

ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
REGIONAL AND LOCAL DEVELOPMENT STUDIES

**AN ANALYSIS OF THE ETHIOPIAN LEGAL FRAMEWORK FOR  
THE FORMATION AND OPERATION OF CIVIL SOCIETY  
ORGANIZATIONS  
(Law and Development)**

A THESIS SUBMITTED TO THE SCHOOL OF GRADUATE STUDIES  
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By  
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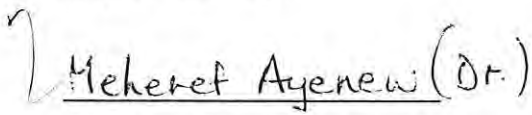
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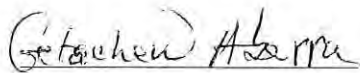
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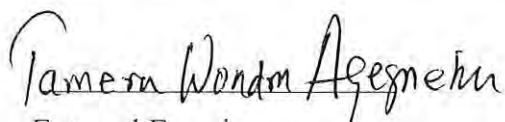


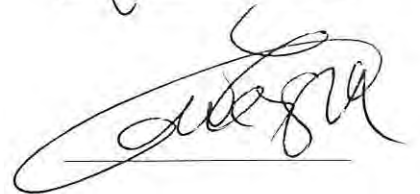
  
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## Abstract

*This research work presents an analysis of the Ethiopian legal framework that governs the formation and operation of Civil Society Organizations (CSOs). The objective of the research work has been to assess the adequacy of the existing legal regime and practices that govern the formation and operation of CSOs. The central argument of the research work is a positive assertion that the existing legal framework and practices for the civil society sector is inadequate which in turn affects the contribution of the sector towards the development process of the country.*

*The paper begins by setting out the role of CSOs in the development process and the importance of a legal framework that governs the sector. This discussion shows how CSOs have increasingly come to be accepted as one of the key actors in the development process both at a global and the national level. After having established the role of CSOs in the development process, the paper examines the legal framework that governs this sector. Examination of the legal framework for the civil society sector begins by a literature review on the over all role of law in the development process. The discussion on this subject identifies the crucial role of law in the development process at large and the social, political and economic rationales on why a country should want to have a legal framework that governs the civil society sector.*

*The paper continues to provide a survey of the existing laws and regulations that govern the sector in Ethiopia and tries to identify major practical issues of the legal framework, which have constrained the formation and operation of CSOs. The research work has identified a set of practical problems that the sector is facing both in formation and operation. The issues are identified on the basis of a series of consultation with practitioners of the sector and other well-placed observers.*

*The analysis on these issues proves the central argument that the existing legal framework for CSOs is inadequate and hence the need for adopting a comprehensive legal regime that enables the formation and operation of CSOs. Such a new comprehensive legislation responsive to the needs of the sector will help to maximize the contribution of the sector towards the development effort of the country.*

# Chapter One

## Introduction

### 1.1 Background

In the past three to four decades, the discourse on challenges of development has mainly emphasized on economic factors as the utmost significant forces underlying the aspiration of poor countries to make economic progress. From the modernization theory of development in the 1960's to the neo-liberal thinkers in the 1980's, the major focus of the intellectual debate has mainly been on the economic dimension of the growth process.

Since recently, development discourse has come to focus on an interrelated set of factors and concepts like *civil society*, *political culture*, *democracy* and *good governance*. An increasing number of development literature are exploring the causal relationship between democracy and development, and the role of civil society in this context.

The apparent assertion of the new discourse is that democracy is not only good for development but can fairly be considered as a causal factor for development (Hyden, 1997). Civil Society is increasingly being referred to as the most important factor in the process of democratic development.

Some literature on the subject has lifted civil society to such a level as the savior of our times. Alan Atkisson writes, “when the history of the 20<sup>th</sup> century is written, civil society

will be credited with incubating the solutions to the enormous challenges we face, ...” Atkisson further proposes that “...civil society is saving the world now, and that the rise of sustainability – an ideal which, like democracy has grown out of civil society’s creative ferment – is both example and proof of its central role in the advance of human well being” (Atkisson, 1997).

With the failure of the development theories of the 1960’s and the 1970’s to deliver the much promised economic advancement, the intellectual debate on the challenges of development has shifted its focus from capital transfer to sustainable human-centered development. According to the newly emerging paradigms, human development is conceived as a process by which people’s choice is continually expanding and people making use of this capacity (Auprich, 1998).

The newly emerging development paradigms called for the participation of people in the development process by way of involvement both in the designing and implementation of development programs. Indeed people in all corners of the world are increasingly demanding a greater say in defining, deciding and controlling their future. People are further demanding greater accountability, more transparency and greater responsiveness of the government. Civil Society is emerging as a common thread that connects individuals as a community around issues of common interest and concern.

Recent development literature has asserted the causal relationship between a vibrant civil society and a well-functioning state and hence states are called upon to adopt the

necessary legal and political measures to enhance citizen engagement in the development process.

It is in this context that the legal regime for Civil Society Organizations has come to acquire relevance and significance as one dimension of law facilitating the development process.

## **1.2 Objective of the Research Work**

The objective of this research work is to assess the adequacy of the existing legal framework in Ethiopia for the formation and operation of Civil Society Organizations (CSOs). Since recently, CSOs appear to have gained a degree of acceptance in the development process of the country but continue to be hindered by the lack of an enabling environment.

One of the most important factors clouding the enabling environment is the legal regime for the sector. Development practitioners speak about the inadequacy, if not the absence, of a legal framework that governs the sector of CSOs. The government appears to recognize the problem and is said to be working on a new legislation for the sector. Within the sector, there is both optimism and trepidation in anticipation of new legislation to govern the sector.

With this background, the objective of this research work is to analyze the existing legal framework there by identifying some of the major issues that posed a problem in the

formation and operation of Civil Society Organizations in Ethiopia. On issues to be identified as major elements of the legal regime, the research work tries to draw lessons and experiences from legislation of other countries and globally recommended standards.

This analysis on an important factor of the enabling environment for the civil society sector, helps in understanding the legal dimension of the issues, the need to address them and recommendations on how best the issues can be dealt with in the interest of creating an enabling environment for the sector. It is hoped that the future legislation for the sector will be developed in proper and genuine consultation with all the concerned actors and in that context, this and other similar research works may help to enrich the debate on the identification of issues and the appropriate type of legal options to deal with them.

### **1.3 Scope, Definition and Limitations**

It is appropriate to begin by properly delimiting the scope of the study and defining what is meant by Civil Society Organizations in this research work. As stated in the objectives of the research work, the study will limit itself to dealing with the legal dimension of the enabling environment for CSOs and more specifically it will be limited to identifying and analyzing issues considered to be major elements of the legal framework.

This study is on practical issues of a legal framework for Civil Society Organizations. The concept and definition of a civil society is in and of itself a rather controversial topic, which is outside the scope of this study. However, the study begins by defining what

constitutes a CSO based on recent literature on the concept and definition of civil society. A word of caution from the outset is that CSOs and Non-governmental Organizations (NGOs) are by no means interchangeable terms. The latter are only considered as one but important sub-sector of the former.

For reasons to be specified below, this research work prefers to use the broader term “Civil Society Organizations (CSOs)” or Civic Organizations. The definition of the term NGO has been a subject of discussion among lawmakers and NGO practitioners for some time now and it appears that, to date, there is no agreed terminology for describing the NGO sector.

The term NGO usually refers to the myriad range of organizations that are non-governmental and not-for-profit in their nature and primarily engaged in humanitarian, development and social activities such as; relieving poverty and suffering, protection of the environment, provision of basic social services, promoting the interests of disadvantaged groups, community development, advocacy, etc.

Such organizations are known under different terminology in the different legal systems of countries in the world. In Britain the term “Public Charities” or “voluntary organizations” or “voluntary sector” is used than the term NGOs. In the United States, in addition to the term NGOs they also refer to “Private Voluntary Organizations” and “Exempt Organizations”. It can fairly be said that the term NGO is almost a universally used term although by no means necessarily universally accepted and agreed term to describe the sector.

The increasingly accepted terminology this research work has preferred to use is the term “Civil Society Organization” which is inclusive of not only NGOs but also other types of civil associations or organizations. It is true that this terminology is not a legal term particularly in the legal system of Ethiopia. However it is also equally true that NGO is also not a legal term with in the legal system of Ethiopia. This research work has come to observe that many practitioners in the sector are increasingly using the term “Civil Society Organization” to describe the sector they belong to and the terminology appears to be fairly accepted by many.

The term Civil Society Organizations (CSOs) was introduced by CIVICUS, the global organization promoting citizen participation. It appears that it is neither possible nor is it necessary to reconcile these different terminologies. What is necessary is to be clear on what type of organizations are included and/or excluded under the definition. This research work prefers to use the term CSO as it is a broader term to include a wide range of non-governmental and not-for-profit civic organizations.

As used here, the term “Civil Society Organizations” refers to a wide range of formally constituted and registered organizations that are recognized as legal entities under the Ethiopian legal system and characterized by a non-governmental and a not-for-profit feature.

A major limitation of the research work was the reluctance of the Office of Associations under the Federal Ministry of Justice to cooperate with the research undertaking. The office has refused both to provide some requisite information and to consult with the writer, apparently for unsatisfactory reason.

#### **1.4 The Central Argument**

The central argument of the research work is an assertion about the inadequacy of the existing legal framework for the formation and operation of Civil Society Organizations in Ethiopia and hence the need for a new and comprehensive legal framework in which the contribution of CSOs in the country's development process is maximized. By identifying and discussing some of the major issues that posed a practical problem in the formation and operation of CSOs, the study attempts to demonstrate the inadequacy of the current legal regime for the sector in Ethiopia.

#### **1.5 The Design of the Research**

On the basis of the overall objective of the study as well as aspects of the different issues to be analyzed, it is necessary to design an appropriate type of research methodology to garner the required information.

Accordingly the major factors that were taken into consideration in choosing the appropriate type of methodology to be employed are; the type of information needed, where it

can be obtained, the period of time available for the study, and the overall objective of the study. On the basis of the foregoing considerations the research work has used two basic forms of collecting the required information for the study. One is the Interview method and the second is Documentary Research.

These methods are found to be more appropriate than the other social science research method for the following reasons:

- The nature of the research work is one which requires gathering information from people that are strategically placed to provide an in depth insight on the different aspects of the issues analyzed by the study
- It was not necessary to waste resources, time and energy by conducting a survey to interview people who have little relevant experience and competence on issues of the sector and hence can not provide a fruit full insight in respect of the relevant issues for the study
- One aspect of the research work being to look in to experiences elsewhere for a comparative analysis of the issues, it naturally relies on a documentary research of legislations, policies and practices elsewhere
- It was also necessary to make an extensive reading of a series of studies and other writings made on the sector
- It was necessary to ensure that multiple sources of information were tapped and that a wide range of perspectives were solicited

### *Approach of the Interview*

The Interviews were unstructured, as opposed to structured ones, and it enabled a greater degree of flexibility of approach to solicit fruit full and rich insights on the issues analyzed.

Indeed the collection of information by such a method is rather a slow process and one can only expect to cover a small number of interviewees as opposed to a survey design. Nor is it possible to articulate the responses of different interviews into a single scheme. However all effort has been made to solicit a candid information from people particularly well placed to provide informed views on the issues central to the content of the research work.

On the selection of informants for the study, the writer has sought to solicit the insights of individuals well placed to comment on the subject matter under consideration. As indicated above, the most critical element of the study was a series of interviews with diverse group of individuals particularly well placed to give fruit full insights and interpret issues in light of actual experiences. These individuals are both practitioners and observers including NGO officials, donor agency officials, academics, and other private citizens in a position to contribute to a better understanding of the issues central to the content of the study.

Needless to say, the information and insights secured on the basis of such purposively selected interviewees cannot be used as a basis for any form of statistical analysis. Although it is not possible for an assessment of this nature ever to be totally comprehensive or absolutely objective, every effort has been made to come as close as to that goal as possible.

There was no any predetermined outcome or any preferred slant to the report suggested by any one. Instead this is only an independent analysis of the issues considered from an academic interest point of view and hoped to contribute as lead in any future consideration of the matter for a concrete measure such as drafting domestic legislation or adopting policies for the formation and operation of civil society organizations in Ethiopia.

## Chapter Two

### The Role of Civil Society Organizations in the Development

#### Process and the Importance of a Legal Framework

#### **2.1 Role of Civil Society Organizations in Development**

Recent literature on issues of development has recognized three important actors in the development process. They are: the State, the Private (market) Sector and the Civil Society Organizations sector, which is also known as the third sector. Following the crisis of the development theories of the 1960's and the 1970's, the newly appearing paradigms of development have begun to shift the focus from mere economic growth to a sustainable human-centered development.

According to newly emerging paradigm of development, civil society organizations are recognized as a third major sectoral actor and hence developing countries are called upon to build their development strategies around the interaction of the three actors; i.e., the state, the market and civil society organizations.

These new paradigm implies the participation of people in all stages of the development process including planning and decision-making. Enhancement of people's participation in turn implied an empowerment process by which individuals, groups,

organizations etc. develop their capacities to perform various social functions (Auprich, 1998).

The new paradigms of development called for the promotion of democratic cultures and systems as an important precondition for social and economic development. An independently functioning civil society can contribute to good governance and the respect of human rights, which in turn are increasingly recognized as important conditions for development. It is in this context that concepts of civil society, good governance and democratic development have come to acquire relevance and significance. Since recently, Civil Society Organizations in many countries have gained traction and credibility as one credible actor of the development effort. CSOs have continued to grow both at an international and local level and have also increased in their diversity.

As Marc Nerfin describes it, this growth and diversification reflects "...the power people have as citizens, autonomous from governments and markets, to operate as a *Third system*" (Marc Nerfin as cited in Auprich, 1998).

Goran Hyden also writes on the new reorientation of the academic discourse on development. For Hyden the intellectual trend in the 1990's is new in that it focuses on what is referred to as *political culture*. According to Hyden this new orientation differs from earlier structuralist theories because it assigns a unique role to human agency and asserts that institutions mediate human choice. Society needs to invest in civil society to achieve democracy and as a result of that to achieve development (Hyden, 1997).

The conventional development theories and practices focused on massive resource transfers, planning and a greater role for the state. According to David Korten, the underlying theory of this conventional practice was the belief that "...placing responsibility for control and allocation of development resources in the hands of central government will result in optimal investment decisions" (Korten, 1987). However the theory failed to match with the realities in ground and policies often led to unexpected crisis after crisis.

Following the frustration of the conventional development theories, the newly emerging paradigms called for a more people-centered development approach and the focus has shifted from capital transfer to the need to strengthen institutional and social capacity. This by implication was a call for democratization. Capital transfer is no longer the main central issue as is the process of democratization. With the new reorientation, the role of the state was conceived, as one of an enabling role where in people will be involved in the management of their own resources.

Although one cannot deny the importance of resources, the new reorientation emphasized more on developing the human and institutional capacity of people than consider development as a function of capital investment. David Korten writes about the significance of "...the development of the complex mosaic of independent yet inter-linked local organizations through which people define and pursue their individual and collective interests within a guiding framework of national policy" (Korten, 1987).

As Maurice J. Williams puts it, “...civil society voluntary associations – which engages citizens in civic affairs outside of the direct purview of the state – is potentially a creative pressure that promotes responsible government, checks gross social and economic inequities, protects human rights including gender and cultural issues, and nurtures the citizenship required for democratic governance” (Williams, 1995).

It is within this context that the relevance and significance of Civil Society Organizations has grown in time and in today’s development effort, CSOs are accepted as one of the three important actors. Indeed there is an ever-growing interest nowadays in CSOs as development agencies at all levels. In this process, CSOs also have grown in their size and nature and presented more potential as development actors.

In Ethiopia also, the past few years have witnessed an increasing interest in the development roles of CSOs. A study commissioned by Pact (Ethiopia), a Washington based development agency, has disclosed a critical assertion that CSOs in Ethiopia have crossed a threshold of acceptance and relevance that places them to assume a role as important actors in the country’s development process. Today civil society is emerging as an increasingly visible and relevant actor in Ethiopia’s political and economic revitalization. Civil Society in Ethiopia is gaining mass and legitimacy through the past few years. While it is rather misleading to describe civil society in Ethiopia as robust, one can fairly assert the relative vibrancy, the diversity and the promising trend of the sector (Clark et al, 2000). In the not too long past history of the country, civil society was rather dormant and the relative vibrancy of the sector can be compared with the not too distant past history of the country.

The increasing number and type of civil society organizations is also a reflection of a democratization process, which is asserted as a necessary precondition for development. Government both at the Federal and Regional level appear to have accepted NGOs and other types of CSOs as having a role in the development efforts of the country. It is important to note, however, that the relative vibrancy of the sector and relative acceptance of members of the sector as credible players does not discount problems that remain. In fact some observers do not even agree with this conclusion and it is appropriate to note that there is room for dissent.

There are areas of uncertainty and unevenness surrounding some of the positive developments. And some observers comment on the possibility of reversal of the progress documented so far given the past history of autocratic rule and the absence of a reliable guarantee on the new process of democratization (Clark et al, 2000).

According to the new reorientation in development theories, the focus has shifted on the role of democracy and good governance in the development process. In this context the concept of civil society and civil society organizations has increasingly come to acquire relevance in the development discourse. A democratic form of states and good governance is increasingly being considered as a necessary precondition and a causal factor for development.

For a long time, the state was considered as the crucial actor in the development process of countries as a rational means of controlling and promoting change. In recent development discourse, while the state continues to be considered as an important actor, a considerable degree of concern has also been voiced about the danger of the state in preempting individual initiatives. “As the pendulum has swung in the opposite direction, analysts now maintain that development wisdom is lodged not in government bureaucracies but in local communities and institutions. Indigenous knowledge and popular participation are examples of concepts that have come to occupy increasing prominence in the debate” (Hyden, 1997).

It is in this perspective that the civil society organization sector, also known as the third or the independent sector, is recognized as one of the three major actors in the development process, together with the state and the market sector.

According to Diamond, civil society acts to strengthen democracy by:

- Containing the power of the state through public scrutiny
- Stimulating political participation by citizens
- Developing such democratic norms as tolerance and compromise
- Creating ways of articulating, aggregating, and representing interests outside of political parties, especially at the local level
- Mitigating conflict through cross-cutting or overlapping interests
- Recruiting and training political leaders
- Questioning and reforming existing democratic institutions and procedures and,
- Disseminating information (Diamond as cited in Hyden, 1997).

## 2.2 The Role of Law in the Development Process

### 2.2.1 Literature on Law and Development

*The Legal framework in a country is as vital for economic development as for political and social development. Creating wealth through the cumulative commitment of human, technological and capital resources depends greatly on a set of rules securing property rights, governing civil and commercial behavior, and limiting the power of the state...The legal framework also affects the lives of the poor and, as such, has become an important dimension of strategies for poverty alleviation. In the struggle against discrimination, in the protection of the socially weak, and in the distribution of opportunities in society, the law can make an important contribution to a just and equitable society and thus to prospects for social development and poverty alleviation (World Bank, 1994).*

Recent literature on development theories and a series of writings on the development experiences of the now developed parts of the world have increasingly come to recognize the positive role law and legal institutions have played in the development process. Since recently, the role of law has largely been ignored and in some instances even considered as rather irrelevant or having very marginal role at the best.

However, recent interdisciplinary research by legal, economic and development experts and practitioners is presenting a different perspective on the vital role law has played and continues to play in the development process. The findings of such researches and studies is revealing that, for example, law made an important contribution to Asia's economic development and that it was most effective when it was congruent with economic policies.

It is suggested that law and legal institutions tended to converge among the economies of the Asian tigers and with institutions of the West with economic development, although the extent of convergence differs from country to country and for different areas of the law (Pistor and Wellons, 1998).

The most influential social theorists have long asserted the vital role of law. Max Weber asserted that the development of a rational legal system was a significant factor in facilitating the development of capitalism. Emile Durkheim described the impact of the division of labor on the nature of legal rules. Adam Smith and Karl Marx observed the close relation between the complexity of economic relations and the complexity of legal systems (Stein, 1980 as cited in Pistor and Wellons, 1998). Yet the role of law has largely been ignored and has not been studied properly until very lately.

“The legal order constitutes the operative form of state policy. Governments can only implement policy through laws directed at influencing the behavior of people. If state policy aims to increase mineral extraction, the government cannot decree that ore deposits uncover themselves. It can only try to induce people to find and dig them out. In this sense,

government employs the legal order instrumentally, using laws to change the behavior of citizens and state officials. Government policy has no effective content until expressed as law” (Seidman and Seidman, 1994).

Since the collapse of the Eastern block and the end of the cold war, a process of economic and political liberalization is a major preoccupation of countries in Eastern and central Europe and in the developing countries. This widespread process of liberalization has brought about a renewed interest in the role of law and legal institutions. The process of liberalization is often accompanied by major changes to the legal framework (Faundez, 1997).

The World Bank and other donor agencies have also become interested in the process of legal reform to the extent that *legal technical assistance* has become one of the major elements of aid programmes to the developing countries and countries of central and eastern Europe.

According to the World Bank, the program of legal technical assistance comprises of different activities such as drafting of various legislation including constitutions, rendering advice on institutional reform and establishment of new institutional frameworks, assistance on a range of projects on judicial reform and legal training.

Historically, the initial legal technical assistance projects were started with the United States aid agencies interest in the 1960’s to make use of law in the modernization process of the then newly emerging independent states of Africa. Lawyers from the United States were engaged in research works of the role of law in the developing countries and in some legal

technical assistance projects. The law and development movement that started in the United States aid agencies was, however, short lived.

According to David Trubek and Marc Galanter, who were the leading figures in the law and development movement of the 1960's, the movement was rather a failure because of the misguided notion that the American model could be exported and implanted in the developing countries (Faundez, 1994).

In the theories of liberal legalism, law was assigned a key role in the process of development and was viewed both as a mechanism to curb arbitrary powers of the government and as an instrument to achieve social and economic objectives (Trubek and Galanter, 1974).

Such an instrumentalist conception of the role of law led the law and development movement to put too much emphasis on legal education on the assumption that the development goals of the state would be facilitated if lawyers were trained to use law as an instrument for change (Trubek, 1994). "Disenchantment with liberal legalism, combined with a reduction of the US aid budget, led to the removal of law from the agenda of development assistance programmes and to a marked decline of academic interest in law and development" (Faundez, 1994).

Faundez in his article on Legal technical assistance describes the similarities and differences between the law and development movement of the 1960's and the recent renewed

interest in the role of law mainly advocated and led by the World Bank. (Although legal technical assistance is becoming one of the major preoccupations of many donor agencies and multilateral aid programmes, the main conceptual and theoretical leadership appears to be provided by the World Bank.)

For Faundez an important difference between the two, [the law and development movement of the 1960's proposed by US aid agencies and the Bank's renewed interest on the role of law in the development process] is the conception of the role of the state in the process of development. In the law and development movement of the 1960's, law was regarded as a mechanism indispensable for controlling political power and protecting individual freedom and the state was viewed as the core that initiates, plans and implements economic development program in an optimal manner. Accordingly this conception emphasized on legal instrumentalism whereby "*socially and politically aware lawyers*" would be at the forefront of the development effort orchestrated by the state." This perspective implies the exporting of legal systems and techniques for designing a liberal welfare state in the then newly emerging independent states of Africa.

The World Bank's new approach to the role of law is different in a sense that it emphasizes its endorsement of the new market-friendly state. In this perspective "...the law is not an all purpose tool at the service of an interventionist state...Instead, law, provides rules to facilitate market transactions mainly by defining property rights, guaranteeing the enforcement of contracts and maintaining law and order" (Faundez, 1994).

The Seidmans in their theory of the role of law and legal institutions in the development process emphasize that *"an adequate development theory must guide the formulation and implementation of law to change the institutions that perpetuate third world poverty and oppression"* (Seidman and Seidman, 1994).

In this perspective the concept of institutions refers to, not just organizations, but to the modalities by which people relate to one another. In any given society, people occupy specified social roles (e.g., as a man or a woman, as a father or a mother, employer or employee, consumer or producer, seller or buyer, etc) and their interaction as different role occupants constitutes institutions. The Seidmans argue that understanding and changing institutions requires the understanding and changing of the role occupants' social behavior. The function of the legal order may be to purposefully change institutions by the use of legal rules and state power.

### 2.2.2 Good Governance and Law Reform

The concept of Governance generally refers to the exercise of political, economic and administrative authority in the management of the affairs of a country. Good governance implies the features of transparency, participation, accountability, effectiveness in the management of resources, rule of law and equity in the exercise of state power. The ultimate aim of good governance therefore is the creation of an enabling environment favorable for the development and participation of the non-state actor, which includes the private sector and the civil society sector (Auprich, 1987).

For some writers, the context within which the foregoing concepts associated with good governance have tended to develop is more towards making markets work more efficiently rather than making governments more accountable to their citizens. Improving the efficiency of the market is sought to be achieved by reducing or eliminating controls. The law reform program of the World Bank has emphasized more on areas of commercial law, property rights and the court system (McAuslan, 1997).

The World Bank puts special emphasis on institutional reform in its agenda of governance issues. The state has also come to be considered as an important actor in the market economy and no more treated as the minimalist state of the classical liberal theory. With such a new conception of institutional reform the state having a crucial role, law is considered to play an important role though in a passive way.

Legal and institutional reform has often involved reception of foreign laws and this in turn has raised the issue of the wisdom in legal transplants. Borrowing and drawing inspiration from foreign laws, however, is not at all new in the history of nations. The laws of different countries are often copied, borrowed or adapted from the experiences of other countries.

Legal systems and practices have quite often influenced one another. But law-making being one of the supreme manifestation of sovereignty, the choice of legal reform is rather a question of political decision by a sovereign state.

The Bank recognizes the sensitive nature of the issue and provides that each country as an exercise of its sovereign right shall make the political decision about the choice of legal reform and the role of external assistance shall be limited to one of providing only technical advice and assistance. Faundez, however, noted that in practice the distinction between the direction of legal reform – a political choice – and the role of external legal advisers – a technical function – is not always easy to make.

Once a given country makes the political decision to modernize its legal system, the remaining task may be considered merely as technical and hence it may be difficult to draw the boundary between the roles of technical advisors and the political or the policy decision makers.

In this regard, Faundez cites the argument made by Rene David, the drafter of the Ethiopia Civil Code. According to Rene David, once Ethiopia has decided to modernize her legal system, it would not have been practical to wait for a law to emerge from within the indigenous culture. The adoption of the civil code, based on the French model, would “assure as quick as possible a minimal security for social relations” (David as cited in Faundez, 1994).

According to the Bank’s approach, the issue of governance is introduced to the institutional reform agenda and law has assumed a crucial role in the process. The Bank’s major focus appears to be on legal issues as it relates to the efficient use of resources and productive investment. The legal framework of a country is expected to create a stable

environment in which economic actors can carry on their activities without the threat of political interference.

For the legal framework to achieve this quality and create the desirable environment, it is expected to meet the following requirements:

- There should be a set of rules known in advance
- The rules should actually be in force
- There should be a mechanism for ensuring application of the rules
- Conflicts should be decided through binding decisions of an independent body and,
- There should be procedures for amending the rules when they no longer serve their purposes (World Bank, 1994).

The foregoing discussion being an introductory remark on the issues in relation to the role of law in the development process, the focus of this research work shall be to do an analysis of the legal regime that governs the formation and operation of Civil Society Organizations. The general discussion on law and development and good governance appears to focus mainly on economic laws but it is important to note that the legal regime that governs the civil society sector is also an important aspect of the legal framework that needs to be addressed in the subject matter of law and development. As discussed herein above, Civil Society Organizations are recognized and accepted as one of the major players in the development process.

Thus the legal regime that governs one of the major actors of the development process is an important aspect of a country's legal framework worth being looked at in terms of creating an enabling environment for an efficient operation of the development actors. Issues of legal reform for the civil society sector is not one of mere technical legal issues for NGOs but one of creating the necessary legal framework for civil society which is indispensable for the social and economic development of developing countries.

As civil society organizations have come to acquire a significant place in the process of development, it becomes relevant to analyze the legal framework in which such organizations may be formed and operate. It is in this perspective that the legal regime for civil society organizations becomes relevant and significant. The following section will focus on the reasons why a country should want to have a legal framework for the civic sector.

### **2.3 The Need and Importance of a Legal Framework for the formation and operation of Civil Society Organizations.**

Law is the principal instrument to determine the type of Civil Society Organizations a given country would like to have and to determine the nature and scope of their activities. The operational life and performance of CSOs is considerably affected by the exercise of government power. The various laws and regulations a government passes and implements are the principal mechanism by which the government decides the manner of operation for CSOs.

A government can purposefully use the legal instrumentality either to repress or encourage the flourishing of CSOs, or to determine the kind of CSOs wanted by the government (ICNL, 1994).

A World Bank sponsored study by ICNL has identified a set of main reasons why a given country should want to have a legal framework that supports a vigorous and independent civic sector of both informal and formal civic organizations. While it is misleading to consider all of these reasons as being uniformly applicable in all countries, it is however true that all of the reasons are appropriate social, political and economic considerations on why a given country should adopt a legal framework for civic organizations.

The writer of this research work believes that the following reasons proposed by the study should be taken as appropriate considerations in Ethiopia.

***A) Protecting Freedom of Association.***

Freedom of association is a fundamental right of people that needs to be protected by law. Many civic organizations are formed by citizens in the exercise of their fundamental right of association and freedom of expression. It is the responsibility of governments to set up legal parameters that protect the exercise of such rights.

Freedom of association and freedom of expression are fundamental human rights that are afforded protection by international law, regional covenants and domestic constitutions of virtually almost all countries in the world. Freedom of association is the fundamental right of citizens to meet and form peaceful assemblies for their own purposes.

As individuals may want to exercise their freedom by forming groups or different kinds of organizations, any country needs to have laws permitting the formation and operation of civic organizations there by giving real meaning to the fundamental rights and freedoms.

Laws permitting interest groups to be formed as legal entities also strengthen freedom of speech, which is equally protected by international covenants and constitutional law. Most citizens are not important enough for their individual voices to be heard, but if they can band together to form, for example, an advocacy organization for the protection of the environment or the rights of ethnic minorities, then their collective voices can be heard. Only by allowing and protecting citizens and their informal or legally formed organizations do the laws of a country give real meaning to the freedoms of association and speech.

### ***B) Promoting Pluralism and Tolerance***

Society is composed of individuals and groups that have diverse interests and needs. It is the sign of a healthy and democratic society that the interest and needs of different individuals and groups are expressed and represented by a wide range of civic organizations or other types of informal groups.

There fore any country needs to have laws that permit and enable the existence of a wide range of civic associational life, which will result in the desired pluralism for a society. The legal permission of such plurality implies how a given society value, tolerate and respect the diversity with in it.

### ***C) Promoting Social Stability and the Rule of Law***

In the absence of a legal framework that permit and enable the legal establishment of civic groups, the diverse needs and interests of groups and individuals in a society will tend to be expressed in a manner that endangers social stability and the rule of law. A legal framework that permits and enables the legal existence of civic organizations serve as a safety valve for social pressure and energies to be expressed in a peaceful way. The existence of various civic groups is a sign of stability and peaceful coexistence in a given society, which implies a well-grounded rule of law for that given society.

Promoting pluralism, tolerance, social stability and the rule of law will help in building democracy, which in turn is necessary for development. The long-range success of building a democratic society will largely depend on building the foregoing pillars of the system.

#### *D) Assuring Economic Efficiency and Support for a Market Economy*

Public goods and services can be more efficiently provided by civic organizations and the private sector than governmental agencies. The capacity of civic organizations to deliver a more efficient service is explained by its feature of voluntarism and the increasing degree of competition among civic organizations for a more efficient service delivery. Civic organizations are also better informed of a community's needs and more responsive in meeting those needs than the government, which often is distant from the people.

There is growing evidence that a well-developed civic sector provides an indirect support for the flourishing of the market economy. As discussed above the societal values of pluralism, tolerance, social stability and the rule of law are vital not only for building a democratic society but also for the success and growth of the market economy. There fore a legal framework for civic organizations will help in fostering the foregoing societal values thereby fostering the development of democracy and the conditions necessary for the growth of the market economy (ICNL, 1994).

The reasons discussed above can collectively be taken as appropriate rationales for adopting a legal framework that permits the formation and operation of civic organizations.

We should note that the first three reasons are social and political justifications whereas the fourth reason is an economic justification. It is for every country to find out

which of the rationales are the stronger reasons and of paramount consideration than the others.

Yaansha writes that regulations to govern the activities of NGOs reflect the particular socio-economic, political and other conditions of the country in question. “Whatever shape such regulations eventually take, the aim should be to enable the development of the NGO sector rather than to obstruct it. At the same time governments have the duty to protect their people as a whole from unscrupulous practices. For legislation to accomplish these aims will require, among other things, that the role of the voluntary sector in a particular country and the law intended to govern it be clearly thought and be well defined” (Yaansha 1995).

While there is a general understanding about the need for a regulatory framework for civic organizations, the move by governments to regulate the activities of civic groups has often been met with resistance on the part of the sector. Legislation is very often viewed with suspicion and as restrictive of a free activity of organizations. Laws are viewed as unacceptable intrusion, which hinder the capacity and effectiveness of NGOs. The Kenyan NGOs stiff resistance against the Kenyan NGO Coordination Act is cited as an example (Kathina and Houson as cited in Yaansha, 1995).

Yaansha writes that such a resistance to regulation by the government is common especially with the foreign NGOs. Given the fact that all the foreign NGOs come from countries where there are legislation to regulate the activities of the voluntary sector, he questions why particularly foreign NGOs resist regulation of their activities by host

governments in the countries examined under his study [Kenya, Uganda, Rwanda and Croatia] (Yaansha, 1995).

The need for political space is often the argument made by the sector to justify the claim for non-interference (Chazan, 1992). Freedom of the voluntary sector is regarded as necessary in order to foster the development of a strong civil society and enabling a free articulation of demands and interests, for proposing alternatives to the state's or market driven policies and for mobilizing interest groups (Kjaerum, 1993).

## Chapter Three

### Assessment of the Ethiopian Legal framework for Civil Society Organizations.

#### 3.1 Survey of Laws and Regulations by which CSOs are currently being governed

##### 3.1.1 Provisions of the Ethiopian Civil Code of 1960

The Ethiopian Civil Code, which was issued under Proclamation No. 165 of 1960 provides for three types of not-for-profit institutions that can be legally constituted for a not-for-profit objective. Each of these institutions will be briefly discussed herein below.

#### **Associations**

According to Article 404 of the Ethiopian Civil Code an *association* is defined as “a grouping formed between two or more persons with a view to obtaining a result other than the securing or sharing of profits”.

Subsequent provisions of the Code, among other things, provides:

- The obligation to draw up statutes and the content of such statutes as a governing document of the association

- The rights and duties of members and the manner by which members may be expelled
- The manner by which associations shall be managed by the appointment of directors
- The powers and responsibilities of such directors
- The legal capacity of associations and rights and obligations of associations
- The manner of dissolution and liquidation of associations, and
- Control of associations by the Office of associations

(Articles 404 – 482 of the Ethiopian Civil Code).

## **Endowment**

An Endowment is a legal institution that can be constituted by destining a certain property for a specific object of general interest other than the securing of profits. Such an institution may be constituted either by donation or by a will.

Article 483 of the Ethiopian Civil Code defines an act of endowment as “ *an act whereby a person destines a certain property irrevocably and perpetually to a specific object of general interest other than the securing of profits*”. Subsequent provisions of the code, among other things, provide:

- The statutes of an endowment as a governing document of the institution in accordance with which it shall be organized and administered
- The manner by which the endowment is managed (the provisions relating to the directors of associations shall apply to the directors of endowments)

- The legal capacity of endowments and the rights and obligations of endowments (the provisions relating to the name, residence and capacity of associations shall apply to endowments)
- The rights of beneficiaries of endowments
- The manner of Liquidation and Control of endowments (the provisions relating to the liquidation of associations and control of associations shall also apply to endowments)

(Articles 483 – 506 of the Ethiopian Civil Code).

## **Trust**

Article 516 of the Ethiopian Civil Code defines a trust as *“an institution by virtue of which specific property is constituted in an autonomous entity to be administered by a person, the trustee, in accordance with the instructions given by the person constituting the trust”*.

It is further stipulated that, *“a trust may be constituted for the benefit of any person, action or idea, provided it does not offend public order or morals”* (Article 518 of the Code).

Subsequent provisions of the code, among other things, provide:

- The form by which a trust is constituted
- The appointment of trustees and administration of a trust
- The powers and responsibilities of trustees
- The rights of beneficiaries, and
- The liquidation of a trust

(Articles 516 – 544 of the Ethiopian Civil Code).

From among the above three types of legal institutions recognized under Ethiopian law, the most, if not the only, way by which CSOs are established is the *association* form. The provisions on the law of associations are the only set of law in the country that can fairly be assimilated with the concept of NGOs, and hence the NGO sector in Ethiopia is regulated by the law of associations.

Endowment and Trust, although recognized by law do not seem to have been used in practice nor are they known by the public as one form of establishing a not-for-profit institute. Both concepts appear to be borrowed by the drafter of the code from experiences elsewhere.

Yaansah writes that, “the concept of a trust is a distinctive English institution, which is the outstanding creation of equity, (Pettit, 1993) and which has been used over the centuries to establish and regulate (largely through judge made law) formal relationship between three parties: the donor (first party) and the trustee(s) (the second party) who hold property for the benefit of beneficiaries (the third party).

Under English law, a trust may or may not be a charity. Whether it is a charity or not will depend on the view the Charity Commissioners take of the *nature* of the trust (Phillips, 1994; Pettit, 1993). A trust is ideally suited for simple, or single purposes, and for charities which do not intend to implement large programmes” (Pettit, 1993; Phillips, 1994).

### 3.1.2 Associations Registration Regulation

The Associations Registration Regulation No. 321 of 1966 was issued by the former Minister of Interior pursuant to authority vested by Article 479 of the Civil Code. The Regulation, among other things, provides for:

- The requirement of registration
- The procedures of registration an association
- The requirements of registration and the forms of application
- The supervision of management of associations
- The procedures of dissolution and the procedures of an appeal process

According to this regulation the authority to register associations was vested on the former Minister of Interior, but since recently the responsibility was transferred to the Federal Ministry of Justice. The Office of Associations under the Federal Ministry of Justice is now the responsible organ of the government for registering International NGOs and local civic organizations whose activity is not limited only to one region. Local organizations whose activity is limited only to a specific region may be registered at the concerned region level with the regional Justice Bureau or the Regional Disaster Prevention and Preparedness Bureau.

The registration with the Ministry of Justice is for the purposes of legally establishing an organization and securing a legal existence for the organization. For the purposes of operational activities, organizations are further required to enter in to a project agreement with

the Disaster Prevention and Preparedness Commission which is responsible for coordinating and supervising the activities of both International and local NGOs operating in Ethiopia.

Organizations may also conclude project agreements with different line ministries or departments of the government for implementing activities.

### 3.1.3 Foreign Bodies Corporate

In addition to the foregoing, the Civil Code provides for the manner by which foreign bodies corporate (foreign NGOs) may be authorized to carry out activities in Ethiopia. Article 545 of the Civil Code provides that *“bodies corporate whose head office is situated in a foreign country and which wish to carry out activities in Ethiopia shall apply for an authorization to the office of associations in Addis Ababa. A copy of the articles of association shall be attached to the application.”*

In the same way endowments and trusts that are constituted in a foreign country and wishing to carry out activities in Ethiopia need to apply for a necessary approval. Once such authorization or approval is granted, foreign bodies corporate, endowments or trusts shall be fully assimilated as regards the enjoyment and exercise of such civil rights, to bodies corporate, endowments or trusts established in Ethiopia (Article 547 of the Code).

### 3.1.4 The Constitution of the Federal Democratic Republic of Ethiopia

It is appropriate to refer to the relevant provisions of the Federal constitution at this juncture. A constitutional guarantee of the basic rights of freedom of expression, freedom of assembly and freedom of association are the basis for the formation and operation of Civil Society Organizations.

The Federal Constitution under Articles 29 and 30 provides for the right of thought, opinion, expression and the right of assembly in a way it meets the internationally accepted standards. Article 31 of the constitution, which provides for freedom of association reads as follows:

*Every person has the right to freedom of association for any cause or purpose. Organizations formed, in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited.*

The ICNL report for the World Bank on Global Standards and Best Practices for Laws Governing NGOs, discusses about the constitutional protection of the foregoing rights. “The constitutions of virtually all countries guarantee the freedom of association. In almost all cases, however, the provisions do so with a proviso that individuals are free to associate for ‘legitimate purposes’ or a proviso that the freedom must be exercised ‘according to law’ or some similar phrase, without placing any limits on what the relevant law can restrict” (ICNL, 1995).

We can observe that the constitutional provision of Ethiopia is no different from experiences elsewhere. Be that as it may, the Federal constitution has a provision that guarantee the fundamental rights and freedoms of assembly and association which is the cornerstone for peoples right to form their own organizations outside the domain of the state. These fundamental rights and freedoms are further protected by Internationally binding treaties. The International Covenant on Civil and Political Rights, a binding multilateral treaty ratified by more than 100 countries including Ethiopia, provides for the rights of peaceful assembly and freedom of association (Article 21 and 22 of the Covenant, 1966).

The Universal Declaration of Human Rights, although not a binding treaty, also provides for the rights of individuals to peaceful assembly and association (Article 20 of UDHR, 1948).

### **3.2 Identification of the Major Issues that posed practical problems in the current legal framework**

In spite the foregoing written rules and regulations by which CSOs in Ethiopia are being regulated, the question whether or not Ethiopia has a legal framework to regulate the activities of CSOs has been a subject of controversy. People interviewed in this assessment have reflected two contending views. Some do not question the existence of rules and regulations except that the existing rules and regulations are considered not to be sufficient or good enough to regulate the activities of the sector. Others vehemently argue that there are no any set of laws and regulations for CSOs in the country except that the foregoing laws and

regulations of associations have been wrongly applied on the NGO sector or the civil society organizations sector.

The writer of this research paper does not begin by totally refuting the existence of the foregoing laws and regulations by which CSOs are currently being regulated. While there is only very little room to question the existence of laws and regulations governing the sector, it is appropriate to question whether the existing laws and regulations are sufficient to govern the sector evolving fast more than ever before.

In fact as stated from the out set, the central argument of this research work is an assertion about the inadequacy of the existing legal framework for the formation and operation of CSOs in Ethiopia. There fore in the subsequent sections of the paper, the writer attempts to identify and analyze issues that demonstrate the inadequacy of the legal framework.

The analysis will seek insights from related domestic legislation of other countries, internationally recommended standards, the literature discussed herein above and the observations of interviewees.

The research work has sought to identify the major issues that posed practical problems in the formation and operation of CSOs. These issues were identified on the basis of the series of consultations and discussions held with different individuals involved in the sector and on the

basis of review of prior studies on the subject. Accordingly the issues that are identified for analysis are:-

- Whether or not the existing legal framework has a clear definition that can accommodate a range of CSOs including NGOs?
- Whether or not the registration process for Civil Society Organizations is hindering or facilitating the formation of CSOs?
- Whether or not the existing legal framework and practices allow income-generating activities by Civil Society Organizations?
- Whether or not the existing legal framework and practices allow the networking of CSOs?
- Whether or not the Ministry currently entrusted with the authority to register and supervise CSOs should continue as the responsible organ of the government for the task of registering and supervising CSOs? And,
- Whether or not there are appropriate legal mechanisms to challenge government actions or decisions in the denial of registration and the cancellation of registration?

## Chapter Four

### Analysis of the Issues

#### 4.1 Defining Civil Society Organizations.

A clear definition of what constitutes a Civil Society Organization is very important to determine the attendant rights, duties, powers and responsibilities of an organization. Yaansah writes that clarity about the general purposes and aims of NGOs is necessary to enable a state to determine what rights, duties, powers and immunities apply to an organization. Such clarity is also necessary for the protection of the public from activities of organizations that may abuse power (Yaansah,1995).

Although the Ethiopian legal system nowhere statutorily defines the term NGO or CSO, the Ethiopian Civil Code, as discussed above in Chapter three, recognizes three types of legal institutions that can fairly be assimilated to the concept of NGOs or CSOs.

These three types of legal institutions recognized by law are, *Associations*, *Endowments* and *Trusts*. [A detailed discussion of these three institutions is provided in the prior section of this paper.] In practice, an association is the most widely, if not the only, form of establishing a not-for-profit and a non-governmental organization. “The concept of Non-Governmental Organization, as a distinct entity, is not known to the Ethiopian legal system. From among various types of legal entities recognized under the law, NGOs could

fairly be assimilated to civil associations as are defined in the 1960 Civil Code of Ethiopia” (Shiferaw, 1996).

The Ethiopian Civil Code defines an *association* as “*a grouping formed between two or more persons with a view to obtaining a result other than the securing or sharing of profits*”.

The Civil Code and the Associations Registration Regulation have detailed provisions on the formation and operation of associations which to date are the governing rules on the establishment of a not-for-profit and a non-governmental organization.

People interviewed from the sector have different views on whether or not CSOs at large and the NGO community in particular should be assimilated with the definition of *associations* as defined under the Civil Code. Some argue that *associations* as envisaged by the Code are the traditional forms of associations known to exist in Ethiopia for a long time now (for example the *Iddirs* and *Iquibs*), and by no means refers to, nor can be assimilated to, the new CSOs or NGOs sector. Others consider the Civil Code provisions as fairly sufficient set of rules that can govern the formation and operation of other types of civic organizations (like professional associations), but not relevant for NGOs which is a distinct entity and that needs a separate legal regime.

From the theoretical background discussion of Chapter one and two, we have seen that the concept of CSOs refers to a wide range of civic association life outside the domain of the state. As discussed in the above chapters, NGOs are only to be considered as a sub-sector of the broader CSOs and by no means are the two interchangeable terms. It is evident that the

definition of *associations* under the Civil Code does not foresee and accommodate the range of organizations that can be conceived under the concept of CSOs as discussed herein above.

Indeed the drafter of the civil code does not seem to have envisaged today's NGOs and other types of CSOs when drafting the civil code in 1960. While it was very wise of the drafter to have incorporated a set of provisions on the establishment and operation of non-governmental and not-for-profit organizations, he could not have been fairly expected to envisage provisions for the now emerging universe of non-governmental entities found virtually in every society.

A legal framework for Civil Society Organizations is a relatively new area in the legal systems of many countries. Yaansah, who did an analysis of domestic legislations for the NGO sector in selected countries writes that 'attempts to regulate either local or foreign non-governmental organizations is a relatively new field for those who draft the law in many countries...While many authoritative books and journal articles have been published on non-governmental organizations, the study of domestic legislation introduced to govern the activities of local and foreign NGOs has been totally neglected' (Yaansha, 1995).

An issue for a future legislation and statutory definition of the sector is sufficient clarity about what organizations are to be included and excluded from the concept of civic organizations. People interviewed from the sector have varying perspective on this issue as well. Some favor a broad definition that can accommodate all types of Civil Society Organizations whereas others tend to prefer a narrow definition that encompasses only

humanitarian and public benefit organizations to the exclusion of other types of organizations such as mutual benefit associations.

The position paper by the Ad-hoc consultative working group on the legal framework for NGOs in Ethiopia, calls for a separate legal regime for the NGO sector and defines NGOs based on the essence of a *public benefit mission* as opposed to a mutual benefit organization or self-help organizations. The paper further points out that the definition of the sector should not be confused with such other legally established entities such as political parties, trade unions, cooperative societies, mutual aid associations or similar other membership benefit organizations (Position Paper on the Legal framework for NGOs in Ethiopia, 1999).

While there is a general agreement on the fact that the sector should not be confused with other types of legally established entities such as trade unions and political parties, there is no such consensus on whether the definition should be limited to only humanitarian and public benefit organizations and exclude other forms of civic organizations such as membership benefit organizations (e.g. professional associations).

The Guidelines for Legislation on Civic Organizations prepared for the Open Society Institute by the International Center for Not-for-Profit Law (ICNL) addresses this very issue and recommends the use of the term “Civic Organizations” as a broader concept that can accommodate a wide range of civil associational life including NGOs.

As used in the Guidelines, *“Civic Organization refers to an association, society, foundation, charitable trust, nonprofit organization, or other juridical person that is not regarded under the particular legal system as part of the governmental sector and that is not operated for profit – viz., if any profits are earned, they are not and can not be distributed as such. It does not include trade unions, political parties, cooperatives, mandatory professional organizations, or churches”* (ICNL, 1996).

At this juncture it is relevant to look at the legislation of some countries to see how the NGO sector is defined under different systems.

The Working procedures for Local and International NGOs in the Republic of Rwanda defines NGOs to mean:

*... a private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the promotion of social welfare, development, charity, or research through the mobilization of resources. In pursuit of these activities, NGOs should be governed by aims and ideas which are non political, non governmental and non sectarian, and concerned solely to assist populations in trouble, need or distress, irrespective of race, class, creed or political consideration.”*

The Working procedure also provides for the basic agreement between the Government of Rwanda and any NGO, and it further expands the definition of NGOs as:

*...an organization which is non political, non governmental, non profit making humanitarian organization which, using its own resources participates in activities*

*with a view to join in the national effort to eliminate poverty and improve people's welfare*

(Republic of Rwanda, Working Procedure for Local and International NGOs and the Basic Agreement between the Government of Rwanda and NGOs, December 1994).

The Republic of Uganda, Statue 5, Non-Governmental Organizations Registration Statute of 1989 and the NGOs Regulation of 1990 defines an NGO as:

*...an organization established to provide voluntary services including religious, educational literary, scientific, social or charitable services to the community or any part thereof.*

It is interesting to note that the definition does not refer to the non-profit aspect of NGOs, which is a defining feature of NGOs in many systems.

The Ugandan Regulation makes a distinction between Ugandan and foreign NGOs and defines an Ugandan organization as one which is "*wholly owned and controlled by Ugandans*", whereas a foreign NGO is one which is not Ugandan (The Republic of Uganda, Statue 5, Non-Governmental Organizations Registration Statute of 1989 and the NGOs Regulation of 1990).

The Kenyan NGO Coordination Act of 1990 recognizes two types of NGOs, namely National NGOs and International NGOs. The distinction between these two types of NGOs is based on the original place of registration; i.e., whether the particular NGO is originally

registered in Kenya or outside of Kenya. According to this act an International NGO is defined as:

*...an organization with the original incorporation in one or more countries other than Kenya, but operating within Kenya under a certificate of registration.*

The same Act defines a National NGO as being registered exclusively in Kenya with authority to operate within or across two or more districts.

The Kenyan NGO Act was rather unclear in terms of defining which organizations are to be included or excluded under the definition of NGOs. This lack of clarity is rectified by an amendment of the act made on 1992. According to the amendment an NGO is defined to be:

*... a private voluntary grouping of individuals or associations not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development, charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education , industry and the supply of amenities and services*

(Kenya Gazette Supplement No. 85, 1992 : An amendment to section 2 of the Coordination Act).

In the Philippines NGOs are defined as “... *independent private organizations involved in promoting the welfare of the majority of the population*”. On the basis of this definition NGOs have perceived and defined themselves as having the following basic features:

- *Private non-profit voluntary organizations that are committed to the task of what is broadly termed as development*

- *Established primarily for civic service, religious, charitable and/or social welfare purposes*
- *Relatively small and flexible structures with their services focused on marginal groups in the rural and urban areas*
- *Undertaking activities covering a wide spectrum ranging from technical aspects of productive activity to socio-economic aspects as planning and information systems, education, organization, etc*
- *Having farmers, women, tribal minorities, squatters, youth and other as target clientele*
- *Generally people-oriented with a firm conviction on the need for peoples participation in decisions and processes affecting them, and*
- *Generally having formal registration with certain government agencies either as foundations or non-profit corporations (Cited in the Position paper on the Legal framework for NGOs in Ethiopia, 1999).*

In the United Kingdom, according to the Charitable Act of the land, an NGO may organize itself as a *charity* provided it can meet the requirements that its purposes fall under one or more of the four headings namely: the relief of poverty, the advancement of education, the promotion of religion and other purposes beneficial to the community in a way recognized as charitable.

The Act sets out a list of issues, which are considered to fall with in the ambit of “charity”:

*Relief of the aged, impotent and poor people...maintenance of sick and maimed soldiers and mariners, school of learning, free schools and scholars in universities ... repair of bridges, ports, havens, causeways, ...education and preferment of orphans...the relief, stock or maintenance of houses for correction ... marriages of poor maids ...supportation, aid and help of young tradesmen, handicraftsmen and persons decayed concerning payment of fifteens, setting out of soldiers and other taxes* (Pettit, 1993 and Goodman, 1976 as cited in Yaansah, 1995).

The charity commissioner will not only look at the stated objectives of an organization but also at the answers to a series of questions aimed at eliciting the organization's plans. There are instances where request for registration may be denied when the charity commissioner is not satisfied or convinced that the purposes of the organization are actually charitable (Yaansah and Bond, 1995).

The legislations of Rwanda, Uganda and Kenya discussed herein above are laws for the NGO sector and with both varying approach but at the same time certain similar features in defining the sector. In the Kenyan statutes, it was not clear which organizations are to be included and excluded from the definition of NGOs until the vagueness was rectified in an amendment to the Act.

While all of the foregoing legislations discussed above appear to emphasize on the *public benefit mission* of the sector, it is not clear whether self-help local organizations are clearly excluded from the definition of NGOs.

The experiences of the different countries briefly discussed above reveals that the task of clearly defining the NGO sector is not at all an easy task. In as much as there are some elements of differences from one country to the other, there are also some common features relating to the generally accepted characteristics of the sector that are true under many systems. Such generally accepted features of the sector refer to the independence, non-profit nature and non-governmental characteristic. “The diversity, the character and purpose of NGOs does not enable one to easily identify the common characteristics of NGOs. There is, however, a convergence of opinion on the three common characteristics, i.e. independence, benevolence and non-profit making” (Shiferaw, 1996).

While it is true that the individual legislation of some countries, if not all, reflect or emphasize the fundamental social problems of their own societies that varies from one place to another, it can generally be observed that a legislation for the NGO sector usually take into account the above elements as the defining feature of the sector.

Any future statutory definition of Civil Society Organizations in Ethiopia needs to address the issues raised in the experiences of other countries and needs to be developed in consultation with all the concerned actors. One of the issues that need to be addressed is sufficient clarity on what types of organizations are to be included and to be excluded from the definition. A discussion with well placed observers assert the position taken by the NGO consultative working group for a separate legal regime for the NGO sector and hence call for

a clear distinction to be made between self-serving (or mutual benefit) organizations as opposed to public benefit organizations.

However, not all observers agree with such a dichotomy and argue in favor of a broad definition that can accommodate all kinds of civic organizations. According to this argument, a distinction among the different types of civic organizations can only be made with regard to different benefits permitted and burdens imposed depending on whether an organization is a public or mutual benefit organization. Otherwise than for the purposes of such benefits or certain burdens, the definition should include all kinds of Civil Society Organizations.

Organizations that are to be excluded from this definition are only those organizations that are clearly governed by a different law; such as, trade unions, political parties, cooperatives and mandatory professional organizations.

The writer of this research work concurs with the foregoing view, which is in favor of a broader definition that can accommodate a range of different Civil Society Organizations. It is true that the existing legal regime on the law of associations is not broad enough to accommodate different types of CSOs including NGOs. This inadequacy should be rectified by a new comprehensive legislation for all kinds of Civil Society Organizations and not just an NGO law that deals with only a small segment of the broader Civil Society Organization.

An NGO specific law, as it appears to be advocated by the NGO consultative working group, will only address the needs of only the NGO sector and not that of a myriad range of

Civic Organizations. Efforts and resources should be geared towards advocating for a supportive legal regime for the development of CSOs at large and not just only a small part of it. This however does not mean that the law should not make appropriate distinction among different types of CSOs for the purposes of, for example, granting some benefits or imposing certain burdens depending on the type of organizations. The law can fairly make a distinction between mutual benefit and public benefit organizations for the purposes of, for example, tax benefits and other incentives.

The legislation of many countries defines NGOs in such broad terms that it does not seem to make a distinction on some benefits, such as, tax exemptions and other fiscal benefits. Under the UK law, fiscal and other tax benefit are not allowed to some voluntary organizations on the basis of the rules regulating charities. The laws of other countries, on the other hand, makes all the benefits open to all organizations to the extent that they are registered as NGOs.

On this point Yaansah writes that, "...while this approach may be justified on the grounds of the need for a uniform treatment in the legislation, nevertheless, it appears that the definitions have not taken into sufficient account the realities of NGO constituencies, size or objectives.... The choice of the form the organization takes often reflects the advantages or the disadvantages or the difficulties involved in constituting itself as one rather than the other.... it seems inappropriate to apply the present definition to local self-help groups or mutual benefit societies with the implication that they should be 'non commercial' and 'non-profit' making.

Such societies have, as one of their central objectives, 'self-sufficiency' and therefore, often need to generate resources, which by definition require that they operate at least some of their activities on a profit making basis" (Milofsky, 1988 and Sanyal, 1994 as cited in Yaansah, 1995).

A study conducted by the International Center for Not-for-Profit Law and the recommendations made on the basis of the study suggests principles and guidelines which if enacted into law would permit, encourage, protect, and appropriately regulate all the diverse organizations that make up the civic sector and not just the NGO sector which is only a small section of the civic sector.

"...It should be borne in mind that the civic sector has enormous diversity. A frequent way of looking at the sector is to make a distinction among organizations according to whether they serve principally the private interests of their members or more broadly the public at large. Some organizations are generally referred to as public benefit organizations (PBOs) and some as mutual benefit organizations (MBOs)...But there is great diversity even if those broad general categories are used as a reference. Within the civic sector are advocacy groups, some of them challenging fundamental governmental policies, as well as social service agencies carrying out programs under contract from the same government. There are groups representing oppressed peoples and opera societies; there are women's rights groups and gardening clubs. There are professional societies that look inward to the needs of their members and policy organizations that seek to create a public dialogue on issues of public

importance. Some are large, but many are small. All of them, however, contribute to the general interest society has or

ought to have in pluralism, tolerance, the protection of human rights, the alleviation of poverty and suffering, the advancement of science and thought, the preservation and advancement of culture and art, the protection of the environment – and all of the multifarious activities and concerns that go to make up a vibrant open society. The aim ...is to suggest principles which if enacted into law would permit, encourage, protect, and appropriately regulate all the diverse organizations that make up the civic sector” (ICNL, 1996).

#### **4.2 The Registration Process for Civil Society Organizations**

The registration process of civic organizations is probably one of the most complained problems in the sector. The problem in this regard is not only that of the law *per se* but also one of an improper interpretation and application of the laws and regulations by the responsible organs of the government.

A number of people interviewed in this research work referred to the registration process as being unnecessarily prolonged, very much bureaucratic, and requiring the filing of too many and unnecessary documentation. The registration process is an important aspect of the legal regime because it pertains to the legal establishment or legal existence of CSOs.

The Civil Code provisions and the Associations Registration Regulation govern the registration process of *associations* in Ethiopia. According to Article 4 of Associations Registration Regulation No. 321 of 1966:

*No association shall carry on any activity other than those necessary to effect the establishment thereof unless and until the Memorandum of association or the Statutes thereof have been registered in accordance with the law and these regulations and a Certificate of Registration has been issued to the founders thereof pursuant to Article 9 hereof. Any person acting on behalf of or in the name of as association not so registered shall be jointly and severally liable with the association for any such acts.*

The regulation provides for the application procedure and what should be included in the application for registration. Accordingly, an application for registration is submitted in the form provided by the regulation with five copies of the memorandum of association and the fee for registration, which is E Br. 100.=. The application shall also provide the following:

- The name, nationality, addresses and occupations of the founders
- A brief biography of the founders together with their photos and
- The names, addresses and nationalities of advisers, agents or administrators to be employed by the association.

After verification of the application, the office of association should in all cases grant the required registration except in cases provided under Article 8 of the regulation. The instances under which the office of association may deny any application for registration are where it determines, following appropriate investigation, that:

- The particulars contained in the application or in the accompanying memorandum of association are false or misleading in any material aspect
- The purposes of the intended association are unlawful or immoral; or
- The purposes of the intended association are against national unity or interest.

It is further provided that any denial of application for registration shall be made in writing and shall specifically state the reasons for the denial and facts revealed in the course of the investigation which are relevant to the denial (Articles 7 and 8 of the Associations Registration Regulation No. 321 of 1966).

When an association is allowed to be registered, it shall be issued a certificate of registration in a form provided by the regulation and such certificate of registration shall at all times be prominently displayed at the head office of the association.

## **The Registration of Foreign Bodies corporate**

The provisions of the Civil Code govern the registration of foreign bodies corporate. (Article 545 – 549 of the Ethiopian Civil Code of 1960) According to these provisions, *“bodies corporate whose head office is situated in a foreign country and which wish to carry out activities in Ethiopia shall apply for an authorization to the office of associations in Addis Ababa. A copy of the articles of association shall be attached to the application”* (Article 545 of the Civil Code).

It is provided that the office may refuse to grant the authorization where the proposed activities are contrary to the law or morals. It is further provided that the foreign organization may not carry out any activities or commence to recruit members before the authorization is granted.

Once an authorization is granted, the foreign organization "*shall be fully assimilated as regards the enjoyment and exercise of civil rights*", to organizations established in Ethiopia. On the status of their nationality, it is provided that, "*they shall be deemed to enjoy such nationality as is recognized to them in the state where their head office is situated*" (Article 547 of the Civil Code).

Article 549 of the Code provides that an authorization granted for foreign organizations may be revoked for good cause by the office of associations. Where an authorization is so revoked, "*an application to set aside such decision may be made to the court by any of the directors*" of the organization and the court may stay the execution of the decision of the revocation until the application is finally decided on.

The foregoing discussion is only what is provided in the regulation and not necessarily the practice with the office of associations under the Federal Ministry of Justice. The office of associations requires the filing of more documentation not provided by law, such as, a project proposal and a support letter from a potential funding agency. This has severely been attacked as being unnecessary, but the Ministry continues to require the filing of such documents.

Interviewees have also pointed out the lengthy time a registration process takes in practice and the rather short period for the validity of the registration certificate, which is only for one year. It appears that there is no legal basis for limiting the validity of the registration certificate to a one-year period of time. According to the regulation, an association may be established for a limited or unlimited period of time, and the registration certificate should be valid for the period for which the association is established.

On the issue of the time limit within which a decision must be taken, Article 7 of the regulation provides that the office of association shall conclude all such measures of examination and investigation within in sixty (60) days after the submission of an application for the registration of an association. In spite of this period for the verification of an application, practice has shown that the registration process of some organizations has taken a time as long as one year, if not years.

The Non-Governmental Organizations Coordination Act of Kenya provides for the registration procedure of both International and National NGOs. According to the Act, an NGO not registered with the NGOs Coordination Board is not allowed to operate in Kenya and such registration must be renewed every sixty months. The regulation sets out the detailed requirements of registration but it does not specify a time limit within which the Board must make its decision.

The fee to be paid up on registration varies depending on the type of the NGO and there are four categories of NGOs depending on whether an organization is National or

International and whether its activity is limited to one district or not. The application must also include minutes of the necessary meetings, the constitution, the proposed annual budget all sources of funding. (Section 10 of the NGO Act) Once registered an organization acquires legal existence and will have the capacity to perform all legal acts consistent with its nature.

The Board is also entrusted with the power of canceling or suspending the registration certificate of NGOs where it is satisfied that:

- The terms and conditions attached to the certificate have been violated
- The organization has breached the Act
- The NGO council has submitted a satisfactory recommendation for the cancellation of the certificate.

Yaansah (1995) writes that the provisions allowing for cancellation of the certificate is rather too vague and wide. “One aim of the legislation is to provide support for the development of NGOs. The provisions should therefore, seek to be objective, non-arbitrary, and reasonable, enabling NGOs to know where they stand. A general provision allowing for cancellation of an NGOs certificate does not meet the requirements of objectivity, reasonableness, and non-arbitrariness for the reasons that in practice, it may justify cancellation even for insubstantial breaches of the Act” (Yaansah, 1995).

The Ugandan Non-Governmental Organizations Registration Statutes provides for the registration procedure and prohibits the operation of organizations prior to being registered with the National Board. The statutes provides for a rather long and vast procedures to be

followed in the registration process. Every applicant organization is required to submit a written work plan for consideration and approval by the Ministry of Planning and Economic Development.

Where the organization to be established is a local NGO, it is further required to submit a written recommendation by two sureties acceptable to the Board, a written recommendation by the Chairman of the Resistance Council I (elected grassroots representative organizations) and endorsed by the II and III councils, and further endorsed by the District Administrator of the area where the organization intends to carry out its activities.

The requirement of submitting a written recommendation from the Resistance Councils and the district administration is apparently an attempt by the government to “...ensure that activities are defined by those who will benefit from them. Indeed it is the philosophy of the Ugandan government to devolve power to the grassroots and it is in accord with this policy that the Ministry responsible for planning and economic development should take its signal as to what are priorities from those elected to represent local interests” (Yaansah, 1995).

In the case of international organizations, a recommendation is required from the diplomatic mission in Uganda of the country from which the organization is coming from or a recommendation from a duly authorized government office from its country of origin. The statutes provides for registration fee, which is different depending on whether an organization is a national or international organization. A registration certificate of an organization is valid

for a period of twelve months at a first instance of registration, renewed for a period of thirty-six months for the first renewal and all subsequent renewals shall be valid for a period of sixty months. The Ugandan Regulation also prescribes for registration fee, which varies depending on whether an organization is national or international.

The International Center for Not-for-Profit Law, in its recommendation of Global Standards and best practices for laws governing NGOs, puts down the following basic points in relation to the legal establishment of Non-governmental Organizations:

- Laws governing NGOs should be written and administered so that it is relatively quick, easy and cheap to establish an NGO as a legal person. Establishment should also be allowed for branches of both foreign and domestic NGOs.
- The establishment of an NGO should require filing a minimum number of clearly defined documents and should involve relatively little bureaucratic judgment or discretion.
- NGOs should be allowed to have perpetual existence (or limited existence, if chosen by the founders)
- Both natural and legal persons should be entitled to create NGOs
- Individuals should be allowed to create an NGO (e.g., a foundation) by testamentary act (e.g., by will)
- Both mutual benefit and public benefit organizations should be allowed to exist
- As a general matter, membership in a membership organization should be voluntary, viz., no person should be required to join or continue to belong to an organization (ICNL, 1995).

Under all the legislation discussed above, the primary purpose of registration is granting legal personality up on the organization that requested to be registered. The laws of almost all countries require that organizations be registered before commencing on operation. The acquiring of a legal personality implies the capacity to perform all civil acts consistent with the nature of the organization and the capacity to sue or be sued in its own name.

The Kenyan NGO Coordination Act does not provide a specified period of time with in which a decision should be made about the registration of an organization. The Rwandan regulation is very exemplary in this regard. It not only provides a specified period of time, but also provides for a short period of time for making the decision, which is fifteen days from the receipt of the application for registration.

The Ugandan statutes provides for a rather lengthy and comprehensive procedure for the registration of NGOs. Such a lengthy process, as is the case in Uganda, hinders the free and easy establishment of civic organizations and should not be encouraged as a standard for domestic legislation.

The objective of this section has been to look at the registration procedures in Ethiopia and compare it with other legislations. The above discussion has shown the procedures to be followed under different legislation. Lessons to be learnt from the other legislation include a defined short period of time for making a decision on the registration of an organization, making the registration valid for a period of time to be decided by the founders of the

organization or for unlimited period of time if they wish so, and the need to reduce the amount of documentation required for the registration process. The main consideration is to make the registration of an organization a relatively quick and easy undertaking for citizens to be able to exercise their right in the establishment of civic organizations.

Some people interviewed in this research work have commented that the registration process at the Federal Ministry of Justice has eased since recently but there is still a lot more left to be desired in terms of an efficient and quick registration process.

A lot more people interviewed in this research work continue to express frustration with the registration process. There are certain assertions of political bias in awarding the registration status. The registration process continues to require the filing of various associated documents and consume inordinate time and resources

The most important elements of an efficient registration process are ensuring a specified and reasonable period of time for registering an organization, making the registration of an organization valid for the period for which an organization is established and requiring only a reasonable amount of documentation to register an organization.

Any future legislation in Ethiopia should take in to consideration the foregoing elements to ensure a speedy and efficient formation of citizens' civic organizations. The principal purpose is setting in place a legal framework that enables an easy speedy establishment of civic organizations. The freedom of association said to be granted by the constitution can only

be properly enforced with such subsidiary legislation that enables a free exercise of the right. A good subsidiary legislation that enables a free exercise of the rights protected by the constitution will give real meaning to the said rights.

### **4.3 Income Generating Activities by Civil Society Organizations**

The issue whether or not CSOs can engage in an income generating activity appears to be one of the main issues that needs to be addressed. The Office of associations under the Ministry of Justice has taken a firm stand that no *association* registered with the office can undertake any form of economic activity to generate income. Apparently the position of the Office is based on the nature of associations as a non-governmental and a non-profit entities. However, CSOs have been pressing for permission to engage in a certain level of income generating activity to help finance their non-profit objectives.

It is appropriate to begin by properly defining what a non-profit organization means from the outset. There is a general consensus that a non-profit organization means an organization whose object is to engage in activities other than the making and distribution of profits as is the case with business organizations whose declared objectives are to make profit for their members. The main element of this definition is the distribution of profit by the members of an organization. This definition does not necessarily rule out the possibility of organizations engaging in some economic activity to generate resources not for distribution among the members but for use towards a non-profit objective.

In accordance with this intent, the name has even changed from “*non-profit*” to “*not-for-profit*” thereby emphasizing the object for which a profit is to be made. Thus a not-for-profit organization is one, which may engage in economic activities allowed by law but uses its income for financing the objectives for which the organization is established. In fact if CSOs are to be self-sufficient and free themselves from the dependency syndrome of foreign financial aid, they should be allowed and encouraged to engage in creative ways of generating income to finance their operational activities.

A study conducted by the International Center for not-for-profit Law and the Guidelines for legislations on Civic Organizations recommended by the same institution provides that

*“A civic organization should be permitted to engage in lawful economic, business or commercial activities, provided that (i) the civic organization is organized and operated principally for the purposes of conducting appropriate not-for-profit activities (e.g., culture, education, health, etc.), and (ii) that no profits or earnings are distributed as such to founders, members, officers, board members, or employees. Such activities may be engaged in provided that the appropriate requirements for licensing and permits are met”* (ICNL, 1996).

The study referred to above makes a distinction between what are known as “*passive economic activities*” and “*active economic activities*”. Investments like stocks, bonds, and other type of financial instruments, on which dividends, interests, rents, royalties are earned

are generally recognized to be *passive* activities that are essentially noncommercial or non-economic and they are generally permitted for all civic organizations.

The study further provides that other kinds of activities that are engaged in an irregular or occasional basis by civic organizations, such as raffles or charity auctions are not to be considered as trade or business activities but are principally a form of fund raising to be governed by appropriate rules. Reference is also made to certain activities that are not treated as trade, such as, a private non-commercial museum that charges an entrance fee, a private non

Commercial college that charges tuition, or a private charitable hospital, not organized for profit, that charges fees to patients to cover its costs. Such sorts of fees are not considered as separate trades or businesses because the fee is so integral to the principal activity of the organization. The study further discusses the issue on whether the economic activity in question can be conducted directly by the civic organization itself or indirectly, e.g., by a wholly owned subsidiary. There are two points in relation to this issue – one is whether the activity should be allowed and the second is whether it should be taxed.

The experiences of countries vary on these issues. In England a Charity can engage in a trade activity only through a subsidiary and not directly by itself. In Poland a foundation is allowed to engage in business directly. In France, a foundation cannot engage in a trade or business activity whether directly or indirectly. Both in England and in Poland, tax is not paid on the net profits of such activities that are used for the charitable purposes of the organization.

The question of to what extent a civic organization should be allowed to engage in economic activities is also addressed by the study. In order to determine the permissible level of economic activity, the study introduces what it calls the “*principal purpose*” test. The test looks at whether the principal activities and expenditures of the organization are for noncommercial purposes. Under this test, a civic organization that persistently spent more than half of its efforts and resources in an active trade or business activity would not be allowed to continue as a not-for-profit civic organization. This test is recommended as a better alternative to another test called the “*destination of income*” test. According to the *destination of income test* an organization is permitted to engage in virtually all kinds of economic activities as long as the proceeds are used for appropriate civic activities (ICNL, 1996).

As indicated above the issue is also increasingly becoming relevant in Ethiopia as a number of CSOs are demanding to have their own means of generating resources to finance their civic objectives. In some instances the projects by themselves are income-generating activities such as employment creation scheme for women or other disadvantaged groups of society. Once engaging in an economic activity is allowed to CSOs, the next question would be whether or not they should be taxed. The issue of taxation is to be considered by taking into account the social purposes for which such organizations are established and the need to encourage and support them in their endeavor to address poverty and other societal problems.

A recommendation made by the NGO consultative working group for NGO legal framework in Ethiopia has addressed this issue in its report. According to this report and the

recommendation there from, it is suggested to look at the two ways in which NGOs can generate income. These are referred to as “*related activities*” and “*feeder activities*”.

“Related activities are the agreed upon NGO projects which produce some income incidentally in the course of implementing the tax exempt activity or purpose. This activity can not be separated from the project as it is intrinsically part and parcel of the project...”

“Feeder activities ...have no connection with the projects of the NGO except for their role to generate income for the NGO. On account of this supportive link, these activities are called feeder activities of organizations...” (A report by the NGO consultative working group, 1998).

The report recommends that both *related and feeder activities* should be permitted for the NGO community in Ethiopia, subject to certain restrictions as may be necessary.

CSOs should be allowed to engage in an economic activity to the extent that the proceeds of such economic activities are used to finance the objectives of the organizations. In fact, this trend needs to be encouraged and the government should further consider encouraging measures such as tax exemption leave alone to prohibit economic activities of CSOs.

The most important consideration of this issue should be the need to make local organizations self-sufficient in their operational activities. The NGO community in Ethiopia is excessively dependent on foreign aid to the extent that the feeling of responsibility to mobilize resources locally is being eroded. The newly emerging sector needs to be encouraged to explore and implement all possible avenues of raising resources locally. One

such method by which the sector can be encouraged is the permission of an income generating activity and the granting of a tax-exempt status.

The other case of an income generating activity is an instance of what is describes as “related activities” in the position paper of the NGO consultative working group on the legal framework for civil society organizations in Ethiopia. Indeed there are a number of projects in the country where an income generating activity is implemented as an intrinsic part of the program to create employment opportunity and generate income for the beneficiaries of the program.

The government should do every thing at its disposal to encourage such employment creation and income generating activities. A matter of particular interest in this connection is self-help employment creation initiatives by different groups of society. Such programs whether financed by external donors or supported by locally generated resources, are programs that should enjoy the special support of the government in terms of measures such as, a waiver of trade license requirement, tax exemption and other forms of financial incentives.

### **Tax Exemption for CSOs**

A related issue with the income generating activity is the issue of tax exemption or tax concession for CSOs. Three issues may be identified under the question of tax concession for CSOs:

- Making charitable donations tax deductible in favor of the donor
- Customs duties exemptions in importing equipments and charitable goods, and
- Provide tax exemption for income generating activities of CSOs.

The issue of tax exemption for income generating activities has been dealt with in prior sections of this paper. Thus this section will briefly deal with the remaining two issues.

In Ethiopia there is no law that allow tax deduction of charitable grants in favor of the donor. This is said to have negatively impacted particularly on corporate giving to the CSO sector.

On the question of import duties, the law provides that capital goods imported by NGOs may be exempted from the import duties on the basis of project agreements approved by the concerned organ of the federal or regional government. The tax exemption is granted upon ascertainment by the Investment authority that the imported capital goods are related to the particular project to be implemented and that the goods qualify for customs duty exemption under the investment law. In instances where foodstuffs, medical equipment and other similar supplies are imported by NGOs in response to emergency situations, the Disaster Prevention and Preparedness Commission pay the import duties through budgetary allocations.

In a similar way, some line departments of the government are responsible for the import duties of certain capital goods imported free of duty in relation to project agreements entered with them. In a number of countries, tax exemption is asked for and granted as one of the main benefits to the CSOs engaged in dealing with a range of societal problems. In the

Canadian tax laws, a registered charity is entitled to receive a tax-free donation. In Australia, the income tax assessment act provides that the income or receipt of a charity is exempt from tax burdens. In Britain charities involved in the relief of poverty, in the advancement of education, and in the promotion of interests beneficial to the community are eligible for full tax exemptions with respect to the incomes they receive (Report of the NGO consultative working group on the legal framework for NGOs, 1998).

The same report makes the following recommendations in relation to preferential tax treatment for NGOs in the future:

- NGOs be exempted from customs duties not only on capital goods and relief supplies but also on all items that are required for their office use and related support activities
- NGO activities that are run on a fee basis as cost recovery be exempted from income tax on the ground that there is no net revenue generated by these activities
- NGOs be exempted from income tax on income generating activities in the course of implementing their projects
- Companies and individuals be entitled to income tax deductions with respect to donations made to indigenous NGOs.

The foregoing issues of tax exemption are matters that deserve proper consideration for a future legislation. Issues in relation to tax matters are not necessarily to be addressed by legislation for CSOs. Tax matters are fairly dealt in a separate legal regime but the point here is to emphasize the need for legal provisions that address the tax matters of CSOs.

#### **4.4 The Networking of Civil Society Organizations**

The networking of CSOs is an increasingly growing trend in the sector. Networking is vital for the development and more improved functioning of service delivery. Among other things, it enables experience sharing, collaboration on matters of common interest, avoiding the duplication of resources and efforts, and coordinating activities. More and more CSOs are forming or working towards the formation of umbrella organizations and a number of people interviewed in this research work have clearly asserted the significance of such networking.

Many refer to CRDA (Christian Relief and Development Association) as a good example of the benefits of an umbrella organization. CRDA is probably the only oldest umbrella organization undertaking a number of vital tasks in the sector.

In spite of the significance of umbrella organizations, the Office of associations under the Federal Ministry of Justice has refused to recognize the legal establishment of such umbrella organizations apparently because the existing laws and regulations do not expressly provide the formation of such organizations. Indeed the law on the formation of associations does not have a specific provision on the formation of umbrella organizations.

However the law does neither has any specific provision that prohibits the formation of umbrella organizations. Under Ethiopian law, once an association is legally established it acquires a legal existence and hence a legal capacity to perform all civil acts. Article 454 of

the Civil Code provides that “*an association may perform all civil acts which are consistent with its nature.*”

Thus if a given association enters in to an agreement with another similar association for the formation of an umbrella organization, it can fairly be considered to have transacted or performed a legal act consistent with its nature. This by no means is contrary to the existing laws and regulations. The NGO consultative working group on the legal framework for NGOs makes the following recommendation in relation to the formation of umbrella organizations:

- As the NGO sector addresses common problems and challenges which require joint action, the forthcoming law should recognize networking organizations of NGOs known variously as consortiums or umbrella organizations
- The language in the legislation should be broad enough to allow the establishment of umbrella organizations and encourage networking at a local and international level
- It is also submitted that the law should have clearly spelt out provisions on the formation of umbrella organizations. Such organizations will not only improve the functioning of NGOs, but also the utilization of resources in the sector.

Indeed the law and practices of governments should not prohibit the networking of CSOs and the legal establishment of umbrella organizations to this end. In the existing Ethiopian legal framework, lack of a clear provision of the law compounded by the inability and reluctance of the Office of associations to adopt a purposive interpretation and application of the law, has hindered the establishment of networking organizations. Until such a time that

the law is amended accordingly, lack of a clear provision on the legal establishment of networking organizations will be one of the deficiencies of the current legal framework.

#### **4.5 Responsible Organ of the Government**

Choosing of the organ of the state that should be empowered to register civic organizations is approached in different ways in the legal system of different countries. In some countries the responsibility is vested upon the ministry with jurisdiction over the subject matter of the proposed activity of the organization; whereas in others, the registration responsibilities are vested upon the courts. Some have opted to empower a single ministry for the task of registering and supervising civic organizations.

While there are advantages and disadvantages to each system, it is generally recommended that the responsibility should be vested with one organ and not multi organs. The ICNL report on discussing the advantages and disadvantages of the different options makes the following observation. "If a multi-ministry permission system is used (i) different ministries tend to develop different standards for registration, some of them being quite lenient and others being quite strict; (ii) because registration duties are spread among many ministries, no ministry develops real expertise in dealing with civic organizations; registration of civic organizations is essentially a sideline of each ministry; and (iii) some organizations have difficulty finding a ministry that will claim jurisdiction over their proposed activities; and (iv) forum-shopping will be possible" (ICNL, 1996).

When the Law of Associations was initially promulgated in Ethiopia, the responsible organ of the government vested with the registration of associations was the then Ministry of Interior. Now the responsibility has been shifted to the Federal Ministry of Justice. Regional justice bureaus are also vested with the power of registering organizations whose activities are limited in their respective regions.

While the task of the ministry is only that of registering organizations and thereby conferring the requisite legal personality, organizations are required to enter in to project agreements with the Disaster Prevention and Preparedness Commission (DPPC) or with the concerned line department of the government for their operational activities. The move of the registering authority from the Ministry of Interior to the Ministry of Justice was considered as a good step in terms of shifting the responsibility from an organ of the government concerned with security matters to a justice branch of the government. Now more than five years since the Ministry has been vested with the registering responsibility, many express their frustration with the performance of the ministry and ask for the establishment of an independent entity for the registration and supervision of CSOs.

A number of people interviewed in this research work have stated that the Ministry of Justice is rather too strict in applying the regulations than in trying to create a supportive environment for the sector. This problem has also been noted at a global level by the study sponsored by the World Bank. ICNL report to the World Bank states that "... the use of one ministry has the advantage of centralizing expertise about civic organizations in one agency, but some times the approach taken by the ministry to civic organizations is too colored by the

other principal mission of the ministry. For example, a Ministry of Justice may be too exacting in applying the law and a Ministry of Interior may be excessively concerned about security risks” (ICNL, 1996).

The NGO consultative working group on the legal framework for NGOs recommends that the Ministry of Justice or counterpart regional justice bureaus should be the authorized bodies to register NGOs and that these offices should have a department for the function of registering NGOs. It is further recommended that the Office of Voluntary Organizations be established to serve as a lead agency for all NGOs for all matters other than registration.

“ The mandate of the office should rest on implementing the aims of NGOs legislation through its various departments. A general manager, who shall be directly accountable to the Office of the Prime Minister, should manage the office. The office shall have a board of directors and should take care of all administrative matters regarding NGO-government relations on its own and serve as an information provider on NGOs to other government agencies and as a focal point for provision of information to NGOs” (Report of the NGO consultative working group on the legal framework for NGOs, 1998).

It is not clear why the consultative working group wanted to choose the Federal Ministry of Justice and the Regional Justice Bureaus as appropriate organs for the registration of NGOs. It in particular seems inconsistent with the idea of calling for the establishment of an independent office of voluntary organizations but retaining the registration responsibility with the Ministry of Justice.

Some people interviewed in this research work stated that such an office [as recommended by the consultative working group] should also be vested with the responsibility of registering CSOs. For a number of observers interviewed in this research work, it is not clear why the recommendation of the consultative working group preferred to retain the registering authority with the Ministry of Justice and recommend the establishment of an office with other functions. An office for CSOs may as well be vested with the power of registering and supervising the sector. The ultimate objective is to ensure that there is a workable and supportive arrangement for the formation and operation of CSOs and hence vesting responsibility on multi organs should not be encouraged.

The Federal Ministry of Justice has been too much exacting in applying the law than in creating an enabling environment in which the sector can perform more efficiently. The function of the ministry would be better served by an independent entity established for the purposes of registering and supervising the activities of CSOs at large. The composition, structure and accountability of such an entity are matters to be worked out subsequently.

Yaansah, in his study of domestic legislations that regulate the activities of NGOs, looks at the experiences of Croatia, Kenya, Rwanda and Uganda on the different types of regulatory boards established under the different systems. The countries examined in his study have established either coordinating boards, bureaus or administrative bodies for the purposes of regulation and enforcement of NGO legislations. The main objective of the regulatory framework is the need to coordinate the activities of NGOs so as to ensure judicious use of resources and to ensure the accountability of NGOs (Yaansah, 1995).

The Kenyan Non-governmental Coordination Act provides for the establishment of NGO Coordination Board, which is entrusted with, among other things, with the following powers and duties:

- To facilitate and coordinate the work of all national and international NGOs
- To maintain the register of all national and international NGOs
- To advise the government on the activities of NGOs and their role in development
- To provide policy guidelines to the NGOs for harmonizing their activities to the national development plan of the country.

Under the Rwandan regulation, the Humanitarian Assistance Coordination Unit (HACU) is vested with the power and responsibility of coordinating and supervising the activities of NGOs. The powers and functions of this unit, among other things, include the provision of assistance, advise and instruction to NGOs with regard to: registration; activities of NGOs; geographic location; endorsement of project proposals; discussion of appointment of appropriately qualified personnel; evaluation of various reports; liaison with donor agencies and NGOs; monitoring of activities and performance of NGOs; and the taking of appropriate action to enforce compliance with the terms of the basic agreement (Yaansah, 1995).

In Uganda, the Non-Governmental Organizations Registration statute provides for the establishment of a Board, which has, among other things, the following powers and responsibilities:

- To consider applications for registration and approve or reject applications

- To keep a register of registered organizations
- To revoke registration
- To guide and monitor organizations in carrying out their services
- To make recommendation to the relevant authorities with regard to employment of non-citizens by an organization or whether an organization may be exempted from taxes and duties or be accorded with any other privileges or immunities

The board is composed of 14 members two of whom are members of the public selected by the Minister responsible for NGOs affairs and the rest are representatives from different government offices. Drawing on a conclusion from these different experiences, Yaansah writes that there are certain major issues emerging. One is the issue of power and the second is an issue that concerns constitutional position of boards, and in particular, their relationship with the political process as advisors to the government and as arbitrators between NGOs and the beneficiary community (Yaansah, 1995).

“The NGO Boards...are central to the whole regulatory frameworks that have been established to regulate the activities of the NGO sector. An analysis of the legislations has shown that the boards have two broad functions: one is to advise the government on the activities of NGOs and their role in the development in these countries. The other is to secure NGO compliance with legislation. Typical matters involved in the latter function include the monitoring of registration requirements and those relating to project reports” (Yaansah, 1995).

Accordingly if any independent office is to be established in Ethiopia in the future, it should assume the power and duty of not only advising the government on NGO matters, but also needs to be responsible for the task of registering them and supervising their activities. Important lesson from the legislation of the countries discussed above is the need of establishing an independent body responsible for the affairs of CSOs.

Both in Kenya and Uganda, an independent organ is established for the function of overseeing the activities of NGOs and advising the government on the role of NGOs in the development process. The function of overseeing the activities of NGOs also includes ensuring the compliance of legal requirements and registering organizations in accordance with the laws in force.

It is appropriate to vest this responsibility on an independent organ of the government in Ethiopian case as well. The experience we have had so far, as attested by a number of interviewees in this research work, did not enable an easy and speedy formation of civil society organizations. Although since recently the Federal Ministry of Justice has been vested with the authority and responsibility of registering not-for-profit organizations, authority over such organizations appear to be scattered on different governmental agencies.

It is evidently clear that there is a very limited expertise in the sector. In an instance where there is only a very limited expertise on the sector, it is appropriate to adopt a system where by the limited expertise can be efficiently utilized. It is also in the interest of CSOs to deal with a single agency that is rightly placed to understand the circumstances within which they

are operating and be responsive to their practical problems and provide the requisite administrative support. Some members of the sector interviewed in this research work have complained of problems relating to complete lack of understanding by counterpart governmental agencies about the work their organizations are implementing.

Indeed the counter part governmental agency needs to have a sound understanding and appreciation of the different programmes implemented by CSOs and be able to appreciate the practical constraints. It is only where there is such an understanding and genuine appreciation of the problem that the governmental machinery could be responsive to the aspiration of the sector. The experience in Ethiopia so far has been such that the governmental machinery has not been responsive to the aspiration of the sector in terms of creating a supportive and encouraging environment for an efficient operation of CSOs in dealing with social and economic problems of the country.

In spite of the constitutional provisions for a free formation and operation of citizens associations, the actual exercise of this right remains to be far from its desired level. Ordinary citizens appear to be very cautious on exercising such right as freedom of association. Formation of a civic association is widely perceived as a political activity not liked by the state and one would feel better of with out involvement in such initiatives. The environment is far from encouraging citizens to make use of their constitutionally guaranteed rights.

At this juncture it is appropriate to discuss issues raised as the concern of the government in regulating the activities of CSOs. Governments have often been accused of not providing

an enabling environment for CSOs. Governments on their part have voiced their concern and responsibility on the matter. The fundamental argument of the state on the matter revolves around the responsibility of the state to protect the public from fraudulent and illegal acts that endanger the general good of the public.

A number of CSOs and more particularly NGOs are mainly organized and operated for the benefit of the public good and it is the responsibility of the government to ensure that the activities are in accordance with the stated objectives. Such organizations mobilize a huge amount of resource in the name of the public and hence the government has every reason to see to it that resources mobilized and secured in the name of the public are put to the intended purposes and not other wise. Experience has shown time and again that resources secured in the name of the poor and the disadvantaged have been embezzled by charlatans.

Governments have also complained of subversive political activities in the name of CSOs that will endanger the political order of a country. Some CSOs are viewed with a high degree of political suspicion as instruments of a certain political objective. Governments are even afraid of unwanted foreign intervention in the name of international NGOs and hence a good number of them are looked at in suspicion.

This research work has not been able to gather an articulated concern of the Ethiopian government as officials of the government have not been available for an interview. However from the experience of other countries and the observation of the local situation in the country, it is not at all difficult to dispel the concern of the Ethiopian government in

regulating the activities of CSOs. It is evident that the environment for the CSOs sector in Ethiopia is surrounded by suspicion and mistrust. Part of the sector that is interested and works in the areas of human rights and advocacy is looked at with the utmost suspicion of a hidden political motive. In fact some human rights organizations are officially accused of subversive political activities.

While it is true that it is the responsibility of the government to protect the public and ensure that the general good of the public is not endangered, it is an equal responsibility of the government to ensure that CSOs are provided with a space in which they can operate free from suspicion and mistrust. The fact that there are some illegal activities in the name of CSOs should not be invoked as a reason to preclude people from the exercise of their constitutionally guaranteed rights.

#### **4.6 Dissolution by an Administrative Decision**

The laws and regulations of many countries provide for instances where a certificate of registration may be revoked or cancelled. This is an important aspect of the legal framework worth looking at as many CSOs have faced with problems of deregistration by the government. The issues are whether or not legally constituted CSOs should be dissolved by an administrative decision of a governmental agency and if such cancellation is to be allowed what are the procedures for such an administrative decision and what are the procedures by which such decisions may be reviewed by competent authorities.

Deregistering CSOs by an administrative decision of a government office appears to be inconsistent with guaranteeing the independence of such organizations. Such an administrative power of a government office leaves organizations at a mercy of the government and their true independent standing may be compromised. Indeed individuals in the sector have confirmed that they often have to restrict themselves from certain activities they think may not be received well by the government for fear of being deregistered.

Article 462 of the Ethiopian Civil Code provides that an association may be dissolved by an administrative decision by the office of associations where its object or activities are unlawful or contrary to morality. The Associations registration regulation further provides the conditions under which it may exercise its power vested under Article 462 of the Civil Code. Article 15 of the Associations Registration regulation provides that an association shall be subject to dissolution by order of the office pursuant to Article 462 of the code in the event of the occurrence of any of the following:

- 1) the association willfully undertakes activities unrelated to and not in furtherance of the purposes thereof as set forth in the memorandum of association of the statutes of the association
- 2) the association fails to comply with any requirement of the law or for these regulations relating to notices, reports or information required to be provided by association or with lawful orders of the office relating to the conduct of the activities of the association; or

- 3) it appears to the office that the association has been organized for is being carried on for unlawful or immoral purposes or the association or any substantial portion of the members thereof have been convicted by a competent court of any crime arising out of or in connection with the activities of the association

It is further provided that any such order of the dissolution of an association shall be made in writing and shall state the facts found by the office and reasons based on such facts on which such order is based.

Both the Civil Code and the regulation provide that an appeal from such decision may be made to the Minister by any of the directors of the association within one month after it has been made known to the association. Article 16 of the Associations registration regulation provides the procedure of such an appeal. The appeal shall be made by a written statement setting forth the grounds of the appeal. The Minister after having reviewed the appeal may summarily reverse the order or shall order a further hearing to be held before him at which time the appellant shall be entitled to be present and to adduce suitable evidence in support of his appeal. Article 16(4) of the regulation provides that the Minister in every case prepares a written decision, signed by him, which shall be presented to the appellant.

Such decision shall:

- recite the nature of the question under consideration;
- recite the substance and source of all relevant testimony and evidence received and considered

- recite the findings of fact made by the Minister and in the case of relevant evidence which is expressly contradictory, the evaluation which leads the Minister to make the factual finding he does resolving the conflict
- state the resolution of the question under consideration and
- state the disposition ordered in respect thereof.

The regulation does not provide for the possibility of taking appeal to court of law against the decision of the Minister. Hence the Minister is apparently vested with the power of making a final decision on the matter. The Minister is also vested with the power of deciding on appeals of denial of registration.

However, whether an appeal can be taken to Court of law has now become controversial given Article 37 of the new Federal Constitution. Article 37 of the Constitution provides that, “every one has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with a judicial power.”

It can strongly be argued that the power of courts can not be ousted given this constitutional provision guaranteeing right of access to justice before the judicial branch of the government.

In Kenya, an amendment to the NGO Coordination Act has provided for a right of appeal against the Minister’s decision. An appeal can now be made to the High Court, which shall

make a final decision. Initially the Minister was given the power to make a final decision and hence there was no possibility of appealing to court of law.

While the amendment that permitted a right of appeal to the High Court is a good step forward, Yaansah writes that the limitation in terms of vesting the High Court with the power to make a final decision is unsatisfactory. Yaansah argues that a right of appeal should be allowed to the court of appeal, which is the supervising jurisdiction over the High Court (Yaansah, 1995).

The Ugandan NGO Registration Statute provides that the NGO board has the power to revoke a certificate of registration under the following conditions:

- the organization does not operate in accordance with its constitution;
- the organization contravenes any of the conditions or directions inserted in the certificate; or
- in the opinion of the board it is in the public interest to do so.

Where the board revokes the certificate of an organization, it shall inform the organization of its decision in a prescribed form and the organization has the right to make appeal to the Minister within 30 days. The Act does not provide for a possibility of recourse to court of law.

Under the Rwandan regulation, a revocation of certificate of registration is not specifically provided. The basic agreement between the government and an organization provides that the agreement may be terminated by either party upon giving a two months prior notice. The

basic agreement appears to provide for a possibility of providing the government counterpart a power of revocation where an organization does not respect the terms and conditions of the agreement.

The Rwandan regulation regarding the remedies available for an NGO against a decision by the government (including, a refusal of registration), are more comprehensive than the Kenyan or the Ugandan legislation. Under the Rwandan Basic Agreement,

*...any dispute between the organization, MINIREISO [The Ministry of Rehabilitation and Social Reintegration] and/or line department, or any other entity subject to their respective direction and control, arising out of or relating to this agreement shall first be settled by negotiation, compromise or arbitration before resorting to adjudication by the regular courts and the laws of the land.*

“The merits of the Rwandan approach is that it attempts to resolve any conflicts between the parties through negotiations in the first instance, recourse to the law being a matter of last resort. This approach reflects the underlying assumption, as appears in the preamble to the basic agreement, that both parties desire to work in cooperation with each other. Negotiation, compromise, or arbitration as a first step, therefore, promotes keeping conflicts at a manageable level” (Yaansah, 1995).

The legislations discussed above have a clear provision that provides recourse to court of law against administrative decision of authorities. In the Ethiopia case, although an argument can be made on the basis of Article 37 of the constitution that courts can not be

ousted, the Associations registration regulation does not have a clear provision on the possibility of resort to court of law. Until such a time that the situation is rectified by a future legislation, lack of clear provision on this issue makes the existing legal framework rather deficient.

## Chapter Five

### Concluding Remarks and Recommendations

This research work has attempted to analyze some of the major issues in the existing legal framework for Civil Society Organizations in Ethiopia. The objective of the research work has been to assess the adequacy of the existing legal framework in Ethiopia for the formation and operation of Civil Society Organizations.

After having established the role of CSOs in the development process, the paper has sought to establish the need for and importance of a legal framework that governs the formation and operation of CSOs.

On the basis of such a background, the paper gives a survey of the existing legal framework in Ethiopia by which CSOs are being governed. After having discussed the relevant existing laws and regulations that govern the sector, the research work has attempted to identify some of the major elements of the legal framework that posed practical problems in the formation and operation of CSOs.

The analysis on these issues has showed that the existing legal framework is inadequate to govern the formation and operation of Civil Society Organizations. The paper has also discussed about the positive role law can play in creating a supportive legal environment in which Civil Society Organizations can flourish and help to contribute towards the over all development effort.

The legal regime for CSOs is an important aspect of the legal system of a country as it deals with governing the formation and operation of organizations that have a pivotal role in the development process of the country. A number of CSOs are organizations that are engaged in a range of services and activities that complement the functions of the government. The functions and services of such organizations need to be governed by a legal framework that facilitates the activities and not be hindered.

It is true that domestic legislations that govern this sector are relatively new in the legal system of many countries. But, since recently, a number of countries have taken and are taking a timely measure to revise the legal framework for CSOs. The issue is so vital that the World Bank also has sponsored a global study to develop guidelines for legislations on civic organizations. This has emanated from a recognition of the significant role of CSOs in the development process of all countries and the developing countries in particular.

A good legal regime for CSOs is also ensuring the protection of the constitutionally protected fundamental rights and freedoms of assembly and freedom of speech. Citizens should be able to form their own groups ranging from small clubs to big organizations. When such groups or organizations ask for legal recognition and protection, the government should provide the required recognition and protection. "If a group does wish, for whatever reason, to form a legal entity that will have separate legal existence from its members, protecting freedom of speech and association means that there must be legal protection for the entire range of organized and legally separate associations, foundations, societies, clubs, and other

institutions. Civic organizations of this type are also essential to the creation of a civil society” (ICNL, 1996).

The purpose of a supportive legal framework is to protect and govern such civic organizations that wish to be legally recognized and be legally protected. It is the function of any government to set out rules and regulations to discharge this vital function. It is also true that the law should serve the purposes of protecting the public from scrupulous groups or organizations that may endanger the general good of the public. “...Laws should exist in all open societies to enshrine and protect the freedoms of speech and association that are exercised by all citizens. Within that context, it is clearly important to recognize that there must also be laws that protect the public from all manner of possible abuses by civic organizations” (ICNL, 1996).

The analysis has showed that the situation calls for revisiting the existing legal framework that governs the civil society sector. Law can properly be used as a means to deal with the observed problems and bring about the desired changes both in terms of adopting a set of appropriate rules and also reforming institutions. Achieving this end, however, assumes the clear and genuine commitment of the state towards recognizing the valuable role of the sector and the need to create a favorable environment for its efficient operation.

On the basis of this analysis it is proposed that the following are the recommended steps towards the creation of a supportive legal framework for the formation and operation of Civil Society Organizations:

- An Office of Civil Society Organizations should be established as a responsible organ of the government to oversee the formation and operation of CSOs. Such an Office shall have a governing board, which is representative of all concerned ministries and members of the CSOs sector. The office shall be fully mandated to be responsible for all affairs of CSOs including registration and supervision.
- A new comprehensive legislation should be adopted that governs the formation and operation of all kinds of CSOs including national and international NGOs. Such a new legislation for the sector should address the issues raised in this research work and accordingly provide for:
  - A clear definition of what constitutes CSOs thereby making clear organizations that are included or excluded from the scope of the legislation. It is submitted that the new legislation should provide a broader definition for CSOs that can accommodate a wide range of civil associational life outside the domain of the state. It is also submitted that the legislation may make a distinction among different types of CSOs for the purposes of special benefits to enjoy and special burdens to be imposed on the basis of their nature.
  - A simple registration process that provides for registration and legal recognition within a specified limited period of time and a right of recourse to courts of law where registration is denied or not granted within the prescribed time limit.
  - A clear permission of income generating activities for CSOs to the extent that incomes generated are used for not-for-profit objectives. The law should

further provide for tax benefit in relation to income generating activities of CSOs and tax deduction benefit for individual or corporate donors.

- A clear permission on the formation of networking organizations and other kinds of innovative networking among CSOs
  - Dissolution of a CSO by an administrative decision should be allowed only on clearly specified serious cases and in all cases there should be a right of appeal to courts of law to review the administrative decision. Otherwise than clearly stipulated instances for an administrative measure, a CSO can only be dissolved by an order of court on the application of interested party.
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- The process of both adopting a new legislation for the sector and establishing an office for the sector should be undertaken in consultation with members of the civil society organizations and other stakeholders

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## DECLARATION


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

A handwritten signature in cursive script that reads "Daniel Bekele". The signature is written in black ink and is positioned above a solid horizontal line.

Daniel Bekele

July 2001

The thesis has been submitted for examination with my approval as University Advisor.

A handwritten signature in cursive script that reads "Getachew Abera". The signature is written in black ink and is positioned above a solid horizontal line.

Getachew Abera

July 2001