999UNTS 171 (ICCPR), Article 2(1) and Human Rights Committee, General Comment Number 15 (1994)

<sup>44</sup> UN Human Rights Council, Resolution 15/21 (October, 2010)

exercise of the rights to freedom of peaceful assembly and association are in accordance with their obligations under international human rights law.”<sup>45</sup>

#### **2.3.1.4. The right to associate without legal entity status**

Countries practice different systems regarding the formation and functioning of CSOs. The different approaches may be categorized into three different approaches. These include notification regimes, approval regimes, and those which follow neither notification nor approval or registration.<sup>46</sup>

In the case of countries that employ a system of “declaration” or “notification”, CSOs can form, operate, communicate, hold events, and receive resources without having to obtain prior permission from state agencies.<sup>47</sup> CSOs must first secure permission to carry out the aforementioned functions in those countries which employ approval regimes.<sup>48</sup> However, the approval regime is at times considered to violate freedom of association.<sup>49</sup> Some argue that freedom of association includes the freedom to associate informally i.e. without the need for legal personality.<sup>50</sup> They contend that the exercise of freedom of association should not be contingent upon registration or legal person status.<sup>51</sup>

The ability of CSOs to form and function independently without the need to seek permission from and notify public authorities is even considered an international best practice.<sup>52</sup> Accordingly, it is argued that registration should not be obligatory and CSOs should be in a position to undertake their activities without the need to register.<sup>53</sup> As a result, they claim that banning informal associations for lack of legal personality by national law runs counter to international standards on freedom of association.<sup>54</sup>

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<sup>45</sup> CIVICUS, *Contested and Under Pressure: A Snapshot of the Enabling Environment of Civil Society in 22 Countries* (2017),p.3

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> See both reports of the UN Special Rapporteur on Freedoms of Peaceful Assembly and Association, and the ACHPR Guidelines on FoAA in Africa

<sup>49</sup> The International Journal of Not-for-Profit Law, Volume 14, Number 3 (September 2012),p.40

<sup>50</sup> Ibid, Also see UNSR's report (UN Doc. A/HRC/20/27) which recommends the notification regime as opposed to requiring approval.

<sup>51</sup> CIVICUS, *Contested and Under Pressure: A Snapshot of the Enabling Environment of Civil Society in 22 Countries* (2017),p.16

<sup>52</sup> Ibid

<sup>53</sup> The International Journal of Not-for-Profit Law, Volume 14, Number 3 (September, 2012),p.41

<sup>54</sup> Ibid

### 2.3.1.5. The right to seek and obtain legal entity status

CSOs may opt to seek legal personality to achieve their objectives. Legal personality refers to:

“a prerequisite for an association to gain the legal capacity to, in its own name, enter into contracts, make payments for goods and services procured, and own assets and property, as well as to take legal action to protect the rights and interests of associations, among other legal processes that can be essential for the pursuit of the objectives of associations.”<sup>55</sup>

Legal personality confers on CSOs the ability to perform a variety of juridical acts including concluding contracts, transactions for goods and services, hiring staff, opening bank accounts, etc.<sup>56</sup> The acquisition of legal personality enables CSOs to act as a legitimate entity for legal purposes.<sup>57</sup> Thus, states are required to respect the right of CSOs to seek and obtain legal entity status or personality. Thus, the legal framework relating to the acquisition of legal personality needs to enable CSOs to register without imposing any burdensome requirements.<sup>58</sup> In sum, the three facets of Freedom of association embody the following elements for civil society organizations:-<sup>59</sup>

1. The Right to obtain Legal Entity Status-CSOs should be entitled to obtain legal status and the procedure should be simple and swift.
2. The Right to operate freely-freedom of association includes the freedom of founders and/or members to regulate the organization’s internal governance and administer their own affairs
3. Right to seek and secure resource

### 2.3.2. The Regional legal framework on CSOs

The African Charter on Human and People’s Rights (ACHPR) under article 10 recognizes the right to freedom of association as every individual shall have the right to free association provided that he abides by the law. In the *a contrario*, no one may be compelled to join an

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<sup>55</sup> European Center for Not-for-Profit Law (ECNL), Handbook on Civil Society Organizations Registration and Operation: Comparative Aspects,(2015),p.3

<sup>56</sup> The International Journal of Not-for-Profit Law, Volume 14, Number 3 (September, 2012),p.40

<sup>57</sup> Supra note 38 above

<sup>58</sup> Ibid

<sup>59</sup> Ibid

association.<sup>60</sup>The African Commission on Human and Peoples' Rights (hereinafter the African Commission) has passed two resolutions concerning the right to freedom of association, using its authority to control the ACHPR's implementation. The first one is the "Resolution on the Right to Freedom of Association". The second resolution -the Resolution on the Security of Human Rights Defenders in Africa- is adopted by the African Commission in response to the on going abuses of human rights on freedom of association faced by human rights defenders in Africa.

Recalling that the African Charter on Human and Peoples' Rights has entrusted it with the duty of promoting and securing human and peoples' rights in Africa the commission yet again "calls on Member States to promote and fully enforce the UN Declaration on Human Rights Defenders, to take all appropriate steps to ensure the security of human rights defenders, and provide information on measures taken to protect human rights defenders in their periodic reports, and invites its members to mainstream the topic of human rights defenders". The African Commission urged State Parties to promote and fully enforce the UN Declaration on Human Rights Defenders, as well as to take all appropriate steps to ensure the security of human rights defenders in its resolutions. Moreover, it has issued guidelines on Freedom of Association and Assembly in Africa which were adopted at the Commission's 60th Ordinary Session held in Niamey, Niger, from 8 to 22 May 2017. These are the continental standards that encompass best practices for CSO regulation.

### **2.3.3. The Ethiopian CSO legal framework**

#### **2.3.3.1 Applicable laws**

Article 31 of the FDRE Constitution provides for the right of every person to freely associate for any cause or purpose. At the same time, the Constitution outlaws "organizations formed in violation of appropriate laws, or to illegally subvert the constitutional order, or promote such activities." Proclamation 1113/2019 is the main body of law applicable to CSOs in Ethiopia. Charities and Societies Regulation No. 168/2009 and prior directives have also been applicable until the draft CSO regulation is adopted so long as they don't contradict the proclamation. Prior directives issued by the Charities and Societies Agency include: Consortium of Charities and Societies Directive No. 1/2010, Directive to Determine the

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<sup>60</sup> Tiso gobena, The implication of the organizations of civil societies proclamation no. 1113/2019 on the promotion and protection of human rights in Ethiopia, a research paper submitted for the partial fulfillment of the requirements of masters of laws degree in international human rights law, Addis Ababa University, (January, 2020), p.30

Operational and Administrative Costs of Charities and Societies No. 2/2011, Directive to Provide for the Establishment and Administration of Charitable Committee No. 3/2011, Directive to Provide for the Establishment of a Charitable Endowment, Charitable Trust and Charitable Institution No. 4/2011, Directive to Provide for Public Collection by Charities and Societies No. 5/2011, Directive to Provide for the Liquidation, Transfer, and Dissolution of Properties of Charities and Societies No. 6/2011, Directive to Provide for Income Generating Activities by Charities and Societies No. 7/2011, Directive to Determine the Particulars of the Audit and Activity Reports of Charities and Societies No. 8/2011 and Directive to Determine Cost Sharing, No 9/2013.

The Council of Ministers is currently discussing a draft CSO Regulation aimed at bringing the latest CSO proclamation into effect. The draft regulation regulates the creation and registration of CSOs, the CSO Board, and self-regulation in the field, among others.<sup>61</sup> The new regulation is intended to replace the Charities and Societies Regulation No. 168/2009 and the aforementioned directives, which will remain in effect for a year after the CSO proclamation is adopted. Even though this time frame has lapsed in March 7,2020, the new regulation is not issued until 2021. This researcher has understood, from an interview with the agency's registration and document authentication team leader, despite the time lapse the previous regulation and directives are still in force so long as they don't contradict the proclamation.<sup>62</sup> However, a new manual on the implementation of new registration was issued by the FDRE Civil Society Organizations Agency on April 8, 2019.<sup>63</sup> Even though the proclamation has not clearly envisaged the issuance of a manual, the Agency for Civil Society Organizations stated that the manual is issued in accordance with the new CSO law 1113/2019. This manual is currently applicable to the formation and registration of civil societies in Ethiopia.

### **2.3.3.2 Scope of application**

The CSO proclamation 1113/2019 defines civil societies as 'organizations operating in two or more regional states'. It further elaborates civil society as an 'organization which implement its main mission in two or more regional states, an organization which have its permanent office in two or more regional states, an organization which have permanent

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<sup>61</sup> <https://www.icnl.org/resources/civic-freedom-monitor/ethiopia>, last accessed February 1,2021

<sup>62</sup> Interview with Ato Takele Diribissa -Registration and document authentication team leader at the Agency for civil society organizations, 2:30-5:30 PM ,February 25,2021

<sup>63</sup> Manual for the implementation of new registration issued by the FDRE civil society organizations agency, (April 8, 2019)

members and operate in two or more regional states or an organization which collects fund in two or more regional states permanently'.<sup>64</sup> The CSO proclamation does not apply to religious institutions, Idir, Iqub, and similar traditional institutions and organizations formed under other laws.<sup>65</sup> Given the argument that African CSOs should not be dependent on foreign donors and that informal CSOs be recognized, the writer has inquired into why the proclamation excludes informal associations. According to the legal expert at the FDRE Civil Society Organizations Agency, if informal organizations are recognized *ipso facto* it will be difficult for administration as there are a multitude of such associations in all four corners of the country.<sup>66</sup> It will not be feasible to follow up with thousands of such informal associations or hold them accountable if there are misdoings and wrong appropriation on the use of resources.

In sum, the scope of the application of the CSO proclamation extends to the following forms of CSOs:<sup>67</sup>

- Organizations operating in two or more regional states. All other organizations operating in a single region shall be registered by the competent registrar of that region;<sup>68</sup>
- Foreign organizations;
- Organizations established in Ethiopia to work on international, regional, or sub-regional issues or operating abroad;
- Organizations operating in the City Administrations of Addis Ababa and Dire Dawa; and
- Charitable organizations are established by religious institutions.

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<sup>64</sup> Article 3(3) of Proclamation no. 1113/2019

<sup>65</sup> Ibid

<sup>66</sup> Interview with Ato Bzayene G/egziabher, legal expert at Agency for Civil Society Organizations, February 25 in-person, 1:45-2:30 PM

<sup>67</sup> Article 3(2) of Proclamation no. 1113/2019

<sup>68</sup> Id, article 88 (4)

## **Chapter Three: Formation of CSOs in Ethiopia**

### **3.1. Principles Governing the Formation of CSOs in Ethiopia**

Article 16 of the CSO proclamation outlines the governing principles of the formation of civil society organizations. Article 16(1) affirms that an organization may be formed for a definite or an indefinite period. Article 16(2) goes on to state that membership in any organization shall be voluntary. The same provision is quick to add that a member may withdraw from membership at will. A civil society organization shall have the right to freely determine its criteria for membership.<sup>69</sup> Yet again, due regard shall be given to democratic internal governance. Any person has the right to become a member of a CSO as long as he fulfills the criteria for membership set by the organization.<sup>70</sup> Every member shall have an equal vote.<sup>71</sup> The CSO proclamation makes it clear that organizations may not be established for the purpose of distributing profit to members.<sup>72</sup> The formation and internal governance of organizations shall be based on democratic principles and it shall be non-discriminatory, independent, and neutral.<sup>73</sup> A civil society organization shall be managed by persons elected by the full participation of the organs authorized by its rules.<sup>74</sup> Finally, it is important to underscore that an organization may not admit or dismiss members except in accordance with its rules.<sup>75</sup>

### **3.2. The main forms of Civil Society Organizations (CSOs) in Ethiopia**

The CSO sector in Ethiopia consists of four main legal forms. These are foreign organizations, charity organizations, professional associations, and local organizations.<sup>76</sup>

#### **3.2.1. Foreign organizations**

A foreign organization is defined as a non-governmental organization formed under the laws of foreign countries and registered to operate through a branch office in Ethiopia.<sup>77</sup>

#### **3.2.2. Charity organizations**

A charity organization refers to an organization established with the aim of working on

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<sup>69</sup> Article 16(3) of proclamation no.1113/2019

<sup>70</sup> Id, article 16(4)

<sup>71</sup> Id, article 16(5)

<sup>72</sup> Id, article 16(6)

<sup>73</sup> Id, article 16(7)

<sup>74</sup> Id, article 16(8)

<sup>75</sup> Id, article 16(9)

<sup>76</sup> Ibid

<sup>77</sup> Article 2(3) of the Proclamation no.1113/2019

charitable purposes for the interest of the general public or third party.<sup>78</sup>

### **3.2.3. Professional associations**

Professional association is defined as an organization formed on the basis of a profession, and its objectives may include protecting the rights and interests of its members; promoting professional conduct, building the capacities of members, or mobilize professional contributions of its members to the community and the country.<sup>79</sup>

### **3.2.4. Local organizations**

A local organization is defined as a civil society organization formed under the laws of Ethiopia by Ethiopians, foreigners residing in Ethiopia, or both.<sup>80</sup> This demonstrates that the nationality of the members of a local organization should not necessarily be the same. The members can be Ethiopian or citizens of other countries in so far as they are resident in Ethiopia. From this it can be deciphered, there are 3 ways to form a local organization under Ethiopian law:

1. A local CSO formed by Ethiopian citizens
2. A local CSO formed by foreigners residing in Ethiopia
- 3 . A local CSO formed by Ethiopians and foreigners residing in Ethiopia

At this juncture, it is important to note that residency is defined as per ordinary laws of the country (i.e. the Ethiopian civil code). Consequently, to establish a CSO foreign nationals should fulfill the residency requirement i.e. 180 days or at least 6 months. Foreigners of Ethiopian origin, commonly known as diaspora's, will also be regarded as foreign nationals unless their nationality is Ethiopian. The CSO law doesn't stipulate special rules for members of the Ethiopian diaspora unlike other laws such as the Investment Regulation No. 474/2020 and Proclamation No.270/2002 that provide foreign nationals of Ethiopian origin with certain rights to be exercised in their country of origin.

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<sup>78</sup> Id , article 2(4)

<sup>79</sup> Article 2(5) of Proclamation no.1113/2019

<sup>80</sup> Id, article 2(2)

### 3.2.4.1. Types of local CSOs and their process of formation

The CSO proclamation underlines that two or more persons may establish an indigenous civil society organization.<sup>81</sup> Local organizations are further divided into five: Association, Board-led organization, a charitable endowment, a charitable trust, and a charitable committee.<sup>82</sup>

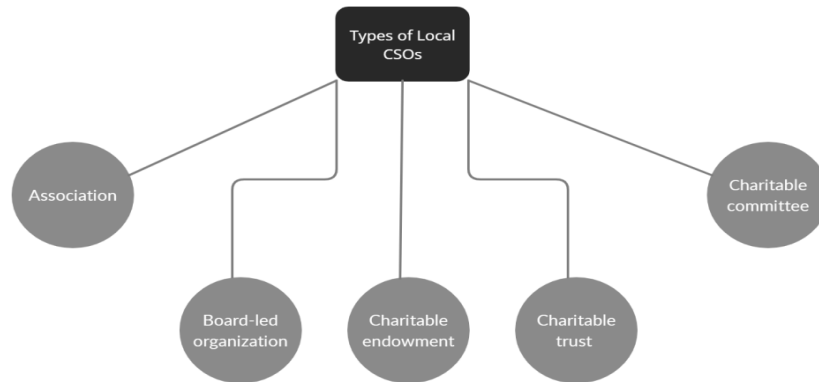


Figure 1:Types of local CSOs

#### A. The formation process of an association

An association is an organization governed by a General Assembly as its supreme decision-making body.<sup>83</sup> A minimum of five or more members are needed to establish an association.<sup>84</sup> The fact that the proclamation requires a relatively smaller number of individuals to form an association makes it easy for members to establish organizations in sparsely populated areas or with less popular causes.<sup>85</sup> An association may also include professional associations.<sup>86</sup> Associations have a General Assembly, Executive Committee, Manager, Auditor, and other departments as may be necessary.<sup>87</sup> The proclamation asserts that details regarding the structure and governance of an association will be determined by its rules.<sup>88</sup>

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<sup>81</sup> Id, article 17

<sup>82</sup> Id, article 18

<sup>83</sup> Id, article 19(1)

<sup>84</sup> Ibid

<sup>85</sup> NGO Laws in Sub-Saharan Africa, Global trends in NGO Law, Volume 3, Issue 3,(June,2011),p.6

<sup>86</sup> Id,article 19(1)

<sup>87</sup> Ibid

<sup>88</sup> Ibid

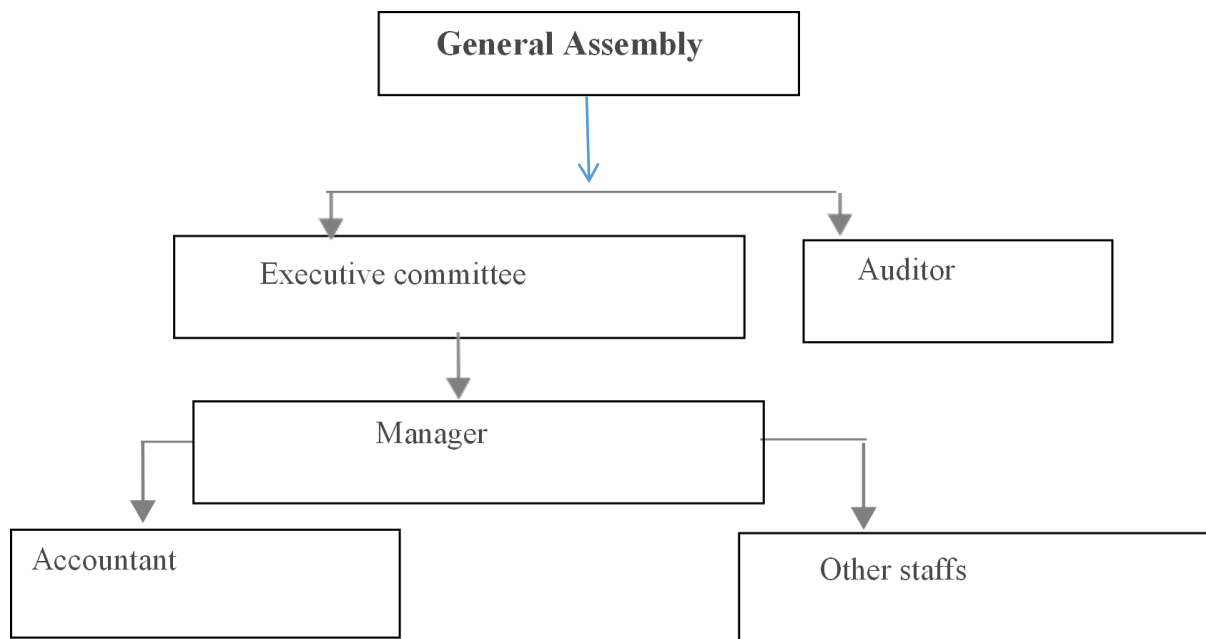


Figure 2: Institutional Structure of an association

**B. The formation process of board-led organization**

Article 20(1) of the CSO proclamation defines a board-led organization as an organization that is formed by two or more founders-its board being the supreme organ. A minimum of five members is needed to establish a board-led organization. However, the maximum cannot exceed thirteen members.

The initial board members shall be designated by the founders. The term of service and appointment procedures for subsequent board members shall be prescribed by the rules of the organization. A board-led organization shall have a manager accountable to the Board and other staff members, as may be necessary.<sup>89</sup>

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<sup>89</sup> Id,article 20(5)

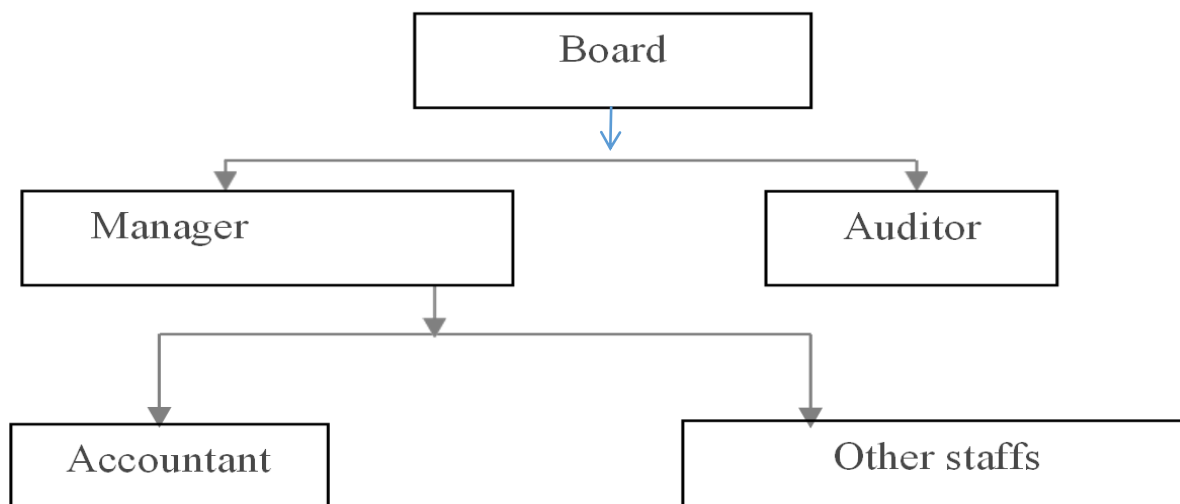


Figure 3: Board-led organization structure

### C. The formation process of charitable organizations

Charitable organizations are entities which are established to provide public services on a non-profit basis.<sup>90</sup> As part of the third sector, these forms of CSOs are not meant to engage in commercial activities aimed at generating profit.<sup>91</sup> Nevertheless, charitable organizations are increasingly involved in commercial activities with the objective of generating revenue for “charity purposes”.<sup>92</sup> The main objective of charitable organizations is philanthropy and social well-being including educational, religious objectives, serving the public interest, public benefit, or the common good.<sup>93</sup> An entity may be established as a ‘charity’ on condition that its purposes are exclusively charitable and for the benefit of the public.<sup>94</sup>

Charitable organizations are established by persons who are willing to give their time and contributions.<sup>95</sup> A charitable organization is expected to devote its resources to charitable activities.<sup>96</sup> As a result, many countries require charitable organizations to register for public benefit purposes alone.<sup>97</sup>

<sup>90</sup> Yibekal Tadesse, The Mandate of Charitable Organizations to Engage in Businesses as Income Generation Activity: Theories, International Experiences and Ethiopian Law, Bahir Dar University Journal of Law, Vol. 10, No.2, (June 2020), p.172

<sup>91</sup> Id,p.173

<sup>92</sup> Ibid

<sup>93</sup> Ibid

<sup>94</sup> Ibid

<sup>95</sup> Id,p.174

<sup>96</sup> Id,p.173

<sup>97</sup> Ibid

#### **D. The formation process of a charitable endowment**

Article 21(1) of the proclamation 1113/2019 defines a “Charitable Endowment” as an organization whereby a certain property is perpetually and irrevocably destined by donation, money, or will be for a purpose that is solely charitable. Article 21(2) of the proclamation provides that property or money provided through gift or will on the basis of Article 21(1) shall be sufficient to fulfill the purpose of the charity initially.

Article 21(2) provides that the founder shall determine the beneficiaries of a charitable endowment. The provision goes on to state that the board may determine such beneficiaries as it deems consistent with the intentions of the founder where the beneficiaries are not sufficiently determined by the founder. Article 22(5) provides that the agency can intervene at any time before the end of the three months indicated under article 22(4) when any activity contrary to the aim of the registration or concerning the property or money occurs. Article 23 of the proclamation provides that the founder of an endowment may revoke it so long as the charitable endowment has not been registered by the agency. But, once registered a charitable endowment will remain permanent.

Concerning the structure of a charitable endowment, Article 24 of the CSO proclamation provides that any charitable endowment shall be organized with the structure of the management board, manager, and other departments as may be necessary. Article 25(1) provides that the members of the management board shall be appointed by the founder or by a person delegated by the founder. The same provision goes on to provide that the agency shall facilitate the appointment of such members where the founder or his delegate has not appointed members of the management board. Article 25(2) provides that a new member shall be appointed according to the rules of the endowment where a member of the management board is for any reason unable to perform his duties. Article 25(3) provides that the number of members of the management board shall in no case be less than three.

Article 26 provides that the management board shall be the supreme organ of the charitable endowment and is vested with the power to appoint a manager who shall be responsible to manage the endowment or dismiss the same, and administer it in accordance with its rules. Article 27(1) provides that the management board shall meet as prescribed by the rules of the charitable endowment. Article 27 (2) goes on to state that the decisions of the management board shall be taken by the majority.

Regarding the remuneration of board members, Article 28(1) of proclamation 1113/2019 provides that a member of the board shall not be entitled to remuneration unless a provision about his entitlement to remuneration has been made, by the Charitable Endowments rules or by any law. Article 28(2) further states that payments made in connection with covering costs incurred by board members for the purpose of attending meetings shall not be considered as remuneration.

Article 29 of the CSO proclamation provides that the duties of the Charitable endowment manager include directing the work of the Charitable endowment pursuant to its rules, representing the endowment in all its dealings with the third parties, following up and supervise the implementation of the decisions of the management board, submitting work plan and budget as well as activity and financial reports to the management board, studying conditions that will promote income generation for the endowment and implement such were approved by the management board; operating bank accounts opened in the name of the endowment in accordance with its rules and discharging other related tasks which may be given to him by the Management Board.

Concerning the powers and functions of the auditor, article 30 of the CSO proclamation provides that the auditor shall monitor the financial and proprietary administration of the charitable endowment and prepare the internal audit report of the organization in accordance with accounting standards acceptable in Ethiopia.

#### **E. The formation process of a charitable trust**

Article 31 of proclamation 1113.2019 defines a “Charitable Trust” as an organization established by an instrument whereby a specific property is constituted solely for charitable purposes and administered by trustees, in accordance with the instructions given by the instrument constituting the charitable trust. Article 32(1) of the CSO proclamation provides that a Charitable Trust may be established by a donation, will, or by the decision of the concerned government body. On the other hand, article 32(2) stipulates that a donation or will under sub-article (1) of the same shall be governed by the relevant provisions of the civil code. Article 32(3) provides that a document that establishes a charitable trust shall clearly specify the founder, the trustees, and beneficiaries of the charitable trust.

Article 33(1) provides that a Charitable Trust may be established for a definite or an indefinite period. Article 33(2) goes on to provide that a Charitable Trust shall be perpetual and irrevocable when it is established for an indefinite period. Article 34(1) provides that the

founder of a charitable trust shall appoint trustees. Article 34(4) prohibits the trustees from performing any acts involving third parties before acquiring a certificate of registration except those acts necessary for transferring the resource mentioned in the donation or will to the possession/ownership of the Charitable Trust. Regarding the number of trustees, article 35(1) of the CSO proclamation provides that the number of trustees shall not, in any case, be lower than three and more than five. The agency shall facilitate the appointment of the number of people required to fulfill this requirement where less than three persons are appointed. Article 35(2) of the CSO proclamation requires that the five first-named persons who are able and willing to act shall alone be the trustees where more than five persons are appointed as trustees. Nevertheless, the agency may allow less than 3 persons as trustees where one or more of such trustees is a Charity as defined under Article 35(3) of the proclamation. Article 35(4) of the proclamation provides that at least one of the appointed trustees shall be an Ethiopian domiciliary.

As to the appointment of trustees, Article 36(1) of proclamation 1113/2019 provides that the trustees may be appointed by the person who founded the Trust or by the person designated by him. The provision goes on to provide that the agency shall facilitate the appointment of trustees in the absence of such an appointment. Article 36(1) stipulates that a new trustee shall be appointed according to the rules of the trust where the trustee so appointed refuses his agency or is for any other reason unable to perform the trusteeship.

Regarding, the appointment of a charity as a trustee, Article 37(1) of the proclamation provides that the officers of the appointed organization will administer the trust if the founder has appointed an organization that has a legal personality as a trustee. Article 37 (2) provides that the said Charity shall administer the charitable trust by the terms of the will, donation or order of the agency and distinguish it from other donations or income that it utilizes to achieve its purposes.

Concerning the structure of a charitable trust, Article 38(1) provides that the manager, treasurer, and auditor of a charitable trust shall be appointed by the founder, or delegated by the founder. Article 38(2) of the proclamation provides that, delegated by his/her delegatee, the trustee shall designate the same from among themselves or third parties if these officers are not appointed by the founder. Article 38(3) of the proclamation provides that the agency shall make such designation where the trustees fail to make such designation or are unable to give a decision. Nevertheless, article 38(4) of the proclamation provides that the trustees shall execute their responsibilities jointly regardless of the provision of Article 38(3). Article

38(5) entitles the trustees to choose among themselves a person who shall serve as the chairperson of meetings.

Article 39(1) of the CSO proclamation provides that the manager shall perform all acts of management without the approval of the trustees unless one of the trustees submits a written protest concerning any administrative act. Article 39(2) provides that decisions beyond acts of management and those decisions protested under sub article (1) shall be taken by a majority where at least three of the trustees are present. Article 39(3) goes on to provide that the final determination shall lie with the vote of the chairperson of the meeting where opposing notions are supported by an equal number of trustees. Article 39(4) stipulates that those who are against a decision taken under sub article (2) and (3) may require that their dissenting opinion be recorded in the minutes.

As to the obligations of the trustee, article 40(1) of the proclamation provides that trustees shall administer the Trust with due diligence and care expected from a responsible family head. Article 40(2) states that the trustees may not alienate immovable property without prior notification to the agency and in a manner contrary to any provision in the act of constitution of the Charitable Trust. Article 40(3) provides the trustees may not alienate the property of a Charitable Trust by a gratuitous title. Article 40(4) provides that the trustees shall be jointly and severally liable for any damage caused to the trust due to the ultra vires acts or decisions they take as officers of the charitable trust. Nevertheless, the provision is quick to add that a trustee who has registered his dissent from the decision of the trustees in accordance with Article 39(4) shall not be held liable.

For the representation of a charitable trust, article 41(1) provides that the trustee manager shall represent the Charitable Trust. Article 41(2) goes on to provide that the trustee manager shall designate the trustee who shall act in his stead and may also appoint an advocate to represent the Charitable Trust in any proceedings. Article 41(3) makes it clear that the Charitable Trust shall be liable for acts of trustees within the scope of their authority.

As article 42(1) provides, a trustee shall adhere to the orders under the establishment document of the trust. Nevertheless, article 42(2) of the proclamation provides that the trustee may ask for permission from the agency to operate beyond the orders on the establishment document when it is essential to do so for the interest of its beneficiaries regardless of the provision of Article 42(1).

Regarding remuneration of a trustee, Article 43(1) provides that a trustee shall not be entitled to remuneration unless this is specifically stated in the establishing document, the trust instrument, or by any Law. Nevertheless, a trustee who acts in a professional capacity shall be entitled to receive reasonable remuneration out of the trust funds for any services that he provides to or on behalf of the trust if all the trustees have agreed in writing and it is approved by the agency pursuant to Article 43(2). Article 43(3) stipulates that a trustee is entitled to indemnity for all personal expenses and obligations arising out of the administration of the Charitable Trust.

Article 44(1) of Proclamation 1113/2019 stipulates that a trustee shall be liable for any consequent loss to the Charitable Trust where he does not in two months advance notify the other trustees and the agency of his intention to resign. Article 44(2) is quick to add that a trustee shall remain responsible for the administration of the charitable trust until he hands over the trusteeship. Article 44(3) provides that a new trustee shall be appointed by the person constituting the trust, by the person on whom such power has been conferred, or in default of any such person, by the agency one month prior to the expiry of the notice prescribed in article 44(3).

Article 45(1) of the CSO proclamation provides that the creditors of beneficiaries may in no case attach a Charitable Trust or any allowance to which a beneficiary is entitled. However, article 45(2) provides that the creditors of persons who are to receive the property forming the object of the Charitable Trust constituted for a definite period may at the dissolution of the Charitable Trust attach such property.

When it comes to the rights of beneficiaries, Article 47(1) of the CSO proclamation provides that the beneficiaries may claim from the Charitable Trust's interest which according to the act of constitution of the Charitable Trust ought to accrue in their favor. Article 47(2) provides that the beneficiaries may apply to the agency for the dismissal of the trustee or to compel him to give appropriate guarantees when their rights are jeopardized. Article 47(3) provides that the beneficiaries of the Charitable Trust have no right to dispose of or to administer the property forming the object of the Charitable Trust jointly or severally. Article 47(4) makes it clear that beneficiaries of a Charitable Trust may only carry out those acts which protect their rights, such as the interruption of a prescription in relation to the various properties of the trust regardless of article 47(3) discussed above.

## **F. The formation process of a charitable committee**

Article 48 defines a “Charitable committee” as a collection of five or more persons who have come together with the intent of soliciting money or other property from the public for purposes that are charitable. Article 49(1) provides that charitable committees shall not collect funds or perform any other activities without acquiring approval from the agency. However, article 49(2) provides that the provision shall not apply to activities necessary for the formation of a charitable committee.

Article 50(1) requires a charitable committee to submit its annual statement of accounts to the agency. Article 50(2) allows the charitable committee to submit its statement of accounts at its dissolution where the period for which the charitable committee is formed is less than one year. Regarding the structure of the charitable committee, article 51(1) makes it clear that the decision establishing the charitable committee shall specify the particulars of persons who founded the charitable committee and those who shall act as president, treasurer, and auditor of the Charitable committee. Article 51(2) goes on to provide that the decision shall specify the purposes of the Charitable Committee and the time within which it has to achieve them. Article 51(3) stipulates that the decision shall determine, where appropriate, the manner in which the activities of the Charitable committee may be carried out and prescribe such measures that are necessary to control the amount and the use of the funds and property collected by the Charitable committee.

Concerning the liability of the members, Article 52(1) provides that the members of a Charitable Committee shall be jointly and severally liable for obligations and debts arising out of its activities. To this effect, Article 52(2) provides that any donor, member, beneficiary, the agency, or the Sector Administrator shall have standing.

Article 53(1) provides that money or property shall have the destination prescribed by the decision which has approved the charitable committee. When the money or property collected by the charitable committee is insufficient to attain the object which the charitable committee proposed to achieve, or where achievement of its purpose becomes impossible. Article 53(2) goes on to provide that the money or property shall be returned to the persons who have donated the money or property in absence of a clear provision to this end. Article 53(3) also provides that the money or property shall be placed at the disposal of the agency and shall be destined for a similar charitable purpose in accordance with the provisions of this proclamation if persons who have donated money or property to the charitable committee cannot or do not want to claim it back.

Article 54(1) of this same CSO proclamation 1113/2019 provides that the balance shall have the destination for another charitable purpose prescribed by the decision approved by the charitable committee where the money or property collected by the charitable committee amounts to more than what is necessary for the attainment of the proposed purpose. Article 54(2) the balance shall be placed at the disposal of the agency and shall be destined for a similar charitable purpose in accordance with the provisions of this proclamation in the absence of any provision to that effect.

Article 55(1) of the CSO proclamation also provides that a charitable endowment shall be constituted for the attainment of a specific purpose where under the decision approving the charitable committee the money or property collected by the Charitable committee is to be destined to a specific lasting objective. Article 55(2) goes on to provide that the members of a charitable committee may seek permission and apply to the agency for registration as a civil society organization where the money or property collected by the charitable committee is significantly larger than what is necessary for the attainment of the proposed purpose. Article 55(3) stipulates that the money or property collected by the Committee shall be transferred to the Charitable endowment if the Committee is registered as an organization.

#### **G. The formation process of consortia and consortium of consortiums**

Article 56(1) of Proclamation 1113/2019 provides that two or more civil society organizations or consortiums may form a consortium or a consortium of consortiums in accordance with an agreement concluded among themselves towards the achievement of their objectives or in accordance with the provisions of this proclamation. Article 56(2) of the CSO proclamation goes on to provide that consortiums or a consortium of consortiums may be established for any legal purpose related to rights and benefits of their members including supporting their members for the achievement of common objectives, facilitating the sharing of ideas, information, and experience, building the capacity of members and support their resource mobilization efforts, undertaking activities designed to enhance the ethical and professional standards among members, working for the protection of the rights of members by articulating their common voice and advocate for enabling work environment for members and conducting research and policy advocacy activities in the sectors in which their members operate. Nevertheless, article 56(3) provides that a consortium may not involve itself in operations that place it in direct competition with a member organization. However, consortiums are not barred from collecting and mobilizing resources to operate projects through their member organizations.

## Chapter Four: Registration of CSOs in Ethiopia

The procedure for legal recognition of CSOs differs from country to country. Some countries adopt a system of “declaration” or “notification” as opposed to a system of registration. In these cases, an organization is conferred upon legal personality right after it has notified the relevant body of its existence by providing basic information.<sup>98</sup> Other countries employ a registration system. In situations where states employ a registration system, they are required to ensure that the registration process is easily accessible with clear, speedy, apolitical, and inexpensive procedures in place.<sup>99</sup> The designated registration authority is expected to act in line with objective standards and must be restricted from arbitrary decision-making.<sup>100</sup> The Continental CSO legal framework as manifested in the guidelines on Freedom of Association and Assembly in Africa requires the impartiality of CSO governance agencies.<sup>101</sup> Decisions to deny registration must be fully explained and cannot be politically motivated.<sup>102</sup> The law governing CSOs is also required to provide clear and accessible information on the registration procedure.<sup>103</sup> It must avoid vague, imprecise language and broad grounds for restricting the establishment of CSOs.<sup>104</sup>

The laws governing the acquisition of legal personality of CSOs should be framed objectively and should not be subject to free exercise of discretion by the relevant authority.<sup>105</sup> According to paragraph 36 of the ACHPR guidelines on Freedom of association and assembly, associations shall be self-governing and at liberty to determine their internal management structures, rules for selecting governing officers, internal accountability mechanisms, and other internal governance issues. Paragraph 23 of the same guideline also stipulates that associations shall determine their purposes and activities freely.<sup>106</sup> Moreover, the rules governing CSOs are expected to be widely published and the process of registration should be easy to understand. Similarly, Foreign NGOs should be allowed to register and operate without discrimination subject only to those requirements strictly necessary to establish *bone fide* objectives.<sup>107</sup>

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<sup>98</sup> The International Journal of Not-for-Profit Law, Volume 14, Number 3 (September 2012), p.7 and 41

<sup>99</sup> Ibid

<sup>100</sup> Ibid

<sup>101</sup> Guidelines on Freedom of Association and Assembly in Africa, fundamental principles, v, p.8

<sup>102</sup> Ibid

<sup>103</sup> Ibid

<sup>104</sup> Ibid

<sup>105</sup> Ibid

<sup>106</sup> Guidelines on Freedom of Association and Assembly in Africa, para.23, p.13

<sup>107</sup> Ibid

## **4.1. Regulatory Requirements for Civil Society Organizations (CSOs) in Ethiopia**

As indicated in the definition of the term “civil society organization” under Article 2(1) of the CSO Proclamation, the law rules out informal bodies from the ambit of the definition of civil society as it clearly requires CSOs to be registered as legal persons.

### **4.1.1. Requirement of Mandatory Registration**

Ethiopia is one of the countries where the requirement of registration is mandatory. The CSO proclamation provides that “any organization shall be registered by the Agency”.<sup>108</sup> The proclamation bans the activities of CSOs which are not registered. It is stipulated that ‘any organization has to be registered by the Agency’ in accordance with the provisions of the CSO proclamation.<sup>109</sup> The term ‘any’ implies that the requirement of legal registration applies to all forms of CSOs without exception. As manifested in the practice of the CSO agency, informal groups of persons are prohibited from engaging in activities unless they register. Such groups are prohibited from commencing or proceeding with their activities or seeking financial assistance from any source pending registration. This shows that legal registration is mandatory for all forms of CSOs in Ethiopia. However, the CSO proclamation is silent as to what happens if an informal group of individuals operate as unregistered CSO or carry out activities without formal registration.

### **4.1.2. Registering organ**

CSOs are required to register at the national-government body, namely Agency for Civil Society Organizations(ACSO).<sup>110</sup> Particularly, the Registration and Document Authentication Directorate department of the ACSO is directly responsible for the registration of CSO’s.<sup>111</sup> On top of that, the new registration process is to be guided by the Agency’s high-level leadership. CSO’s established at a regional level will only be registered by the concerned regional body.<sup>112</sup> The registration and document authentication directorate of ACSO along with the communication directorate will make new CSO registration forms accessible to customers in soft and hard copies.<sup>113</sup> Prospective applicants for CSO

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<sup>108</sup> Article 57(1) of the Proclamation no.1113/2019

<sup>109</sup> Ibid

<sup>110</sup> Id, article 57(2)

<sup>111</sup> Manual for the implementation of new registration issued by the FDRE civil society organizations agency,(April 8, 2019),article 5.2

<sup>112</sup> Id,art.5.1

<sup>113</sup> Id,art.9.1

registration can get the forms from the information desk.<sup>114</sup> Moreover, the agency has prepared model rules for local organizations (Association, Board-led CSOs, and Charitable endowment).CSOs can prepare their own rules or use these model rules.

## **4.2. Requirements and Conditions for Registration**

### **4.2.1. Registration procedure and required registration documents for local CSOs**

Article 58(1) of the CSO proclamation and the manual for the implementation of new registration issued by the FDRE Agency for Civil Society Organizations (2019)<sup>115</sup> provides that an application for registration by local organization shall be signed by the founders and should contain:

- The minutes of the formative meeting indicating the names, addresses, and citizenship of the founders;
- If the organization is an association the minute of its general assembly meeting and if it is a board led organization the minutes of its first board meeting;<sup>116</sup>
- Copy of the identity card or passport of the founders;
- Passport size recent photograph of founders, managers, executive committee and management board members depending on the type of organizations;<sup>117</sup>
- The name of the organization and its logo in hard or soft copy<sup>118</sup> along with the description and definition of its logo;<sup>119</sup>
- The objectives of the organization and its intended sector of operation;
- The region where it intends to operate;
- The rules of the organization approved and signed page by page<sup>120</sup> by the founders

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<sup>114</sup> Id,art.9.3

<sup>115</sup> Manual for the implementation of new registration issued by the FDRE civil society organizations agency, (April 8, 2019),articles 4.1.4 and 4.1.7

<sup>116</sup> Interview with Ato Takele Diribissa -Registration and document authentication team leader at the Agency for civil society organizations, 2:30-5:30 PM ,February 25,2021

Manual for the implementation of new registration issued by the FDRE civil society organizations agency, (April 8, 2019),articles 4.1.4 and 4.1.7

<sup>117</sup> Interview with Ato Takele Diribissa -Registration and document authentication team leader at the Agency for civil society organizations, 2:30-5:30 PM ,February 25,2021

Manual for the implementation of new registration issued by the FDRE civil society organizations agency, (April 8, 2019),articles 4.1.4 and 4.1.7

<sup>118</sup> Id,art.4.1.5

<sup>119</sup> Supra note 97

<sup>120</sup> Manual for the implementation of new registration issued by the FDRE civil society organizations agency, (April 8, 2019),article 4.1.2

- Application letter requesting registration;
- Local CSO registration form given by the agency filled and signed;
- The organization's address;
- If the organization is a professional association the relevant educational documents of the founders.<sup>121</sup>

#### **4.2.2. Registration procedure and required registration documents for Foreign CSOs**

The CSO proclamation and the CSO manual issued by ACSO provide that the application for registration of a foreign non-governmental organization shall be accompanied by the following documents<sup>122</sup>:

- Duly authenticated certificate of registration showing its establishment from its country of origin;
- Duly authenticated resolution of its competent organ to operate in Ethiopia;
- An authenticated by-law or constituting document of the organization by which its operations are governed;<sup>123</sup>
- Duly authenticated power of delegation of the country representative. The power attorney shall specify the name of the representative and the full authority entrusted to him/her to legally represent the organization in Ethiopia;<sup>124</sup>
- Copy of Passport and Visa of country representative;
- The Foreign CSO application form shall be filled and submitted to the agency along with an official letter of request for registration signed by the country representative;
- Letter of recommendation from the embassy in which the charity is incorporated or in the absence of such by a competent authority in that country or from Ministry of Foreign affairs of the federal democratic republic of Ethiopia and;
- An action plan for a minimum period of two years;
- The action plan shall include objectives, beneficiary selection, implementation

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<sup>121</sup> Id,art.4.1.6

<sup>122</sup> Article 58(2) of the Proclamation no.1113/2019

<sup>123</sup> Manual for the implementation of new registration issued by the FDRE civil society organizations agency, (April 8, 2019),article 4.2.2

<sup>124</sup> Id,p.3

strategy, expected result, staffing, sustainability, budget allocation (the budget allocation shall show the 20/80 admin/program cost), and monitoring and evaluation.<sup>125</sup>

#### **4.2.3. Registration procedure and required registration documents for a consortium**

In regard to the application for the registration of a consortium, the CSO proclamation provides that the application for registration by a consortium shall be signed and submitted by the head of their representative organization and shall contain the following particulars<sup>126</sup> :

- Rules of the consortium signed by the representatives of the founder
- A certificate of registration issued by the agency or authorized regional government body to the members of the consortium and signed by founding representatives ;
- The minutes of the decision among members to form the consortium.

#### **4.2.4. Specific requirements of registration relating to different types of local organizations**

Article 22(1) of the CSO proclamation provides that the registration of a Charitable endowment may not be sought during the lifetime of the founder, except by the founder herself/himself or a person delegated by the founder for that purpose. Article 22(2) goes on to state that the registration of a charitable endowment shall be sought by the person to whom the founder has entrusted such task and who has accepted it or by the executors of the founder's will after the death of the founder. Article 22(3) stipulates that the registration of the charitable endowment shall be sought by those persons who have drawn up the act of endowment or who have been witnesses to it or who hold that act in deposit in default of the persons specified in sub-article (1) and (2) of Article 22.

Article 22(4) provides that the registration of the charitable endowment may be sought, three months after the death of its founder, by any interested party or by the agency where the persons who are bound to seek the registration of the charitable endowment fail to do so. Prior to registration, a charitable endowment should deposit 200,000 Ethiopian Birr in a blocked bank account. If it got successfully registered, the endowment, through a decision evidenced by its internal minutes, will ask permission from the Agency for Civil Society Organizations(hereinafter ACSO or the agency) for the money to be transferred to a regular

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<sup>125</sup> Ibid

<sup>126</sup> Article 58(3) of Proclamation no.1113/2019

account from the blocked account. Then, the agency will write for the bank to open a new account for the endowment and transfer the money from the blocked account to the new account.<sup>127</sup>

On another note, the application for the registration of a charitable trust must be submitted within 3 months from the formation of the charitable Trust as provided under Article 34(3) of the proclamation. Article 34(2) of the CSO proclamation requires appointed trustees to apply to the agency for a certificate of registration pursuant to article 57 of the proclamation.

Regarding charitable committees, Article 49(1) provides that charitable committees shall not collect funds or perform any other activities without acquiring approval from ACSO. Article 49(3) makes it clear that the agency shall consider Articles 59 and 62 of this proclamation when approving a charitable committee. Something unique about the charitable committee is that it is not given a certificate of registration like other CSOs. Upon successful registration, the agency will issue a specific letter of authorization on the specific area of engagement by the charitable committee. After the specific charitable goal is achieved, the committee will report back to the agency.

In addition to the aforementioned registration of individual types of civil societies, mergers, divisions, and conversions of CSOs shall also be registered with the agency.<sup>128</sup> Article 88(3) of the proclamation also requires all organizations registered under proclamation No. 621/2001 to re-register under Proclamation 1113/2019 within one year which has now already lapsed on March 7, 2020. Those not re-registered shall be liquidated.

#### **4.2.5. Application fee**

Article 58(4) of the CSO proclamation provides that the applicant shall pay a registration fee to be determined by the relevant regulation. Since the draft council of ministers CSO regulation currently under active consideration by the council, is not yet adopted fees will be paid as per the annexed schedule on Regulation No. 168/2009. Accordingly, local civil society organizations pay 600 Ethiopian birr while foreign CSOs will be charged with 300 USD.<sup>129</sup>

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<sup>127</sup> Interview with Ato Takele Diribissa -Registration and document authentication team leader at the Agency for civil society organizations, 2:30-5:30 PM ,February 25,2021

<sup>128</sup> Articles 80-82 of proclamation no.1113/2019

<sup>129</sup> Annexed schedule of Regulation No. 168/2009

### **4.3. The time frame for Registration**

Article 57(2) of the CSO proclamation provides that the agency shall register the applicant and issue a registration certificate within 30 days from the date of application for local organizations and within 45 days for a foreign organization as long as the applicant fulfills the requirements stipulated within the law. Article 57(5) implies that the agency may refuse to register the applicant if it has good cause. Although the provision does not clarify what constitutes a good cause for refusal to register, it is contended that this includes non-fulfillment of requirements, mistakes, and shortcomings in the application. The agency is expected to respond to the applicant requiring it to correct the mistakes or shortcomings, to fulfill the outstanding requirement within the time period stated in Article 57(2) pointing out the non-conformity. This implies that the applicant may be granted registration upon the correction of the detected irregularities and re-submission of the application although the correction of mistakes does not guarantee that the applicant will be granted registration if other shortcomings are revealed. The applicant may still be refused registration due to other defects and omissions in the documents.

### **4.4. Evaluation of Application for Registration**

The CSO proclamation vests the agency with broad discretion in the course of evaluation of applications for registration. It makes it clear that the agency is not in a position to refuse registration for reasons which are not listed.<sup>130</sup> Article 59(1) of proclamation 1113/2019 provides an exhaustive list of grounds for refusal of registration. These include:-

- ◆ The application does not comply with the necessary conditions set out under Article 58 of the CSO proclamation and the applicant's representative fails to meet such conditions after being requested to do so;
- ◆ The aim of the organization or its proposed activities under the organization's rules are contrary to law or public morals;
- ◆ The name or symbol under which the proposed organization is to be registered resembles the name of another organization or any other institution or is contrary to public moral or is illegal;
- ◆ The document furnished for registration by the organization is fraudulently obtained or forged.

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<sup>130</sup> Article 59(2) of Proclamation no.1113/2019

The CSO proclamation limits the grounds of refusal of registration to the aforementioned four reasons thereby ruling out the possibility of refusal of registration on insignificant or far-fetched grounds. However, the broad and vague formulation of the reason for refusal of registration on account of “contrary to public morals or law” may serve as a pretext to prohibit the establishment or registration of CSOs which may be considered unacceptable, unwanted, or suspicious.

Moreover, Article 59(3) the CSO proclamation provides that the agency must provide a written response permitting the applicant to fulfill such requirements and re-submit its application within 30 days if an application fails to fulfill the necessary requirements laid out under the law. Article 59(4) of the proclamation stipulates that the agency shall reject the application for registration and state the legal grounds for rejecting the application if the applicant is unwilling to amend and re-submit its application. Article 59(5) allows an applicant that is dissatisfied with the agency’s decision to lodge a complaint before the board within 30 days from receiving the decision. Article 59(6) of the proclamation requires the board to review the complaint and give its decision within 60 days upon receiving the complaint. Article 59(7) of the proclamation provides that if an organization obtains a registration certificate by fraudulent or forgery act and if it is verified by the agency, the board shall decide the dissolution of the organization. Moreover, if an officer or board management committee member of a CSO or its branch has been convicted of a crime that involves fraud, deprived of civil rights for dishonest acts, and has not been reinstated, convicted, and has been with no restoration the agency shall not register the organization.

Further, if the above person is unable to act because of incapacity within the meaning of the law or has been interdicted by a court, the agency will refuse to register the organization. In addition, if a member of the board or executive committee of an organization is also employed in the same organization as an officer or ordinary employee the agency shall not register the organization.<sup>131</sup> Moreover, CSOs whose registration is annulled by the agency can not re-register unless the relevant decision is revoked by a decision of the board or a court. Likewise, CSOs with such pending cases before the board or a court will not be registered.<sup>132</sup> However, if a CSO is dissolved as per article 83 but at a later date if the reasons for dissolution are no longer in place the proclamation does not provide for the grounds of its

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<sup>131</sup> Article 65(1-3) of proclamation no.1113/2019

<sup>132</sup> Manual for the implementation of new registration issued by the FDRE civil society organizations agency, (April 8, 2019),article 3.7

re-registration.<sup>133</sup>

#### **4.5. Refusal of registration and remedies**

Applicants can appeal against refusal of registration before the board within 30 days from the expiry of such a period where the agency fails to issue a certificate of registration within the time frame indicated under Article 57(2).<sup>134</sup> The Board is required to examine the complaint and make a determination on the matter within a period of 60 (sixty) days.<sup>135</sup> Article 57(5) provides that the board shall direct the agency to issue the certificate of registration forthwith if it finds that the agency failed to register the organization without a good cause. The same provision goes on to state that the agency shall be deemed not to have a good cause to refuse registration if it fails to respond to such application within the time limit mentioned under sub-article 2 of article 57 of the proclamation. Article 57(6) of the proclamation provides that an applicant dissatisfied with the decision of the board rendered in accordance with article 59(6) and (7) of the proclamation may lodge an appeal before the Federal High Court within 30 days from receiving the board's decision.

#### **4.6. Effects of Registration**

In regard to the effects of registration, Article 61(1) of the CSO proclamation provides that any organization which is registered upon fulfillment of the registration requirements:-

- ◆ Shall have legal personality;
- ◆ Can sue, be sued, and enter into contracts;
- ◆ Without prejudice to laws that require a special license, can operate in the sector of its choice;
- ◆ Can own, administer and transfer movable and immovable property. However, the proceeds from the disposal of the property may not be transferred as a donation for the benefit of members or to another activity that is not its mission.

Article 61(5) of the CSO proclamation requires the organization which transfers property to inform the agency within 15 days. The agency has a duty to use a registry of organizations.<sup>136</sup> In turn, civil societies are required to display their certificate of registration in a visible place

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<sup>133</sup> FDRE Attorney general, Legal and justice affairs advisory council of Ethiopia, Charities and societies law technical experts team research and recommendations report, Addis Ababa-Ethiopia, August,2018,p.62

<sup>134</sup> Article 57(3) of Proclamation no.1113/2019

<sup>135</sup> Id, article 57(4)

<sup>136</sup> Article 66 of proclamation no.1113/2019

at the CSOs head office or branch offices.<sup>137</sup> It is also important to note that a certificate of registration only serves the purposes of registration and a sector-specific permit is still needed for income generation activities.<sup>138</sup> The agency will make public the list and details of newly registered CSOs every 6 months as per article 66(3) of the proclamation.<sup>139</sup> It shall also notify relevant regional and federal authorities every 3 months by a letter with the details of newly registered CSOs.<sup>140</sup> If a CSO wants a support letter from the agency, as long as it is duly registered and provides sufficient reasons thereof, the agency shall write such letter upon request.<sup>141</sup>

#### **4.7. Currently available data on the registration and formation of civil society organizations in Ethiopia**

As of November 2020, 1783 civil society organizations have re-registered as per Article 88 (3) of the CSO proclamation. Out of these, 1420 CSOs are re-registered as local organizations, 325 as foreign organizations, and 38 as consortiums. Among the re-registered 1420 local CSOs, we find:<sup>142</sup>

- 1107 Charitable associations,
- 138 Board-led organizations
- 116 Professional associations,
- 42 Mass-based organizations
- 16 Charitable endowments and
- 1 Charitable trust

From the raw data gathered ACSO until early January 2021<sup>143</sup>, the following can be decoded:

- ❖ 1163- total registered CSOs after the promulgation of 1113/2019
  - 693 Board-led CSOs
  - 305 Association

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<sup>137</sup> Id, article 69

<sup>138</sup> Id, article 62(10)

<sup>139</sup> Manual for the implementation of new registration issued by the FDRE civil society organizations agency, (April 8, 2019), article 8.3

<sup>140</sup> Id,art.8.4

<sup>141</sup> Id,art.8.2

<sup>142</sup> Agency for Civil Society Organizations, civil societies registration database, last accessed January 4,2021

<sup>143</sup> Ibid

- 113 Foreign CSOs
- 36 Charitable endowment
- 13 Consortium
- 1 Charitable committee, 2 undesignated

Due to its convenience, most civil society organizations are currently established using the board-led legal form. According to ACSO’s senior legal expert, this sub-type is particularly preferred because it doesn’t require CSOs to convene general assembly. Rather, it allows them to decide on matters more conveniently by the CSO board thereby increasing efficiency.<sup>144</sup> On the other hand, according to the agency’s registration and document authentication team leader,<sup>145</sup> a CSO is seldom registered as a charitable trust to date.

#### **4.8. The extent to which the system of formation and registration creates enabling legal environment for CSOs**

The previous charities and societies proclamation 621/2009 was characterized by complicated procedures for registration of CSOs, a ban on activity without registration, and severe restrictions on the receipt of foreign funding. In comparison to the old proclamation (621/2009), the new proclamation (1113/2019) creates an enabling legal environment for CSOs. As such, all organizations without distinction have the right to engage in any lawful activity to accomplish their objectives. Unlike the previous proclamation 621/2009, there are no definitional restrictions on what CSOs can engage in under the new proclamation 1113/2019. Neither are there mandatory requirements for sector agreement or a need to do a project appraisal for local civil societies.

Moreover, there is no longer a prohibition on CSOs from engaging in activities such as human rights advocacy. The registration process to obtain the status of a legal entity is less complex, simple, and relatively quick. There also is no requirement for renewal of license in the new proclamation. This lifts the thick air of insecurity among CSOs and highly minimizes the discretionary role the Charities and Societies Agency used to have.

Regarding self-regulation of CSOs, proclamation 1113/2019 has a more liberal standing. The repealed proclamation no. 621/2009 granted the agency powers which encroach upon the

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<sup>144</sup> Interview with Ato Bezayene, legal expert, Agency for Civil Society Organizations, January 21 via telephone and February 25 in person 1:45-2:30 PM

<sup>145</sup> Interview with Ato Takele Diribissa -Registration and document authentication team leader at the Agency for civil society organizations, 2:30-5:30 PM ,February 25,2021

internal governance system of civil society organizations. Particularly, Article 91 of proclamation 621/2009 stipulated that the agency may order the removal or suspension of officers. Not only so, all civil societies have been under obligation to notify the agency in writing seven days prior to any general assembly meetings.<sup>146</sup> This was extremely burdensome and intrusive, to say the least. The new proclamation has all in all relieved CSOs from such absurd duty.

Furthermore, in comparison with proclamation 621/2009, the new proclamation 1113/2019 is relatively precise and exhaustive on the grounds of refusal for registration. On another note, the previous charities and societies law allows the agency to refuse an application for registration if 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.<sup>147</sup> These grounds can often be abused under the disguise of discretion. What's more, the agency can refuse registration if the nomenclature of the charity or society is country-wide and the composition of its members or place of business does not show the representation of at least five regional states. Again, this is not a pragmatic requirement in a country where civil society is in a nascent stage and resources to operate intra-regionally are scarce. The new CSO legislation rectifies this and provides for clear and reasonable legal grounds to refuse registration of a CSO.<sup>148</sup>

With regards to remedies, the new civil society organization proclamation provides for more convenient and just remedies. The civil society agency board which looks into complaints against the decisions of the agency is now more inclusive and representative. Under the previous civil societies proclamation, the seven board members are nominated by the government while only two members are from charities and societies. In sharp contrast, proclamation 1113/19 increases the number of board members to eleven. There are only three representatives from governmental bodies and the rest eight members are from the NGO sector. Specifically, the members of the board are as follows: three from CSOs, two from National Federation of Disability Associations, two from Women and Youth Associations and one expert. Besides the board, the council of civil societies which was recently established as per the proclamation also has a role in advising the board on the registration and administration of CSOs.

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<sup>146</sup> Article 86 of Proclamation no. 621/2009

<sup>147</sup> Id, article 69 (2) and (5)

<sup>148</sup> Article 59 (2) of proclamation no.1113/2019

Another important change in the new CSO proclamation 1113/2019 relates to appeal rights. Under the old CSO framework in the proclamation 621/2009, Ethiopian charities or societies aggrieved by the decision of the board can appeal to the Federal High Court only within 15 days from the date of the decision. But under the new CSO law, this time framework is raised to 30 days giving the applicant more room to file an appeal. Second, the new law does not deny foreign CSOs the right to appeal. The fact that the old proclamation excludes Foreign Charities was clearly against the right to access to justice, the principle of equality, and non-discrimination. But the new proclamation under article 57(7), 59(8), and 77(5) provides that the applicants dissatisfied by the decision of the Board/Agency may lodge an appeal to the Federal High Court without any distinction.<sup>149</sup> By and large, the new civil society legal regime post-proclamation 1113/19 is more favorable for the free association of individuals in Ethiopia.

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<sup>149</sup> Supra note 19, p.48

## **Conclusion and Recommendation**

Throughout this study, the formation and registration of civil society organizations in Ethiopia have been elaborated. The four legal forms of CSOs in Ethiopia: local organizations, foreign organizations, charity organizations, and professional associations have been discussed. Also, the subdivisions of local CSOs and the formation of each of those was also thoroughly explained. Nationality is not required to establish local civil society organizations. Residency is the only major factor taken into account.

There are five types of local CSOs namely: associations, board-led Organizations, charitable endowments, charitable trust, and charitable committees. The internal governance system and characteristic features of each of the above were extensively explicated throughout this study. An association is an entity established by five or more members and governed by the general assembly, whereas a board-led organization is founded by two or more individuals and is governed by a management board. A charitable endowment is an entity in which any property is permanently and irrevocably designated by donation, money, or will for a reason that is strictly charitable. A charitable trust is an entity formed by an instrument in respect of which specific assets are constituted solely for a charitable purpose and are managed by trustees in accordance with the instructions provided by the charitable trust instrument. Finally, a charitable committee is a coalition of at least five individuals who have come together to solicit money or other public property for charitable purposes.

Ethiopia is among the countries in the world which require mandatory legal registration of civil societies. Accordingly, both foreign and local civil societies need to be registered. The set of documents that need to be provided by local and foreign CSOs including the application fee and time frame for decision are slightly different. Foreign CSOs will be registered within 45 days for USD 300 while local CSOs will be registered within 30 days for about Ethiopian Birr 600. If the Agency for Civil Society Organizations rejects the application for registration, the applicants have a chance for re-submission, a CSO board application, and a Federal High Court appeal. Finally, once a civil society organization is successfully registered it is conferred with a legal personality and ability to carry out its functions in accordance with the law.

The finding of the research on whether the aforementioned system of formation and registration under proclamation no. 1113/2019 creates an enabling legal environment for CSOs is in the affirmative. In comparison to the old proclamation (621/2009), the new

proclamation (1113/2019) at least legally creates an enabling legal environment for CSOs. Yet still, continual effort is needed on part of the Agency for civil society organizations to institutionally translate the freedoms enshrined in the law into practice.

As a recommendation, this study would like to put at least three matters upfront. First, it is recommended if the registration of specific profession-based CSOs be entrusted to their main professional association authenticated and registered by the Agency. For example: to a registers professional association of Commercial Lawyers in Ethiopia the main Ethiopian Lawyers Association can have a mandate. In order to form a professional association of Macro Economist in Ethiopia the main association of Ethiopian Economist can have a mandate. Similarly, to form a pediatric association of Ethiopia it would be good if registering with the main Ethiopian Medical association suffices. This mechanism would save precious time and resources for the Agency and prospective CSOs. The Agency will also have more time and be able to effectively keep backlog files at bay. Sub types of associations have also more proximity to their main sectorial professional associations than the Agency. This will also eventually foster the self-regulation of CSOs.

Secondly, another major short coming that requires improvement relates with the recognition of informal CSOs. Ethiopia, as a country of thousands years of history, is rich in community and cultural associations. These institutions are trusted by community members and at times may have more impact on society more than any other CSOs. However, proclamation 1113/2019 under article 3(3) (b) have completely side lined them from its ambit. The regard of cultural and community association as “informal” and “not modern” raises the need to decolonize the law and give a legal recognition to such cultural and community based organizations.

Finally, the Agency for civil society organizations has recently announced on its website <http://acso.rs-go.com/> that it will make 45 services including registration of new civil societies online. Even though this is a commendable move in terms of making registration more convenient, it carries a significant amount of risk. Making registration entirely online will raise issues of internet accessibility and data justice. New CSOs may also be victims of fraud and it will encourage go-in-between illegal agents. Some fake NGOs with sinister motives such as funding of terrorism and money laundering may also take advantage of this new system. Hence, it is not only imperative but also necessary for the Agency to weigh in these risks and provide mechanisms to tackle them before the launch of the online registration system.

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