

ADDIS ABABA UNIVERSITY

THE NEW CIVIL SOCIETY LAW AND ITS IMPACT ON THE  
MOVEMENT OF THE SECTOR: WITH PARTICULAR  
REFERENCE TO ADVOCACY-BASED ORGANIZATIONS

A Thesis

By

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## List of Acronyms

- APAP:** Action Professional Association for the People
- AIDWO:** African Initiative for Democratic World Order
- ANPPCAN:** African Network for the Prevention of and Protection against Child Abuse and Neglect
- CIVICUS:** World Alliance for Citizen Participation
- CSA:** Charities and Societies Agency
- CSO:** Civil Society Organization
- CSP:** Charities and Societies Proclamation
- EARC:** Ethiopian Arbitration and Reconciliation Center
- EBA:** Ethiopian Bar Association
- ECHR:** European Court of Human Rights
- EHRCO:** Ethiopian Human Rights Council
- EVIPA:** Ethiopian Visually Impaired Persons Association
- EWLA:** Ethiopian Women Lawyers Association
- HUNDEE,** Oromo Grassroots Development Initiative
- ICCPR:** International Covenant on Civil and Political Rights
- IJCSL:** International Journal of Civil Society Law
- ICNL:** International Center for Non-profit Law
- MDG:** Millennium Development Goal
- NEWA:** Network of Ethiopian Women Association
- NGO:** Non-Governmental Organization
- OSJE:** Organization for Social Justice in Ethiopia
- OSAV:** Organization for Social Advancement Vision
- OVC:** Network of Organizations Working in Support of Orphans and Vulnerable Children
- RCCHE:** Research Center for Civic and Human Rights Education
- PANE:** Poverty Action Network in Ethiopia
- PDC:** Peace and Development Committee

**PFE:** Pastoralists Forum Ethiopia

**SAHRE:** Society for the Advancement of Human Rights Education

**UECSA:** Union of Ethiopian Civil Society Association;

**UN-NADAF:** UN New Agenda for the Development of Africa

**VECD:** Vision Ethiopia Congress for Democracy.

## Abstract

Ethiopia's new charities and societies legislation has been affecting the growth and effectiveness of civil society organizations, particularly advocacy-based organizations, since its implementation. Though a lot has been said and written concerning the effect of the law on civil society organizations, particularly advocacy-based organizations, yet there is no empirical evidence that can explain the effect of the law. Since rhetoric alone is not sufficient to judge the impact of the law, this study seeks to assess on the impact of the law on the operation of CSOs.

To show the impact of the law the researcher has collected primary data from nine individual civil society organizations and five consortium organizations through two different types of questionnaires, and has interviewed the implementing Agency using semi-structured interview.

The analysis indicates the following results: the total number of civil society organizations has substantially dwindled as compared to pre-reform period; the majority of Ethiopian civil society organizations has changed their areas of engagement that they were primarily established for; Ethiopian civil society organizations that opted not to change their former areas of involvement, are not as active as pre-reform period mainly due to lack of funding; and more than ninety percent of civil society organizations currently operating in the country terminated governance component of their intervention-implying reduction in effectiveness in their development intervention.

From the aforementioned findings one can infer that the law is affecting the growth, engagement and effectiveness of the civil society organizations, particularly advocacy-based organizations. Hence, the new law for charities and societies is restrictive. This has far-reaching implication for democratization and

development process of the country. Among many, one is less citizen participation and hence less pluralism, democracy and respect for human rights in the country. To minimize the adverse effect of the law, those most restrictive provisions of the law, that is, article 2(3) and 14(5) must be repealed.

## CHAPTER ONE: Introduction

### 1.1. Background of the Problem

The voluntary sector in Ethiopia has a short history, going back in effect to the last years of the imperial regime. When the civil code containing the law of associations meant to govern all voluntary organizations was issued in 1960, there were hardly any active organizations that may be described as CSOs in the proper sense of the word. By the latter part of 1960's there were a small number of professional associations registered with the Ministry of Interior, which was the then regulatory body, but these were mainly concerned with the basic interests of their members and professions and did not play any significant role in the development of other public issues. There were also government supported women associations, patriotic groups and others but these played a marginal role and had only a mute voice (Dessaiegn et al, 2008:11).

The sector may be said to have began active life in the early 1970's when as a result of devastating famine in Wollo and Tigray received a global publicity, the Imperial Regime was forced to open its door to the international and local NGOs to undertake relief and rehabilitation activities (Sisay, 2002:1). The equally tragic famine of the mid-1980's caused more NGOs to be established in the country to engage in the relief effort. However, until the mid-1990's, the growth of the sector was quite slow by international standards, and by the end of the 1980's the strength of the sector was relatively small compared to many African countries as well as the size of the country's population. By the latter part of 1980's

there were perhaps sixty to sixty-five NGOs operating in the country; most of which were international organizations (Dessaegn et al, 2008: 12).

In both regimes (the Imperial and the Derg) the organizations were engaged primarily in relief operations, however, they were able to subsequently shift from relief work to rehabilitation and later to development activities. The main reason for this small size and limited areas of engagement of the sector was lack of willingness in both the Imperial and Derg regimes to tolerate independent citizen activism and allow autonomous non-state organizations. Due to absence of enabling working environment, the growth and diversity of the sector was highly limited for such a long period (Dessaegn et al: 12).

After the fall of the Derg, there was a steady increase all through 1990's, and accelerated growth from the end of the decade onwards as a result of relative opening up of the political space. In the late 1990's the growth was not only numerical but also in diversity. In post 1990's there were not only relief and development organizations but also those that undertook human rights, governance and advocacy programs, voter education, environmental advocacy, and public policy investigation and monitoring activities (Wondwosen, 2009:84).

Until recently, the basic laws that were governing the formation and operation of most type of CSOs were the 1960 and 1966 civil code of the Empire of Ethiopia and Association Registration Regulation, respectively. However, these laws were unresponsive to the current realities of the sector, as they failed to consider the diversity of profiles among CSOs and

contemporary appreciation of their roles in good governance and development; implying the need to reform the legal framework governing the sector.

Recently, therefore, the Federal Government of Ethiopia adopted one of the most controversial proclamations in the country, Charities and Societies Proclamation no. 621/ 2009 dealing with the formation and operation of CSOs. The implementation of this law has been started very lately with re-registration of existing CSOs.

In view of the above, the focus of this study is on the impact of this law on the development and effectiveness of CSOs in general and advocacy-based organizations in particular.

## **1.2. Statement of the Problem**

Despite a steady increase both in its size and diversity, Ethiopian civil society sector was governed by the civil code of 1960 and association registration and regulation of 1966. These laws were not responsive to the existing realities of the sector in Ethiopia.

In response to this, recently, the federal government of Ethiopia has adopted a new civil society proclamation no.621/2009. The law is one of the most controversial laws both at national and international levels.

The implementation of this law has been commenced on 13 February 2010 just one year after its adoption. Following the commencement of the implementation of the law, the Charities and Societies Agency has been taking different measures against the sector. To cite few:

- The Agency has cancelled the license of 10 CSOs that were engaged in children adoption in Addis Ababa (CSA, 2010).
- The Agency has also shut down 42 community-based organizations (CBOs) operating in southern nations, nationalities and peoples' region (SNNP) and banks were instructed to freeze their assets (Debebe, 2010:21).
- The Agency has blocked 9.5 million birr that belonged to Human Rights Council (HRCO) following its re-registration as Ethiopian society (Debebe, 2010: 22).

Following the commencement of the law some CSOs, too, have been taking diverse steps. For instance:

- HRCO has closed 9 of 12 branch offices that were operating in regional states (Debebe, 2010:21).
- HRCO has reduced 90 percent of their employees. Ethiopian Women Lawyers Association (EWLA), Action-Aid and CCRDA were some of the organizations engaged in lay-offs and closing branch offices (Debebe, 2010: 20).

The implementation of this law has been affecting the engagement, effectiveness, and development of civil society organizations, particularly those of advocacy-based organizations.

Hence, the objective of this paper is to investigate and explain how and why the implementation of this law has been adversely affecting the engagement, effectiveness and development of civil society organizations operating in the country.

### 1.3. Research Questions

The research is expected to answer the following questions:

- i. How the implementation of the legislation has been adversely affecting the growth and effectiveness of CSOs?
- ii. Why the implementation of the law has been adversely affecting the growth and effectiveness of CSOs?
- iii. What are the major of barriers that the law imposed on the CSOs?
- iv. Which category of CSOs is being most affected by the law?
- v. Which provisions of the law are most restrictive/ affect the operation of CSOs most? and
- vi. What is the implication of the law for democratization and development process of the country?

### 1.4. Research Objectives

This study has the following three objectives:

- i. To investigate the impact of the new CSP on the growth and effectiveness of CSOs, particularly on those organization that are engaged in human rights and governance issues;
- ii. To understand the current legal environment of civil society sector and its implication for the democratization and development process of the country; and
- iii. To make viable recommendations based the research findings.

## 1.5. Significance of the Study

In the absence of government recognition and an established set of supportive regulations, CSOs may be defenseless against arbitrary intrusions and rulings by state actors, political terrorists or other antagonists (Brown and Kalegaonkar, 1999:5). Legal system, under which CSOs operate, is one of the factors that heavily influence the nature of the sector. Thus, supportive legal framework plays a crucial role for the success of the CSOs. Without enabling legal environment the sector can not flourish and be effective in its intervention. This indicates how supportive regulation is indispensable for the development and effectiveness of the sector.

For the legal framework to be supportive and hence play its role as effectively as possible, its provisions must be fair and conform to other national and international laws. It may not be as such difficult to guess how a restrictive/ disabling legal environment undermines the growth and the effectiveness of the sector. Accordingly, this study would have the following significance:

- i. The study gives clues what should be the content of an enabling law;
- ii. Enables to understand how disabling legal environment affects the operation of CSOs; and
- iii. It initiates other researchers to engage in similar topic.

## **1.6. Scope of the Study**

This study focuses on those formal organizations that were engaged in human rights and governance issues and working in the capital city, Addis Ababa. It excludes all the rest categories of CSOs that are not supposed to be governed by this law. It also excludes all organizations that were licensed by regional states and operating in regions. This is because given time and money constraints, it is not feasible to cover all regional states where those organizations were operating.

## **1.7. Limitations of the Study**

This study has the following limitations:

- i. There was lack of data. This could be related to the unwillingness of some respondent organizations to return the questionnaire they were given out. This, in turn, may be related among other things to the time of data collection, which was April, one month before the May 2010 Election; and
- ii. There was also serious financial constraint, since the budget allocated to the research never considered the current price situation.

## **1.8. Research Methodology**

The nature of this study is basically descriptive. Therefore, in this research qualitative survey methodology is used. It employs both opinion and documentation survey.

### 1.8.1. Sampling Technique and Sample Size

Three types of respondent organizations were selected to elicit the required data that enables the researcher to answer the research questions. The selection was based on the type of activities they were engaged in before the reform. Only organizations that are involved in human rights and governance related issues and consortiums whose member organizations were either engaged in advocacy activities or adopted right-based approach to development, were selected to see the difference between pre and post reform period size, scope, sources and amount fund, scale of operation and effectiveness.

The types of respondents are the leaders of individual organizations under consideration, the implementing agency, and leaders of network organizations. The target population of this study was 75 individual CSOs that were engaged in human and democratic rights advocacy; and 12 network organizations that were operating in Addis Ababa. Out of 75 CSOs, a sample 15 CSOs, which were well-known for their active engagement in activities related to human and governance, were purposely selected and surveyed to investigate the adverse impacts of the law.

Again of those 12 network organizations, a sample 5 (42 percent) consortiums were purposively selected based on the type of activities whose member organizations were involved in, so as to supplement and complement the data obtained from the subject of the study.

The following were the 15 sample CSOs selected for the study (listed in alphabetical order):

- i. Action Professional Association for the People (APAP);
- ii. African Initiative for Democratic World Order (AIDWO);
- iii. African Network for the Prevention of and Protection against Child Abuse and Neglect (ANPPCAN);
- iv. Ethiopian Arbitration and Reconciliation Center (EARC);
- v. Ethiopian Bar Association (EBA);
- vi. Ethiopian Human Rights Council (EHRCO);
- vii. Ethiopian Visually Impaired Persons Association (EVIPA);
- viii. Ethiopian Women Lawyers Association (EWLA);
- ix. HUNDEE, Oromo Grassroots Development Initiative;
- x. Organization for Social Justice in Ethiopia (OSJE);
- xi. Organization for Social Advancement Vision (OSAV);
- xii. Research Center for Civic and Human Rights Education (RCCHE);
- xiii. Peace and Development Committee (PDC);
- xiv. Society for the Advancement of Human Rights Education (SAHRE);  
and
- xv. Vision Ethiopia Congress for Democracy (VECD)

The following were five consortiums (umbrella organizations) selected to supplement and complement the data obtained from the individual CSOs:

- i. Network of Ethiopian Women Association (NEWA);
- ii. Network of Organizations Working in Support of Orphans and Vulnerable Children (OVC);
- iii. Poverty Action Network in Ethiopia (PANE);
- iv. Pastoralists Forum Ethiopia (PFE); and
- v. Union of Ethiopian Civil Society Association (UECSA).

### 1.8.2. Data Collection Instruments

Generally three major data collection instruments were used in the study. These are questionnaires, interviews and content analysis of the relevant documents. Questionnaires and interview were used to collect the primary data, whereas content analysis was used to collect secondary data from different relevant documents.

#### The Questionnaire and Response Rate

Questionnaires were used to examine the effects of the law on those CSOs that were engaged in governance and human rights issues. Two questionnaires were prepared, both had open-ended questions. The questionnaires were distributed to those leaders of concerned organizations in person. Out of 11 questionnaire distributed to sample organizations, 9 (82 percent) were returned. The rest 2 were not willing to return the questionnaires. Of 15 selected sample organizations, the whereabouts of 4 organizations could not be located; of course, 2 of them were contacted with their cell-phone but were not willing to be physically accessed and give any comment on the issue in question; saying currently they had no office but planning to have in the near future; having finished revising their objectives and missions in line with the provisions of the law. All sample consortium organizations returned the questionnaires they were given.

## **The Interview**

Semi-structured Interview was prepared to inquire the implementing agency. One of the concerned staff of the Agency gave an interview. But the data collected from the Agency were incomplete, and based on estimation rather than documented data. The reason for this, according to the Agency, is the absence of compiled data as the registration is not yet over. Contrary to this, the researcher has noted high reluctance on the side of the Agency to provide the researcher with the necessary data.

### **1.8.3. Data Analysis and Interpretation Methods**

In the study both quantitative and qualitative methods of data analysis were employed. More specifically, tables and percentage were used to discuss the collected data. The data were analyzed within the framework of legal barriers to civil society organizations. Internationally recommended standards, best country experiences, and other theoretical frameworks were used to interpret the data.

## **1.9. Content and Structure**

Chapter one contains introduction that includes background, statement of the problem, objectives of the study, importance of the study, research questions, delimitations and limitations of the study, and research methodology.

Chapter two presents a review of related literature, which discusses the different roles played by civil society sector, challenges faced by civil society, impediments to the growth of civil society in developing countries, relationship of civil society with the society, human rights as the underpinning of civil society law, legal framework to civil society, importance of legal and regulator framework to civil society, and different types of legal barriers to civil society organizations and governments' justifications for such barriers. The new legislation is also briefly summarized in the same chapter.

Chapter three presents the data gathered through questionnaires and interview. The chapter also discusses and analyses the data obtained from both primary and secondary sources. It also tries to identify and explain the various impacts of the law on the civil society organizations, and the implications of such a law for democratization and development process of the country. And finally, chapter four concludes the paper and forwards some recommendations.

## CHAPTER TWO: Review of the Literature

### 2.1. Introduction

In this chapter the researcher has explored different literatures on civil society and law. These literatures attempt to explain different roles played by civil society sector, impediments to the growth of civil society in developing countries, different types of challenges faced by civil society sector, relationship of civil society with the society, human rights as the underpinning of civil society law, legal framework for civil society, importance of legal and regulatory framework to civil society, and types of legal barriers and governments' justifications for such barriers. The basic question is, is it worthwhile to permit and encourage the formation and activities of civil society organizations, what are the impediments to the growth and effectiveness of such organizations, and of those impediments which one is currently most serious and why?

### 2.2. Definitions

For the purpose of this paper the researcher will attempt to identify a definition of non-governmental organizations (NGOs) and Civil Society Organizations (CSOs). There are as many definitions of NGOs and CSOs as there are numbers of people who attempt to define them. There is no single right definition. However, common themes run through most definitions, and the researcher therefore adopt the following as working definitions:

Non-governmental organizations (NGOs) refers to an association, society, foundation, charitable trust, non-profit corporation, 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 normally does not include trade unions, political parties, profit-distributing cooperatives, or churches, which are usually regulated under separate legislation.

Civil Society is the sphere of institutions, organizations, and individuals located among the family, the state, and the market, in which people associate voluntarily to advance common interests. In sense, it includes (but is not limited to) legal entities such as the various forms of NGOs (associations, societies, companies limited by guarantee, foundations, trusts, etc.) as well as trade unions, political parties, cooperatives, and churches. All voluntary associations are CSOs, while NGO specially refers to the above definition (ICNL, 2009:1).

Civil society should not be equated to non-government organizations (NGOS). NGOs are a part of civil society though they play an important and sometimes leading role in activating citizen participation in socio-economic development and politics and in shaping or influencing policy. Civil society is a broader concept, encompassing all organizations and associations that exist outside the state and the market (Pasha, 2004:3).

Another definition describes NGO as “ an independent voluntary association of people acting together on a continuous basis, for some common purpose, other than achieving government office, making money or illegal activities”( Willetts as cited in IJCSL,2008:15).

Otto, as cited in IJCSL (2008:15) defines NGOs as:

*Organizations that aim to represent values and aspirations associated with peoples rather than with states, including the promotion of human rights, gender and race equality, environmental protection, sustainable development, indigenous rights, nonviolent conflict resolution, participatory democracy, social diversity, and social and economic justice.*

Pasha (2004:3) identifies the following elements as key features of successful civil societies which emanate from various definitions: separation from the state and the market; formed by people who have common needs, interests and values like tolerance, inclusion, cooperation and equality; and development through a fundamentally endogenous and autonomous process which cannot easily be controlled from outside.

### **2.3. The Role of Civil Society**

Civil society has been widely recognized as an essential ‘third’ sector. Its strength can have a positive influence on the state and the market. Civil society is therefore seen as an increasingly important agent for promoting good governance like transparency, effectiveness, openness, responsiveness and accountability (Pasha, 2004:3).

Civil society can further good governance, first, by policy analysis and advocacy; second, by regulation and monitoring of state performance and the action and behavior of public officials; third, by building social capital and enabling citizens to identify and articulate their values, beliefs, civic norms and democratic practices; fourth, by mobilizing particular constituencies, particularly the vulnerable and marginalized sections of masses, to participate more fully in politics and public affairs; and fifth, by development work to improve the wellbeing of their own and other communities (Pasha, 2004:3).

#### **2.4. Challenges to Civil Society**

Civil society includes the structures of voluntary association, the values and norms that mobilize citizen action, and the modes of independent communication and information sharing that enable citizen awareness and activity (Bratton, 1994). The civil society is often discussed in contrast to the state and the market (Wuthnow, 1991:45). Put simply, the state is concerned with public goods and mobilizing resources through state authority; and the market is concerned with producing private goods and services and mobilizing resources through market exchange. Civil society, by contrast, is concerned with common goods defined by social groups and it mobilizes resources through social visions and values (Wuthnow, 1991 45; Wolfe, 1991:79). Civil society organizations and associations include neighborhood groups, churches, non-governmental development organizations, cooperatives, soccer clubs, choral societies and many other associations. In a diverse society, the agencies of civil society-organized

around very diverse values, norms and beliefs—are likely to reflect that heterogeneity.

The promotion and defense of social values by civil society can lead to organizations with many diverse roles, from government or business watchdogs to innovators in social problem-solving and providers of services to underserved populations. Civil society organizations can respond flexibly to many social problems but the nature of civil society and its relations to the other sectors can also generate problems and dilemmas that undermine the ability of civil society organizations to carry out their social missions (Brown & Kalegaonkar, 1999:2). For the purpose of this paper, the researcher focuses only problems that are grounded in relation to other sectors (external challenge).

The contexts in which civil societies operate and evolve are likely to have big impacts on their shape, capacities and performance. Salamon and Anheier's (1994) international survey of non-profit sectors suggests that the nature of the sector is heavily influenced by factors like the legal system under which it operates, the degree of political centralization of the state, and the level of social and economic development in the country.

The scope for achieving development goals through intersectoral activities is drawing increased attention (Waddell, 1997: 39; World Bank, 1997: 107) so meeting the challenges posed by intersectoral relations is increasingly vital. The researcher will focus on three external challenges here, each related to the external forces identified by Salamon and

Anheier (1994): public legitimacy and accountability, political space and government regulation, and business relations. The researcher's intent here is not to be exhaustive but to illustrate potential problems.

**Public Legitimacy and Accountability:** In countries where there is a long history of public acceptance of activity of civil society organizations, their nature and role in society is widely respected.

Often associated with public legitimacy is the existence of legal systems that establish the rule of law, rights of assembly and freedom of speech, and systems of regulation that establish rights and obligations of civil society actors. In other countries, support for civil society is "limited by the lack of clear, coherent, and supportive regulations" (CIVICUS, 1997: i) or subject to arbitrary changes as governments try to develop a coherent posture on civil society roles.

In the absence of government recognition and an established set of supportive regulations, CSOs may be defenseless against arbitrary intrusions and rulings by state actors, political terrorists or other antagonists. NGOs in Bangladesh have been subject to arbitrary rulings and even decertification by the NGO Bureau when they have been seen as threatening to the interests of state bureaucracies. Government regulations in Andean countries are turning NGOs into implementers of state programs rather than participants in national policy dialogues (Bebbington, 1997:58).

The lack of a public tradition or legal context to support civil society organizations can be exacerbated by problems of accountability. Since the beneficiaries of CSO activities are often a constituency quite different

from those who provide the material support for those activities, the nature and constituencies of CSO accountability may be problematic (Fries, 2002:227). The mechanisms for many civil society organizations by which key constituents can assess their performance and hold them to meeting performance standards are not well understood or developed, so the sector remains vulnerable to accusations that they are not accountable or responsive to their primary constituencies (Najam, 1996:339).

**State Relations: Political Space and Government Regulation:** Relations between civil society organizations and the state often give rise to serious challenges. In many countries government actors are deeply suspicious that civil society organizations will be potential competitors as deliverers of services to constituents, channels of resources from international donors, or as watchdogs and challengers of state policies and actions (Bratton, 1989b:587; Bebbington, 1997:75). Suspicions may run particularly deep in countries with highly centralized regimes that see all development activities as their responsibility, where NGO services are seen as potential threats to state power (Brown & Kalegaonkar, 1999:6).

In countries where government agencies are the primary holders of resources and the main providers of programs which foster grassroots development, NGOs committed to grassroots empowerment understandably look to the state for effective programs. When government agencies become major financial resources for NGOs, the priorities of those NGOs may become subordinated to those of the state (Brown et al., 1997). Alternatively, NGOs may become major critics of government failures to deliver services or live up to their responsibilities, and so become targets of government wrath. Civil society organizations adopt a

range of strategies for dealing with government action and political space, from low profile work that draws little attention, to implementing government programs, cooperatively developing joint programs, contesting government actions with mass movements, and building transnational alliances to influence international patterns of recalcitrant governments (Bratton, 1989b: 569). But the success of such strategies turns on good understanding of the political possibilities of the specific situation, and CSOs that misjudge those potentials may encounter serious shrinkage of the political space in which they must work.

**Market Relations: Business Cooperation, Cooptation and Capture:** Links with the for-profit sector are emerging as a major growth area as the privatization, liberalization and globalization of many developing country economies proceeds and resources allocated to development from Northern countries continue to shrink. The ability of civil society organizations to work with private businesses is shaped by the perceptions and attitudes of both sectors.

Cooperation with market actors can make much-needed resources available to civil society organizations. But such cooperation can be double-edged. Expanding and improving programs with market resources is undertaken at the risk of becoming co-opted to market interests. Contacts with businesses, like contacts with the government, may also result in a human resource drain as particularly effective civil society leaders are recruited by organizations with more resources and opportunities.

Businesses typically do not seek to influence civil society organizations as a sector, but they will attack organizations seen as direct threats to their interests. Consumer advocacy groups that block business development projects may find themselves subject to efforts based on persuasion, bribery, intimidation and even outright coercion. Press reports in the early 1990s of Royal Dutch Shell's activities in Nigeria note its role in sponsoring thugs that attacked citizen protesters.

Finally, relations with the market sector pose a serious problem as foreign resources available to NGOs increase, because those resources will attract agencies which are nominally NGOs but which have in fact been organized for market reasons. In some regions, already high percentages of NGOs competing for funds reflect the capture of civil society organizations and their conversion to a profit-seeking role.

**International Relations: Whose Civil Society?** The fact that civil society is in some countries a foreign concept not congruent with existing cultural, political and institutional realities can pose serious challenges to civil society organizations. In many countries where civil society organizations work in development activities, many resources and programs are started and maintained by international civil society organizations that are easily characterized as agents of foreign cultural, political and religious traditions.

As local and national interests question the concept of civil society organizations and action, civil society actors risk being dismissed as "foreign" or "imperialist" if they cannot link their activities to the values, visions and expectations perceived as legitimate in local and national

terms. Even when program values and activities resonate with local institutions, the fact that so many material resources are being mobilized to support the development of civil societies can have a perverse effect.

When civil society organizations are seen as dominated by foreign resources and programs, they can be portrayed as implementers of other cultures and values. High dependence on external resources and values can undermine the identities of national and local civil society organizations in their own eyes as well as in the eyes of skeptical or antagonistic observers. Such losses of identity can drastically undermine the legitimacy of civil society organizations as development actors.

The aforementioned challenges posed to civil societies, as they become more active players in the processes of social, political and economic development of a society. These challenges vary across countries, both because of the variety of external contexts in which they are played out and the variety of civil society organizations and actors that are involved.

The array of challenges is daunting. It is worth noting that many of these challenges are exacerbated as civil society organizations become more important actors; as long as they are acting on the margins of social development, they remain relatively unaffected by such pressures. It is when they become central players in social, political and economic transformations—as in the last decade for many countries—that the problems posed by many of these issues become more salient.

## 2.5. Impediments to the Growth of Civil Society in Developing Countries

The issue of the small scale of the civil society sector in developing countries, where their potential contribution to the achievement of MDGs is high deserves further attention. If these organizations are to be strengthened, it is important to understand what factors have historically hindered their growth. Variation in the scale and nature of civil society sector in different countries is largely affected by the historical, cultural, social and political environment; a number of impediments to growth of CSOs can be identified as follows (Salamon & Anheier, 1997:90).

**Authoritarian Political Control:** Perhaps the most basic factor accounting for the generally retarded pattern of the third sector development in many developing countries is the long history of authoritarian rule (Pasha, 2004:6).

Authoritarian political control did not end in these countries with independence. Rather, it persisted. The upshot has been a persistent atmosphere of distrust between the nonprofit sector and the State in many of these countries. The State remains highly watchful of its power and too easily interprets the emergence of CSOs as a challenge to its very legitimacy (Pasha, 2004:6).

**Religion:** Religion has a multiple impact on the development of the nonprofit sector. In addition to the basic belief and the support it gives to acts of charity, crucial other facets of religion's impact need to be taken into account – its posture toward individualism, its commitment to institution building, and its relationship with State authorities. Indications

are that while religions can share a positive orientation toward philanthropy, they may not generally be supportive of the emergence of CSOs (ibid).

**Colonialism:** Another factor that helps to explain the generally retarded pattern of third sector development in the third world is the recent history of colonial control. Like religion, however, colonialism's impact on third sector development has been multi-dimensional. What is more, it has varied somewhat depending on the national traditions and values of the colonial power. Colonialism has tended to undermine the independence of local social classes that might have provided the rallying point for civil society institutions. This was particularly true of the Spanish and Portuguese colonial traditions, which created especially authoritarian political and social structures in their respective colonies. In much of Latin America, colonialism created a highly inhospitable environment for the emergence of truly autonomous civil society institutions that might have challenged the monopolistic power of the colonial regime and its local allies.

**Low Income and Constrained Social Development:** Perhaps the most important impact of colonialism on some of the countries was the constraint it exercised on social development. One of the principal consequences of the colonial experience, in fact, was to limit the space that indigenous middle class elements could occupy in the developing world. This was so because the colonial administration handled many governmental and commercial functions that might otherwise have been performed by the indigenous people, thereby restricting middle class professional opportunities. What middle class cadre emerged in these

countries thus tended to be tightly bound to the colonial administrations and therefore lacked the independence characteristic of the urban commercial and professional middle class elements that emerged in Western Europe during the dawn of the industrial era.

This situation persisted because of the general poverty and lack of development in these countries. As growth had gathered momentum in at least some regions, however, this situation is changing. Indeed, the significant upsurge of nonprofit activity in countries like Brazil, Thailand and Egypt over the past two decades can be attributed in part to the emergence of a sizable new urban middle class as a result of recent economic growth.

**Limited Resources:** An important factor hindering the growth of the civil society sector is the scarcity of financial resources. Funding constraints limit the scale and functioning of CSOs, significantly impairing their ability to deliver and maintain services. In case of large NGOs, in particular, heavy reliance is frequently placed on funding from foreign donors. This is making CSOs more reflective of donor interests than those of their communities or designated target groups. Many CSOs have to review their missions or undertake work outside their mandate just to survive. The difficult economic conditions make local fundraising very difficult. Competition for scarce resources is also limiting opportunities for coalition-building, long-term institutional development and other aspects of local capacity building. Their performance in terms of poverty reach and popular participation is also compromised.

“In some instances they have neglected the landless and other marginalized people, thereby failing to reach the poorest of the poor” (UN-NADAF, 1990–2000:127). Sometimes only certain regions are serviced by well-equipped CSOs, neglecting other areas more desperately in need.

**Legal Treatment:** A further factor impeding the development of the nonprofit sector in some developing countries has been the legal environment within which nonprofits must operate. Governments of different countries use restrictive legal civil society law that affect the sector. To get around the general legal provisions, however, governments have added various restrictions to limit their general thrust and make them more cumbersome. Thus, for example, tax laws and related legislation often establish significant obstacles to the operation of CSOs. What this makes clear is that establishing an enabling legal environment for civil society action is only a first step towards opening a way for a viable civil society sector. A variety of other obstacles can easily frustrate the intent of even the most supportive legal provisions.

**The Development Paradigm:** One other factor helping to explain the historically constrained pattern of civil society sector development in the third world is the changing fashion in development policy and development ideology. During the 1950s and 1960s, development thinking emphasized the importance of a State as the principal agent of modernizing reforms. As a consequence, considerable effort went into differentiating a sphere of State action outside the pre-modern structures of tribe or community, and into creating modern, secular administrative structures that could effectively operate in this sphere. This development framework included a

sphere of business in addition to that of government, but it downplayed, if not excluded, CSOs which were viewed as only marginal in the frame of affairs.

The shift to “structural adjustment” in the 1980s did not change this fundamentally. To the contrary, the “structural adjustment” paradigm of development merely replaced government with the private business community as the mode of development. In the process, however, it reinforced an essentially two-sector model of society that left little room for a vibrant civil society sector. The lack of civil society growth is thus understandable given that it been historically neglected in the central policy debate.

## **2.6. Relationship of Civil Society with the Society**

There are many reasons why a country should want to have laws that assure the existence of a strong, vigorous, and independent civic sector. The most important of these is to protect the internationally recognized freedoms of expression, association, and peaceful assembly (Klingelhofer and Robinson, 2004:2). These freedoms are enshrined in international and regional agreements that bind most countries. In addition, the constitutions and the laws of many countries protect these fundamental freedoms.

Individuals should not be required to establish a formal legal entity under a domestic civic organization law in order to exercise one or more fundamental freedoms. However, laws that permit groups to establish themselves as entities with legal personality strengthen these freedoms. Most persons are not sufficiently important or influential for their

individual voices to be heard or their individual actions to matter, but if they can band together to form, for example, an advocacy organization for the protection of the environment or a humanitarian organization to assist refugees, then their collective actions can make a difference (Irish et al,2004:13). Only by allowing and protecting both informal and formal civic organizations do the laws of a country give real meaning to the freedoms of expression, association, and peaceful assembly (Klingelhofer and Robinson, 2004:2; Irish et al,2004:13).

In addition to protecting fundamental freedoms, there are several other reasons why societies should adopt laws that help to support a vigorous and independent sector of formal civic organizations. These include encouraging pluralism, promoting respect for the rule of law, supporting democracy, promoting economic efficiency, and addressing “public sector market failure.”(Irish et al, 2004:14).

There are many differences among the members of any society; individuals and groups have diverse interests and needs. Civic organization laws help individuals and groups pursue their varied interests (e.g., sports, folk music, or the preservation of a particular language or culture). By encouraging the pluralism that results from permit tin formal civic organizations to exist, a society demonstrates that it values and respects diversity among its members. In a word, the society endorses the principle of tolerance.

Not only is diversity desirable, it is unavoidable. In many societies, people come from different ethnic backgrounds, speak different languages, and practice different religions.

They are of different genders, ages, professions, and avocations. These differences can be expressed in a legal or an illegal manner (Irish et al, 2004:14). Rather than drive a group underground and sharpen social antagonism, good laws for the civic sector allow the group legal existence and special benefits under the law, as long as the group meets basic standards of responsible behavior. In other words, civic organizations provide an essential safety valve for social pressures and energies that inevitably build up in any society. Moreover, civic organizations provide an opportunity for persons of different ethnic, racial or religious backgrounds to work together to further common interests, and thus can help serve as a bulwark against inter-communal violence. The existence of numerous and diverse civic organizations is characteristic of, and in itself helps promote, peaceful and stable societies where there is respect for the rule of law.

The success of democracy over time requires the pluralism, social stability, and respect for the rule of law that is promoted by legal support and protection of the civic sector. Democracy is an inherently imperfect and often messy form of government. It can be frustrating and inefficient. It is the only form of government, however, that ensures the government will generally serve the interests of the people, rather than vice-versa. For democracy to succeed, each segment of society must believe that state institutions can generally be trusted and that it will have a chance to influence decisions through elected representatives, or even gain a majority voice in the government. A vigorous civic sector that is protected and accountable helps to build the pluralism, social stability, public trust, and respect for the rule of law that are necessary for the long-range success of democracy.

Civic organizations play another vital role in democracy. They allow individuals and groups to mitigate the majoritarianism that can otherwise make a democratic government insufferable for marginal groups that are never able to win sufficient backing to see their ideas and values reflected in the policies of the state. For these groups, civic organizations offer a key way in which they can peacefully pursue their interests and goals without interfering with, or being suppressed by, the wishes of the majority.

Civic organizations can often provide public goods and services more efficiently—that is, with higher quality and lower costs—than state authorities. There are many reasons for this. One is the fact that civic organizations often pay less or employ fewer people than a governmental agency to accomplish the same objective. There is the fact of volunteerism itself. To the extent that private individuals devote time and energy through civic organizations to the solution of public problems on a free and voluntary basis, there can be a cost savings to the government. More importantly, to the extent that civic organizations rather than a monolithic state authority provide public goods and services, there can be cost savings that result from competition among organizations seeking to provide such services.

Finally, there is the factor of market knowledge. A small, local civic organization is far more likely to know the real needs of the people to be served and how best to meet those needs than a large and often distant state organ. Many states have begun to recognize the superior efficiency of civic organizations in many situations.

The phenomenon of market failure is well known in discussions of the private, business sector. However, there is often “market failure” in the provision of generally needed public goods or services, such as parks or highways. An essential role for government is to identify those areas of market failure where there is a real need for public goods and to meet those needs. State and for-profit entities, however, simply cannot and do not anticipate and provide all of the public goods and services that are desired by the citizenry.

Finally, many countries are moving toward market economies, and the existence of a well-developed civic sector provides indirect support for the success and growth of a market economy. Market economies tend to flourish best where pluralism, social stability, public trust of institutions, and respect for the rule of law exist. Laws for the civic sector foster these societal values (Klingelhofer and Robinson, 2004:3; Irish et al, 2004:15).

While not all countries will subscribe to each of these basic rationales for having laws that permit formal civic organizations to exist, the reasons described here indicate why it is useful for any society to allow formal civic organizations to exist and to protect them from undue intrusion in their affairs.

## **2.7. Human Rights as the Underpinning of Civil Society Law**

The basis of civil society is freedom of association, expression, and assembly. The evolution of civil society and its legal basis reflects its changing engagement with the state through history.

Throughout history governments have sought to set limits to citizen association; constitutions have set frameworks within which citizen action may or may not take place. Both in theory and in practice citizen organization is now underpinned by the international instruments which were developed during the twentieth century to protect human rights (Fries, 2001:224) Central to these is the UN Universal Declaration on Human Rights enshrining basic freedoms, including, centrally, freedom of expression (art. 19), freedom of assembly, and freedom of association (art. 20). Explicitly or implicitly they guarantee the right to form and operate civil society organizations, and provide an international basis for civil society law. The Universal Declaration of Human Rights has a normative effect as a statement of standards to which member states of the United Nations are expected to adhere.

This means that, at the global level, the concept of civil society is reflected in the fundamental legal expressions on which civilized society is based. This in turn means that laws and practices at state level which violate these principles breach international standards and are in that sense against the law. This is of crucial importance in promoting civil society globally. The fact that there is a legal basis for civil society at the international level does not, of course, mean that it is enforceable.

The Universal Declaration does not have a direct binding legal effect in itself. Many of its provisions are, however, included in the International Covenant on Civil and Political Rights (ICCPR), which does create direct binding obligations on the 143 countries which are party to it. At the regional level there are human rights conventions, such as the American Convention on Human Rights, drawn up by the Organization of American

States; the African Charter on Human and Peoples Rights (Organization of African Unity); and the European Convention on Human Rights (Council of Europe), all of which enshrine the rights of association, expression, and assembly. For countries which have ratified the European Convention on Human Rights, these rights are enforceable through the courts of the individual member states and ultimately through the European Court of Human Rights (ECHR) in Strasbourg (Moore, 2009:10).

These rights set the principles for informal civil society activity and for organized activity at the local level. Thus, associations of individuals pursuing common interests, whether they be social, mutual support, sport, or some other activity, are protected by the framework of human rights law. Written constitutions often translate these rights from international to national level. Securing these rights does of course depend on their being respected by the authorities and upheld by the courts.

## **2.8. Legal Framework for Civil Society**

The basis of civil society law is international conventions and agreements, most of are developed in the 20<sup>th</sup> century so as to protect and promote human rights. Most national frameworks contain most of the provisions of international laws. Accordingly, civil society law has both international and national legal basis.

### 2.8.1. International Law and Civil Society

The international legal basis for civil society – that is, for associational life as expressed through the diverse range of civil society organizations – is rooted in the body of international law that protects the fundamental freedoms of association, peaceful assembly and expression, as well as freedom of thought, conscience and religion, and the right to take part in the conduct of public affairs (Fries, 2003:224).

The State has a duty to promote respect for human rights and fundamental freedoms. That duty includes both a ‘negative’ responsibility – i.e., to refrain from interference with rights and freedoms – and positive – i.e., to ensure that the legal framework is appropriately enabling and that the necessary institutional mechanisms are in place “to ensure all individuals” the recognized rights and freedoms (ICNL, 2008:5). This means that states have certain obligations to protect these rights with respect to third parties. Article 2 of the ICCPR is explicit in describing this State duty.

International Covenant for Civil and Political Rights, Article 22:

*No restrictions may be placed on the exercise of this right [freedom of association with others] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right (ICCPR, 1976:7).*

State interference with fundamental freedoms must be based on legal grounds. First, certain rights are derogable in times of public emergency which threatens the life of the nation. Second, the ICCPR sets the parameters for restrictions on the right to freedom of association in Article 22(2). In other words, excepting situations of public emergency, restrictions on the exercise of freedom of association are *only* justifiable where:

- i. Prescribed by law;
- ii. In the interests of one of the four legitimate state interests:
  - National security or public safety;
  - Public order;
  - The protection of public health or morals;
  - The protection of the rights and freedoms of others; *and*
- iii. Necessary in a democratic society.

International Covenant for Civil and Political Rights, Article 2:

*1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

*2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt*

*such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant (ICCPR,1976:1).*

The body of international human rights law has been strengthened and, in many cases, complemented by regional human rights instruments, in which the freedoms of association and expression are also enshrined. Depending on the country and corresponding regional instrument, these may offer recourse to individuals and/or CSOs whose rights have been violated. Key regional instruments include:

- African Charter on Human and Peoples' Rights;
- American Convention on Human Rights;
- American Declaration of the Rights and Duties of Man;
- Arab Charter on Human Rights; and
- European Convention for the Protection of Human Rights and Fundamental Freedoms (Moore, 2009:12).

## **2.8.2. National Legal and Regulatory Framework Affecting Civil Society Organizations**

The relevance and impact of international law varies from country to country. Civil society organizations operate within the framework created by national law and regulation in their respective countries. The overarching framework at the national level for most countries is the constitution, although there is often a huge discrepancy between constitutional rhetoric and actual practices. Flowing from the constitutional context, the national-level legal framework may consist of laws and regulations, executive orders and administrative directives, as well as judicial decisions interpreting that body of law.

National law is often bound, at least in writing, by the confines of applicable international legal instruments, although this is certainly not always the case in practice. Of course, the precise contours of the legal framework vary considerably from country to country and depend on a variety of factors. The sections below examine some of the most common features of the legal and regulatory framework affecting civil society.

### **2.8.2.1. Constitution**

The fundamental freedoms relating to opinion, speech, assembly and association are often codified in national constitutions. Human rights codified at the national level as constitutional or fundamental rights grant protection against arbitrary interference by the State but also entail certain obligations by the State to fulfill and protect these rights with respect to third parties. The precise wording of such constitutional protections varies from country to country. In some countries, the fundamental freedoms extend to citizens only, but more broadly in other countries to non-citizens as well. In most countries, the fundamental freedoms of association and expression are not absolute; constitutions often articulate specific limitations in the language of the constitution itself.

While constitutions may contain empowering language, they are often undermined through disabling or inadequate sub-constitutional laws and regulations, or by poor or inadequate implementation. As but one example, North Korea protects the right to free association in its constitution

“Citizens are guaranteed freedom of speech, of the press, of assembly, demonstration and association”), but not in actual practice.

It is the framework of sub-constitutional laws – including, of course, citizen access to and understanding of these laws as well as their practical implementation – that, in most cases, determines the actual scope and real meaning of free association.

### **2.8.1.2. Sub-Constitutional Laws and Regulations**

Within the constitutional framework, the legislative and regulatory system consists of laws and regulations governing various forms of CSOs, and may also include executive orders and administrative directives, as well as judicial decisions. Indeed, it is the sub-constitutional legal framework that defines the organizational forms which civil society can assume.

Regardless of the number of underlying CSO forms, the legal framework will typically address a wide range of issues relating to the life-cycle of a CSO, the fiscal treatment of CSO, relations between the state and the civic sector, and public participation. Not surprisingly, there is no single piece of legislation that can embrace such a wide range of issues.

Rather, depending on the country and legal traditions, there is likely to be a complex web of legal sources that may include civil code provisions, laws relating to various organizational forms, tax law, labor law, criminal law, as well as regulations, decrees, and possibly court decisions that will likely have direct or indirect influence on the existence, operations and activities of CSOs (Moore, 2009:15).

## 2.9. Importance of Legal and Regulatory Framework to Civil Society

How legal framework and its application could affect the formation, operation and sustainability of civil society organizations is discussed as follows.

### 2.9.1. Enabling or Restrictive Legal and Regulatory frameworks

The precise impact of the legal framework on the development of civil society – and on the health, vibrancy and sustainability of the civic sector – may be difficult to measure. Certainly, the legal framework is only one factor among many that influence the scope and strength of civil society in any given country. Political, cultural, historical, and economic factors also play defining roles (Moore, 2009:16).

That the application of the law has a direct impact on civil society, however, is indisputable. The legal framework and the way that it is applied directly affect the ability of a CSO to form, operate and sustain itself. The sector as a whole has the capacity to engage citizens, deliver services, interact with the state, and otherwise participate in social, political and economic life. Taken together, these activities help advance democratic development, service delivery, and other macro-level objectives.

One may conceive of the law as providing legal space – in the same way that a public building provides architectural space – within which individuals may act through CSOs to address a wide range of mutual

benefit and public benefit goals. That legal space may be open, broadly accessible, supportive and enabling, or it may be closed, difficult to access, constraining, and inhibitive. The former springs from an enabling legal framework, and the latter from a restrictive legal framework (Moore, 2009:16).

More recently, law has been used as the tool of choice by governments to constrict the space available for civil society, to create barriers against their activities and funding sources and to threaten their very existence. Through such regulatory burdens, governments have moved to weaken and undermine the often nascent civil society in their countries (ICNL, 2008:10). The regulatory burdens can take many forms – barriers to establishment, barriers to registration, government interference in the internal affairs of CSOs, excessive taxation, barriers to foreign funding, punitive sanctions, and other legal constraints. But the negative impact, demonstrated through the reduced ability of CSOs to participate meaningfully on issues of public importance, and through their struggle to survive at all, is clear.

## **2.9. 2. The Implementation Process**

The strength and viability of civil society is not merely a question of the legal framework, and the degree to which it is enabling versus restrictive. It is also a question, of course, of implementation. A sound, well-drafted law may be poorly or inadequately implemented or not implemented at all. Of course, judges and lawyers play a key role in applying the laws. At the same time, however, poor, inadequate and even constraining legislation may be progressively implemented. In sum, the question of implementation

– and the degree to which a law is fairly, objectively and apolitically applied – is just as important as the legal framework itself and how well it reads on paper (Moore, 2009:18).

## **2.10. Legal Barriers to Civil Society Organizations and Governments’**

### **Justifications**

The major legal barriers to civil society organizations and some of governments’ justifications for adopting such legal barriers on the formation and operation of civil society organizations are discussed below.

#### **2.10.1. Legal Barriers to Civil Society Organizations**

A disturbingly large number of governments—principally, but not exclusively authoritarian or hybrid regimes— are using legal and regulatory measures to undermine and constrain civil society (ICNL, 2008:9).

Legal impediments affect a broad range of civil society organizations, regardless of their mission, but in many countries organizations pursuing human rights and democracy are disproportionately affected, if not deliberately targeted (ICNL, 2008:9).

Legal barriers arise from a variety of sources, including constitutions, legislations, regulations, decrees, court decisions, and legally binding measures. Moreover impacting NGOs extends beyond laws specifically designed to govern civil society organizations. Such legislation include, for example, anti-terrorism or anti-extremist legislation, state security or

state secrets legislation, and regulations affecting internet use, and access to information and assembly (Moore,2009:11).

International Center for Non-for-Profit Law (2009:3) categorizes the wide range barriers being used in countries around the world, in to the following five broad groups:

a) Barriers to entry

These are restrictive legal provisions that are used to discourage the formations and/ or registration of civil society organizations. These barriers include limits to the right to associate, prohibitions against unregistered groups, restrictions on founders, burdensome registration procedures, vague grounds for denial, and barriers preventing international organizations from operating in the country.

b) Barriers to operational activity

These are obstacles in the law that directly prohibits or otherwise constrain legitimate activities. These barriers are direct prohibitions against spheres of activity, invasive supervisory oversight, government harassment, criminal sanctions against individuals, failure to protect individuals and organizations from violence, termination and dissolution, and establishment of government-organized NGOs.

c) Barriers to speech and advocacy

These are legal restrictions against expression of speech mainly in advocacy and policy engagement. They include prior restraints and censorship, defamation laws, broad or vague restrictions against advocacy, criminalization of dissent, and restrictions on freedom of assembly.

d) Barriers to contact and communication

These are legal restrictions hindering the free flow of information and communication. They include barriers to the creation of networks, to international collaboration, and to communication as well as criminal sanctions against individuals.

e) Barriers to resources

These are legal provisions that hinder the ability of NGOs to secure resources to carry out their activities. These barriers include prohibitions against funding, requirements for advance government approval, and policies to route funding (especially from foreign sources) through the government.

## 2.10. 2. Governments' Justifications for Legal Barriers

The justifications presented by governments for the regulatory backlash against civil society are as diverse as the restrictions themselves. Governments argue that they are necessary to promote NGO accountability, protect state sovereignty, or preserve national security (INCL, 2009:3). A key problem is that these concepts are malleable and prone to misuse, providing convenient excuses to stifle dissent, whether forced by individuals or civil society organizations. For instance United Nations, as cited by INCL (2008:21), has noted the following:

*Under the pretext of security reasons, human rights defenders have been banned from leaving their towns, and police and other members of the security forces have summoned defenders to their offices, intimidated them and ordered the suspension of all their human rights activities. Defenders have been prosecuted and convicted under*

*vague security legislation and condemned to harsh sentences of imprisonment.*

As a result, ‘ organizations are closed down under the slightest of pretexts; sources of funding are cut off or inappropriately limited; and efforts to register an organization with a human rights mandate are delayed by international bureaucracy’ (INCL, 2008:21).

In recent years, governments have defended the enactment and/or implementation of legal impediments constraining civil society as seeking to accomplish a range of governmental purposes. International Center for Non-for-Profit Law (2008:3) identifies the following justifications of governments for their regulatory backlash:

- Legislation recently enacted or proposed on the government’s declared intent to enhance NGO accountability and transparency;
- A related but distinct justification is the desire to “harmonize” or “coordinate” NGO activities;
- Governments have sought to justify restrictions under the banner of national security, counter-terrorism or anti-extremism; and
- Among the most common justifications for the current regulatory backlash against NGOs is preventing interference with state sovereignty, or guarding against foreign influence in domestic political affairs.

## **Conclusion**

A healthy civil society sector has a serious of benefits that accrues to a society. These benefits can be classified social, political and economic. There are different factors that hinder the development and effectiveness of this sector. Among others, the major one is the legal system under which the civil society organizations operate. Legal framework and its application is becoming more restrictive and narrowing the space available for the civil society sector, as the sector plays more active role in the political, social and economic development of a society. Governments extend different excuses for creating such inhospitable legal environment, most of which are pretexts. The common ones include curbing CSO abuses, counter-terrorism, and national security. As freedom of association is one of the fundamental rights of people and the existence of civil society organizations is vital to the protection and promotion of human rights, democratic values and to expedite socio-economic transformation of a society, the sector has to be protected from unwarranted intrusions of any sector.

### **2.11. Summary of the Legislation**

On 6 January 2009, the Charities and Societies Proclamation No. 621/2009 of Ethiopia (Civil Society Law or CSO law) was enacted. The law is one of the most controversial laws in the country. The implementation of this law was commenced, one year after its enactment, on 13 February 2010. The CSOs Proclamation enacted by the Federal Government includes all charities/ societies that operate in more than one regional state or whose

members are from more than one regional state, and Foreign Charities and Ethiopian Resident Charities and Societies, even if they operate only in one regional state. The legislation is reviewed in light of the guideline for laws affecting civil society organizations. The major provisions of the legislation are assessed as follows:

### 2.11.1. Types of Organizations

The law divides CSOs into two broad categories known as “Charity” and “Society.” Under the previous practice, the registering authority divided CSOs into the categories of development, advocacy, religious, and professional associations (Dessalegne et al, 2008: 13). Nevertheless, the new law envisages three forms of legal establishment of charities or societies, which may vary depending on their place of registration, source of income, composition of members’ nationality, and place of residence. The three forms of association include (CSP, 2009: 1-2):

a) *"Ethiopian Charities" or "Ethiopian Societies" are Charities or Societies formed under the laws of Ethiopia and whose members are Ethiopians, generate income from Ethiopia, and are wholly controlled by Ethiopians. However, they may be deemed Ethiopian Charities or Ethiopian Societies if no more than 10 percent of their funds are received from foreign sources ( see article 2 (2) of the CSP);*

b) *"Ethiopian Residents Charities" or "Ethiopian Residents Societies" are Charities or Societies that are formed under the laws of Ethiopia and consist of members dwelling in Ethiopia, and who*

*receive more than 10 percent of their funds from foreign sources ( see article 2 (3) of the CSP) and;*

*c) "Foreign Charities" are Charities that are formed under the laws of foreign countries, or consist of members who are foreign nationals, or are controlled by foreign nationals, or receive funds from foreign country sources (see article 2 (4) of the CSP).*

### **2.11.2. Establishment and Registration**

**Purposes:** Civil society organizations can be established for the benefit of third parties and classified as a “Charity” or for the benefit of their members, and classified as a “Society” or for the benefit of both their members and third parties, and classified as “Charitable Society.” Article 14 of the CSP lists the types of charitable activities in which CSOs may or may not take part. The law implicitly restricts organizations categorized as “Ethiopian Residents” or “Foreign” from taking part in advocacy activities, such as advancement of human rights, gender equality, the rights of children and disabled persons, and the efficiency of the justice system.

The Agency may also refuse to register a charity or society on the grounds that ‘the proposed charity or society is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Ethiopia’ (See article 69 of the CSP). The proclamation further provides that the Agency may refuse registration if the name

under which the proposed charity or society is to be registered is considered to be contrary to public morality or is illegal.

**Registration as a Voluntary versus Mandatory Requirement:** The law makes registration a mandatory prerequisite to forming an association, and thus ‘any Charity or Society shall apply for registration within three month of its formation’ (See article 64 of the CSP). Failure to register within the prescribed period shall be grounds for cessation of the formed Charity or Society. The law requires all CSOs to be legally registered and implicitly prohibits informal activity of collective entities.

**Registration or Incorporation Requirements:** The law puts no explicit restrictions on who can be founders of a charity or society, and there is no limitation on the number of founders. Accordingly, natural or legal persons can establish an association of their choice, whether a charity or society (See articles 15 (3) and 55 (2) of the CSP). However, there is an implied inference from the reading of Article 57 (6) that a society that has a federal character and nomenclature should have members from at least five Regional States. This means, in effect, that the law is attempting to determine the number and composition of the founders.

The power of licensing, registering, and supervising CSOs is given to a special Agency established as a separate legal entity, but accountable to the Ministry of Justice, which is in turn accountable to the Council of Ministers. Therefore, the administration of CSOs falls under the executive branch.

Concerning registration formalities, the application for CSO registration includes particulars, such as the goals, objectives, and activities of the CSO. The form prepared by the Agency must be accompanied by:

- a) A copy of the rules of the charity or the society and, where applicable, documentation of the act of constituting a Charitable Trust or Charitable Endowment; and
- b) Other similar documents and duly completed forms as the Agency may require.

**Civil Society Organization Registry:** Article 71 of the CSP deals with registration of CSOs and instructs the Agency to keep a registry of Charities and Societies. However, this provision fails to specify whether the registry would be accessible to the general public or any interested person. The Agency is also mandated to publish the list of charities and societies registered, suspended, or cancelled.

**Foreign Organizations:** In addition to the above requirements, Charities that are established abroad shall present:

- a) Duly authenticated certificate of registration showing the CSO's establishment in its country of origin;
- b) Proof of the decision of its competent organ to operate in Ethiopia;
- c) A letter of recommendation from the Embassy of the country in which the Charity is incorporated, or in the absence of such by a competent government office in that country;
- d) A letter of recommendation from the Ministry of Foreign Affairs of the Federal Democratic Republic of Ethiopia;
- e) Power of attorney of the CSO's representative in Ethiopia.

The law also provides for a registration fee determined by a regulation of the Ministers of Council. The Agency is required to register the applicant and issue a certificate of legal personality within 30 days from the date of application. If the Agency does not issue a certificate of legal personality, or does not make known that it will not do so, the applicant may apply to the Board no later than 45 days from the date of application. Article 104 of the CSP provides that the decision of the Board is final on the administrative level, and only organizations classified as Ethiopian charities or societies have the right to a judicial appeal of the decision of the Board. Ethiopian Resident or Foreign CSOs do not have the right to lodge an appeal of the decision of the Board (see article 104 of the CSP).

Registration may be denied on one of the following specific grounds:

- i. The rules of the proposed charity or society do not comply with the necessary conditions set by the proclamation;
- ii. The proposed charity or society is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare, or good order in Ethiopia;
- iii. The application for registration does not comply with the provisions of this law;
- iv. The name under which the proposed charity or society is to be registered resembles the name of another charity or society, or any other institution, or is contrary to public morality, or is illegal;
- v. The nomenclature of the charity or society is countrywide and the composition of its members or its work place does not show the representation of at least five Regional States.

However, the law fails to put an obligation on the Agency to provide a written communication on the refusal of a registration.

The following are significant constraints on the registration/incorporation process:

- i. The requirement imposed on CSOs having federal character or nomenclature to have members from or a work place in at least five Regions;
- ii. The restriction on CSOs in the formation stage not to raise funds of more than 50,000 Ethiopian Birr; and
- iii. The additional requirement imposed on foreign organizations to produce letters of recommendation from Ethiopian embassies and the Ministry of Foreign Affairs.

### 2.11.3. Supervision and Enforcement

**Regulatory Authorities:** The law has mandated the following supervisory organs to oversee the administration and operation of CSOs:

- i. Ministry of Justice, as the Agency accountable to the Ministry;
- ii. Charities and Societies Agency, a special organ established to administer the registration, operation and dissolution of Charities and Societies;
- iii. Charity and Society Board, established under the Agency, consisting of 7 members nominated by the government, including two from the civil society; and
- iv. Sector Administrators, having a supervisory and advisory role in the administration of CSOs.

The establishment of an autonomous Agency to undertake the registration and supervision of societies and charities and a corresponding Board for facilitating the implementation of the proclamation is one of the positive

aspects of the law. This indicates the attention and recognition given to the sector and may help CSOs to get efficient services during registration and operation. Granting space for the participation of CSOs' representatives in the Board is another positive aspect of the law as it gives CSOs the chance to have a say in the regulation of the sector (see articles 4 and 8).

**Internal Governance:** In principle, the law recognizes the rights of CSOs to determine their own structure (See article 59 of the CSP). Nevertheless, there are some provisions that require CSOs to adopt certain forms of structure. For example:

- i. Charitable Endowments and Charitable Institutions must have a board of management, manager, and auditor within their structure;
- ii. Charitable Trusts should have a trustee manager, a trustee treasurer, and a trustee auditor;
- iii. Societies and charitable societies must have a general assembly, executive committee, and an internal auditor.

The law further provides the power and responsibilities of the different organs in the administration of the organization. There are various provisions that allow or call for the interference of the Agency in the internal affairs of the organization. societies must notify the Agency, in writing, of the time and place of any meeting of the General Assembly of a society no later than seven working days prior to such a meeting ( See article 86 of the CSP). No charity or society may employ expatriates unless a work permit is granted in accordance with the relevant law. The Agency may order the appropriate organ of the charity or society to remove an officer who falls short of any of the requirements set forth

under article 70 of the CSP and to assign another person as an officer. In addition, article 70 identifies individuals who cannot be assigned as officers of charities or societies, including:

- i. Convicts of a crime that involves fraud or other crimes that involve dishonest acts;
- ii. Convicts of any crime whose punishment results in the deprivation of her/his civil rights, which have not yet been restored; and
- iii. Individuals outside Ethiopia whose absence impedes the proper administration of the charity or society.

Moreover, the Agency may, upon the request of one or more members or officers of the Society convene the meeting of the General Assembly through the Chairperson or on its own. The Agency may, where appropriate, nominate a Chairperson of the General Assembly (See article 61 of the CSP). The Agency may also suspend an officer responsible for misconduct or mismanagement of the administration of the charity or society and order the appropriate organ of the charity or society to assign another person (See article 91 of the CSP).

**Reporting:** Civil society organizations are generally required to submit statements of accounts, annual activity reports, and bank accounts. The statement of account (accounting record) must show all sums of money received and expended by the charity or society on a day-to-day basis, the context in which the receipts and expenditures took place and a record of the assets and liabilities of the charity or society. The annual statement of accounts shall be prepared in accordance with standards set by a Certified Auditor. It should also be noted that charities and societies may not receive anonymous donations, and shall at all times keep records

clearly indicating the identity of donors (See article 77 of the CSP). Charities and Ethiopian Resident Societies shall prepare and transmit to the Agency an annual report on the major activities carried out and relevant information regarding the Charity. Ethiopian Societies are not required to submit annual activity reports. CSOs are to report to the Agency annually and upon request concerning all bank accounts of the charity or society with necessary particulars.

Charities and societies whose annual flows of funds do not exceed Birr 50,000 may choose to prepare a statement indicating receipts and payments as a statement of assets and liabilities. The law also exempts organizations whose annual income is less than Birr 100,000 from being examined by Certified Auditors. Finally, CSOs that are engage in income-generating activities are expected to keep books of income-generating activities separate from books of account.

**State Enforcement and Sanctions:** The CSP contains enforcement mechanisms for violation of its provisions consisting of both administrative and judicial measures. Any person who violates the provisions of the proclamation may be punished in accordance with the provisions of the criminal code, and in addition:

- i. Any charity or society failing to keep its book of accounts; to record money received its source, and the amount expended; to preserve any accounting records for at least five years from the end of its financial year, will be punishable with a fine of no less than Birr 20,000 and not exceeding Birr 50,000.

- ii. Any charity or society that, in violation of article 79, fails to submit to the Agency an annual statement of account prepared in accordance with acceptable standards, fails to prepare the statements of receipts, payments and assets and send the same to the Agency, or does not preserve any statements of accounts and related documents for at least five years from the end of its financial year will be punishable with a fine of not less than Birr 10,000 and not exceeding Birr 20,000.
- iii. Any charity or society that, in violation of article 84, fails to report annually or upon request its bank accounts with the necessary particulars will be fined not less than Birr 50,000 and not exceeding Birr 100,000.
- iv. Any charity or society that, in violation of article 90, allocates less than 70 percent of its expenses in the budget year for the implementation of its purposes and not more than 30 percent for its administrative activities shall be punishable with a fine of not less than Birr 5,000 and not exceeding Birr 10,000.
- v. Any officer, employee or person who participates in criminal acts stated under sub article (2) of this article shall be punished with a fine of not less than Birr 10,000 and not exceeding Birr 20,000 or imprisonment of not less than five years and not exceeding ten years or both.

One should recall that it is only Ethiopian Charities or Societies that have the right to a judicial appeal to the decision of the Agency, and thus Ethiopian Residents or Foreign CSOs do not have such rights.

**Dissolution, Winding up, and Liquidation of Assets:** A charity or society can decide on its dissolution according to its own rules<sup>W</sup>. In addition, CSOs of any type may be dissolved involuntarily by the Agency in any one of the following cases:

- i. The Agency cancels or suspends the license of the charity or society in accordance with article 93 of the proclamation; or
- ii. The charity or society has become insolvent.

The following are grounds for suspension of an organization:

- i. Failing to comply with the Agency's orders to amend a rule of the organization or correct another fault;
- ii. Submitting falsified accounts or reports to the Agency;
- iii. Contravening the provisions of the proclamation or regulations and directives issued there-under or orders of the Agency or its own rules; or
- iv. Failing to provide the Agency with information required by the Proclamation.

On the other hand, the license of any charity or society can be cancelled if:

- i. The registration of the organization has been procured by fraud or misrepresentation;
- ii. The organization has been used for unlawful purposes or for purposes prejudicial to public peace, welfare, or security;

- iii. The organization fails to rectify the causes for suspension within the time limit set by the Agency;
- iv. The organization fails to renew its license; or
- v. The organization commits a crime by violating the provisions of the criminal code or that of the Proclamation.

The dissolution of Ethiopian Charities and Societies may be effected by a decision of the Federal High Court, whereas the dissolution of Ethiopian Residents Charity or Society or Foreign Charity shall be effected by the decision of the Agency, with no judicial recourse. Dissolution has the following effects:

- i. The property of the organization will be liquidated;
- ii. After settling all debts and liabilities of the organization, the remaining property will be given to a charity or society with a similar purpose, or to any charity or society by the order of the Agency;
- iii. A charity or society that is being dissolved may not perform activities other than those necessary for its liquidation without the authorization of the Agency.

#### 2.11.4. Civil Society Organizations Activities

**General Powers:** Once legally registered, CSOs have legal personality and thus enjoy the general rights and powers of juridical entities, such as ownership of property or entering into contracts. However, though not provided by the CSP, the Civil Code requires foreigners to have special permission from the government to own immovable property in Ethiopia.

**Expressive / advocacy / public policy activities:** Advocacy activities are considered “political activities,” which are allowed only for Ethiopians and Ethiopian organizations that can mobilize more than 90 percent of their income from local sources. Article 14 (5) of the CSP lists those activities that are reserved only for Ethiopian Charities:

- i. The advancement of human and democratic rights;
- ii. The promotion of equality of nations, nationalities and peoples and that of gender and religion;
- iii. The promotion of the rights of the disabled and children’s rights;
- iv. The promotion of conflict resolution and reconciliation; and
- v. The promotion of the efficiency of justice and law enforcement services.

**Communication and Cooperation:** One of the strengths of the CSP is that it clearly provides for the rights of Charities and Societies to establish consortiums that coordinate their activities, which was one of the gaps in previous framework (See articles 15 (3) and 55 (2) of CSP). The law permits CSOs to engage in income-generating activities with the following conditions: the activity must be approved by the Agency; the activity must be incidental to the achievement of the purposes of the organization; and the profits must be used only to further the activities of the organization. The registration and licensing requirements shall be determined in accordance with other law applicable to business organizations.

**Seeking/Securing Funding:** One of the most contentious provisions in the CSP is the provision dealing with access to foreign funds. CSOs, opting to be registered as Ethiopian, are not allowed to receive more than 10 percent of their funds from foreign sources (See article 2 (2) of the CSP).

There is no law binding the government to fund the activities of CSOs, though there are some CSOs that work closely and with the support of the government.

#### **2.11.5. Tax Laws**

The Proclamation does not specify which taxes CSOs are required to pay. Article 103 of the CSP states that CSOs may engage in income-generating activities, but are subject to laws concerning registration and licensing requirements for activities related to trade, investment, or any profit-making activities. Income from grants, donations, and membership fees are not subject to tax. CSOs generally pay different taxes when buying services and goods.

CSOs working on service delivery and relief activities may be exempt from some forms of taxes, such as customs duties on imported items. Similarly, CSOs working with the financial support of international organizations like USAID may also be exempt from value-added taxes (VAT) due to agreements between the USA and Ethiopian government. The Income Tax Proclamation considers donations to CSOs from business organizations or individuals to be non-deductible expenses, and provides limits on expenses for administrative and core business of CSOs. Accordingly, no charity or society can allocate less than *70 percent* of the expenses in the budget year for the implementation of its purposes, and cannot exceed 30 percent for its administrative activities (see articles 2 (14) and 89 (1) of the CSP).

## CHAPTER THREE: Data Analysis and Discussion

### 3.1. Introduction

In this chapter, data gathered through questionnaires and interview are presented and discussed. In the same chapter, the result of the research is analyzed in light of different literatures, particularly the five legal barriers to civil society and governments' justifications for such barriers.

The chapter is divided in into five sections. The first and second sections discuss and analyze the data gathered through questionnaires and interview. These sections also discuss and analyze the impact of the legislation on development and effectiveness of CSOs in general and advocacy-based organizations in particular, respectively. Section three identifies and discusses the most restrictive provisions of the law and the major legal barriers that they have created. Section four identifies and discusses both the official and underlying justifications of the law. The last section discusses the implication of such a restrictive law for protection and promotion of human rights and democracy as well as development process of the country.

### 3.2. The Impact of the Law on the Growth and Effectiveness of Civil Society Organizations

This section discusses and analyzes the data gathered through questionnaires and interview, thereby tries to identify and discuss the impacts of the law on those CSOs that are supposed to be governed by

this law. Some of the major direct impacts of the legislation on the CSOs are discussed as follows:

### **Narrowing down the scope of civil society organizations engagement**

The law defines any Ethiopian CSO that receives more than 10 percent of its funding from foreign sources as “foreign” and then bars all “foreign” CSOs from working on activities related to human rights and governance. As can be seen from table1 below, 77 percent of those formally registered Ethiopian CSOs have become “foreign” (Ethiopian Residents Charities/Societies). As a result, most of CSOs operating in Ethiopia (Foreign Charities as a whole and 94 percent of formal Ethiopian CSOs) have been excluded from engaging in the promotion of good governance, democracy, human rights and peace.

What this makes clear is that the number of CSOs, which were previously working on activities related to human rights and governance issues, has dwindled; and all those CSOs, which adopted rights-based approach to development, have terminated governance component of their intervention (abandoned software aspect of development) and focused on provision of services and relief aids. Hence, the scope of the majority of CSOs engagement has been limited to service provision, aid and development activities only.

### **Hampering the growth and development of the sector**

The law requires all civil society organizations that fall within the federal jurisdiction, CSOs that are working in more than one Regional States and

Ethiopian Residents Charities even if working in one Regional State—to be re-registered. As indicated in table1, the total number of CSOs re-registered within the deadline is 1,552, which is only 39 percent of about 4000 CSOs that were expected to be re-registered as per the law. Different categories of respondents, including the Charities and Societies (CSA) have given varied explanation for such big disparity. These include:

- i. Some CSOs have ceased their operation altogether ( refer table 5);
- ii. Some CSOs have been making some adjustment in their objectives and strategies to dove-tail with the requirements of the law and then to get registered; and
- iii. Some CSOs have been denied their license by the Agency (see table 5 & 6).

Since the above explanations are hindrances to the growth of the sector in one way or another, it is safe to say that the law is hampering the growth of the sector.

**Table 1:** The total number of CSOs registered with the CSA by category

After reform					Before reform
Registered organizations	category				
	Ethiopian Residents	Ethiopian charities	Foreign charities	Total	
Re-registered organizations as per the deadline	1197	76	279	1552	
Newly registered organizations	34	3	4	41	
Total	1231	79	283	1593	4000+
%	77%	5%	18%	100%	

Source: CSA, 2010

## Reducing the effectiveness of civil society organizations intervention in development

These days, there has been a wide and growing consensus among development actors, scholars and politicians around the globe on the existence of close link between development and governance (Dessaiegn et al, 2008:8). It is also recognized by the government of Ethiopian as it is reflected in various policy documents including the PASDEP (Emyshita, 2008:82; Dessaiegn et al, 2008:9). However, unlike other policy documents, this proclamation tries to make distinction between development and governance issues.

The law allows those CSOs defined as “foreign” to engage in poverty reduction and other development interventions, but prohibits them from engaging in governance and human rights issues (CSP,2009:9). As can be seen from table 1 above, out of the total number of CSOs registered during the time of this survey, 1,514 (95 percent) were registered as “foreign” (Ethiopian Residents and foreign charities). Thereby all this significant number of CSOs have terminated the governance component of their intervention.

Since development and governance issues are highly interrelated and interdependent, thinking about the effectiveness of one without another may be naïve. Provision of services and relief aids can not eradicate poverty unless the problem of governance is dealt with, which is one of the major problems and development obstacles of countries like Ethiopia. Though Ethiopian Residents and Foreign Charities—which constitute 95 percent of the total CSOs operating in the country—have relatively better

resources and experience and capacity, they can not make effective and sustainable development intervention unless they are allowed to engage in governance related activities.

### **3.3. The Impacts of the Law on Advocacy-Based Organizations**

The history of non-governmental organizations dates back for not more than four decades in Ethiopia. Initially they were mainly engaged in relief works and service delivery. It is only in the last decade or so that CSOs started to involve in rights issues (Sisay, 2010:21). Though, currently this trend has been seemingly reversed. The number of advocacy organizations was few in Ethiopia even in pre-reform period. According to Dessalegn et al (2008:11) there were only about 75 CSOs, which were actively engaged in rights and governance related issues, in the capital city (Addis Ababa).

Since these organizations have been divided into two different categories (Ethiopian Residents and Ethiopian Charities) based on their sources of income, taking a close look at the impact of the law on each category can help us understand the comprehensive impact of the law on those CSOs that were/have been engaged in advocacy activities. The impact of the law on each category has been discussed as follows:

#### **3.3.1. Impacts of the Law on the Ethiopian Residents Charities/ Societies**

According to the definition of the law, Ethiopian Residents Charities are charities that can solicit any amount of their funding from foreign sources and hence can not involve in activities related to governance and human

rights (CSP, 2009:2). This implies that these organizations are not Ethiopians though they are formed under Ethiopian laws, established and wholly controlled by Ethiopians for the mere reasons that they receive more 10 percent of their income from external sources.

These organizations were in dilemma until the commencement of the implementation of the law, either they had to opt to continue raising full or substantial part of their income from foreign sources and hence forfeit their core objectives they were primarily established for, by being re-registered as Ethiopian Charities or they had to choose to raise at least 90 percent of their income from domestic sources and hence continue pursuing their core objectives that they were primarily established for, by being re-registered as Ethiopian Charities. This was a situation they were in and forced to make a decision between two evils and it was a hard time for them. Finally, most of them opted to secure their survival than choosing to remain in their former areas of engagement and doing nothing tangible but jeopardizing their very survival.

As shown in table 2 below, out of surveyed Ethiopian CSOs, 56 percent were found to be Ethiopian Charities/Societies; implying the number of organizations that opted to be “foreign” so as to ensure their very survival by receiving at least substantial part of their income from external sources, as they used to do for a decade, by forfeiting their core objectives they were primarily established for. In this way, the majority of Ethiopian CSOs, which were engaged in human rights and governance issues, have been forced to change their areas of engagement.

From the above discussion, it can be easily noted that the law has substantially reduced the number of CSOs that were working on governance and rights issues. It has also denied the majority of Ethiopian CSOs, which were established and controlled by Ethiopians, the right to participate in the affairs of their country.

**Table 2:** Ethiopian Civil Society Organizations by category

Name	category	
	Ethiopian Residents	Ethiopian Charities
APAP	✓	
ANPPCAN	✓	
EBA		✓
EVIA		✓
EWLA		✓
HRCO		✓
HUNDEE	✓	
OSJE	✓	
RCCHE	✓	
Total	5	4
Percent	56%	44%

*Source:* Organization Survey, 2010

Those CSOs, which have changed their areas of engagement with the hope of receiving at least substantial part of their funding from abroad, do not seem successful in securing sufficient funding as they used to do before, and hence they are currently facing relative financial constraint. 100 percent of respondents reported that their organizations' existing sources of funding are not reliable; and 77 percent of the respondents stated that their organizations are not presently getting sufficient funding (refer table 3, page 67). According to the respondents some of their organizations'

former donors are not presently willing to fund their new projects and hence they have no good relationship with such donors; they said looking for other donors on the basis of specific project is time taking if, at all, they are there. From the above discussion, it is logical to say these organizations can not be effective in their present areas of intervention given the financial shortage they are currently experiencing, lack of experience in their current area of engagement, and their inability to address other development related issues such as governance.

### **3.3.2. The Impacts of the Law on the Ethiopian Charities/ Societies**

According to the definition of the law, Ethiopian Charities are charities that can not receive more than 10 percent of their funding from foreign sources and hence can engage in activities related to human rights and governance (CSP, 2009:1). From table 2, out of the surveyed Ethiopian CSOs only 44 percent opted to remain Ethiopian Charities/ Societies so as to continue pursuing their core objectives they were primarily established for. From this one can notice how the number of CSOs, which were engaged in advocacy activities before the reform, has dwindled in the post-reform period. Though, they have a privilege to partake in human rights and governance issues, as shown in table 1 above, their number is insignificant as compared to pre-reform period and other categories of the sector.

The main reason for the small size of Ethiopian Charities, according to 100 percent of the respondents, is article 2 (3) of the law- which defines any Ethiopian CSO that receives more than 10 percent of its funding from foreign sources as “ foreign”(see table 5 &6). Recognizing the difficulty of

raising at least 90 percent of their funding from local sources—given the current financial capacity of Ethiopian citizens and lack of culture of voluntarism and practice of funding formal CSOs among the public—the majority of Ethiopian CSOs (56 percent) have become Ethiopian Residents charities (refer table 1 & 2). Here, the basic question that should be raised is that, could those few CSOs achieve their objectives or at least survive?

Ethiopian CSOs, which opted to become Ethiopian charities and hence are expected to raise at least 90 percent of their funding from local sources, are currently facing serious financial constraint. According to 80 percent of the respondents, their organizations are not currently getting sufficient fund to finance even their ongoing projects. 100 percent of the respondents mentioned that their organizations' current sources of funding are not reliable; 75 percent of the respondents said that the number of their organizations' branch offices and employees has significantly dwindled; and 100 percent of the respondents stated that the size of their organizations' budget has profoundly declined as compared to the previous years. Some of the respondents indicated that due to the current financial constraint, some of their organizations' ongoing projects have been discontinued (refer table 3 below).

From the above discussion, one can understand how these organizations are financially constrained. This, in turn, indicates how raising 90 percent of their funding from domestic sources, at least in short-term, is impossible, given the current financial capacity of Ethiopian citizens and lack of culture of voluntarism and practice of funding formal CSOs among the public.

**Table 3:** Financial state of individual CSOs in the post-reform period

Issues	Respondents		
	Response	Freq.	%
What percentage of your organization's budget is secured from domestic sources?	None	2	22
	<10	3	33
	=90	4	44
	Total	9	100
Do you think your organization's source of fund is reliable?	Yes	1	11
	No	8	88
	Total	9	100
Is your organization currently getting sufficient fund to carry out its mission?	Yes	2	22
	No	7	77
	Total	9	100
What has been happening to your organization's employees, both in terms of size and salary?	No change	4	44
	Dwindled	5	55
	Total	9	99
What has been happening to your organization's budget as compared to previous years?	Same	3	33
	Reduced	6	66
	Total	9	100
Do you think your organization can sustain with current source of fund?	Yes	4	44
	No	4	44
	Not sure	1	11
	Total	9	100
What has been happening to your organization's ongoing projects?	Some discontinued	6	66
	Being carried out	3	33
	Total	9	100

*Source:* Organization Survey, 2010

As it can be seen from table 4 below, the status of 75 percent of Ethiopian charities/ societies has declined from national to local, implying a considerable reduction in both the number of branch offices and employees, which is solely caused by financial constraint that they are

presently experiencing. For instance, following the implementation of the law, Human Right Council (HRCO) has closed 9 of its 12 branch offices that were operating in Regional States and reduced the number of its workers by 90 percent during the time of this survey. Ethiopian Women Lawyers Association (EWLA) and Action-aid are some of the organizations that engaged in lay-offs and closing branch Offices (Debebe, 2010: 30).

What this makes clear is that many of the Ethiopian CSOs are shrinking in number, status and scale of operation mainly due to lack of funding. Given insignificant number of Ethiopian charities and serious financial constraint that they are currently facing, they can not be effective in pursuing their objectives. So that it is reasonable to say that the law has profound adverse impact on both the size, effectiveness, scale of operation and development of CSOs that have opted to remain Ethiopian Charities/societies.

**Table 4:** Status of individual CSOs in the pre and post-reform periods

Name	Status				Category	
	Previous		Current		Ethiopian Residents	Ethiopian Charities
	Local	National	Local	National		
APAP		✓	✓		✓	
ANPPCAN		✓		✓	✓	
EBA		✓		✓		✓
EVIA		✓		✓		✓
EWLA		✓	✓			✓
HRCO		✓	✓			✓
HUNDEE	✓		✓		✓	
OSJE	✓		✓		✓	
RCCHE		✓		✓	✓	
Total	2	7	5	4	5	4

✓

Source: Organization Survey, 2010

Now, from the above two consecutive discussions, one can have a full picture of the impact of the law on those CSOs that were/have been engaged in governance and rights issues. Of total number of Ethiopian CSOs that were working on right and governance, the majority have changed their area of engagement, so that have no chance of involving in such activities. And the rest few organizations, which opted to remain in their former area of engagement, are not as effective as before mainly due to serious financial constraint they are currently facing. This means that currently there are no independent organizations that are actively engaged in those issues of rights and governance in the country. In an interview with the BBC's Zeinab Badawi on Hard Talk, on 2 April 2009, Prime Minister Meles Zenawi responded to a question that the NGO law undermined the independence of civil society by saying:

*It does not undermine the independence of Ethiopian civil society organizations. What it undermines is the funding of civil society organizations in Ethiopia who are involved in political activities from foreign sources. And I believe the practice in all developed countries is that political activities are funded from local sources.’(BBC, 2009).*

He went on to say that *only those NGOs involved in political activities will be affected*. He said, ‘all those NGOs who are involved in economic, social and environmental developmental activities are not required to source their money locally’. But these areas are political by nature—indirectly these NGOs are affected by working in these areas. Then, who is in charge of these issues?

### **3.4. The Most Restrictive Provisions and Major Legal Barriers of the Law**

#### **3.4.1. The Most Restrictive Provisions of the Law**

From the previous discussions, we can clearly learn that the most restrictive provisions of the law, which posed a great challenge on almost all Ethiopian CSOs, are the related articles, that is, article 2 (3) – that defines any CSO that receives more than 10 percent of its funding from external sources as “foreign” and article 14 (5)–that prohibits any foreign CSO from partaking in human rights and governance related activities (CSP, 2009:1-2).

Sample respondents from the two groups, consortiums and individual Ethiopian CSOs, were asked about the effects of the law on advocacy organizations and as to which provision/s of the law has/have posed a

serious challenge on the movement of advocacy organizations, and the results are presented in table 5 and 6 respectively.

Almost all respondents from the two groups reported that article 2 (3) and 14 (5) that restricts funding sources and working on advocacy activities, respectively, are provisions of the proclamation that affect the operation of CSOs, which have been engaged in human rights and governance issues, most (see table 5 & 6). All respondents, from both groups, have agreed on the adverse impact of the law on the size and effectiveness of advocacy-based organizations. The logical result of the above discussion is that article 2 (3) and 14 (5) are the most restrictive provisions of the proclamation.

In addition to, the aforementioned two most restrictive provisions, article 105 (2) that denies access to justice and article 90 (1) that specifies the amount of administrative and project costs, are identified by some of the respondents as articles that affect the operation of advocacy-based organizations (See table 5 & 6). Article 105 (2) of the proclamation that denies the right of CSOs established in the form of Ethiopian Residents or Foreign Charities to have access to judicial recourse or appeal of administrative decisions, which is against the Constitution and the ICCPR to which Ethiopia is a party.

**Table 5:** The effect of the law on member organizations in the eyes of the consortiums

Issues	Respondents		
	Response	Freq.	%
Are there member organizations that were denied license?	yes	1	20
	No	3	60
	Not sure	1	20
	Total	5	100
Do you think the legislation affect the operation of organizations engaged in advocacy?	Yes	5	100
	No	0	0
	Total	5	100
How could it affect organizations engage in advocacy?	Restricting funding source	1	20
	Restricting working on advocacy	4	80
	Total	5	100
Which provision/s of the legislation do you think affect most the operation of organizations engaged in advocacy?	Art. 14(5)	2	20
	Art. 2(3) (4) & 14(5)	1	20
	Art. 2(3)(4),14(5) & 105(2)	1	40
	Art. 2(3)(4), 14(5) & 90(1)	1	20
	Total	5	100

*Source:* Consortium Survey, 2010

Individual civil society organizations were also asked about the effect of the law on their operation and the intention of the government for adopting such a proclamation. The result of the survey has been presented in table 6 below. The result of this survey is complemented and supplemented by the result of survey secured from consortiums. The results found from the two groups of respondents are virtually the same.

**Table 6:** Effects of the legislation on individual CSOs

Issues	Respondents		
	Response	Freq.	%
Has the legislation affected your organization's operation?	Yes	9	100
	No	0	0
	Total	9	100
Has your organization changed its area of engagement?	Yes	5	55
	No	4	44
	Total	9	100
Which provision/s affects your organization's operation most?	Article 14(5)	3	33
	Art. 2(3) & 14(5)	2	22
	Art. 2(3) & 90(1)	1	11
	Art.14(5) & 90(1)	1	11
	All	2	22
	Total	9	100
What do you think the intention of the government?	Reserved	5	55
	To reduce the challenges from CSOs in areas of human and democratic rights	1	11
	To control peoples' initiative and attack the right to association	1	11
	To decrease foreign intervention	2	22
	Total	9	100

*Source:* Organization, 2010

Bringing about changes in the aforementioned areas is difficult and frustrating task as they are time taking and demand a lot of energy and finance. Hence, there seems no reason for these organizations not to give up in the short-term and take some strategic measures so as to ensure their very survival. Accordingly, the fate of these organizations would be

either to change their area of engagement and resort to foreign funding by sacrificing their core objectives or forfeit their relative independence for financial security or cease their operation altogether. Whether they take one or another of these measures, they are out of the game. Subsequently, it would be difficult to find CSOs that are actively engaged in human rights and governance issues in the country.

### 3.4.2. The Major Types of Legal Barriers of the Law

From previous discussions, one can notice that how article 2 (3) in conjunction with article 14 (5) could effectively hamper the development and effectiveness of independent CSOs, particularly those organizations that were/ have been engaged in human rights and governance issues. The major barriers of the law are derived from those two most restrictive provisions of the proclamation. The law contains three major legal barriers that can easily muzzle CSOs, particularly organizations that are pursuing human rights and governance related issues. These include the following:

- i. ***Barrier to resources:*** As article 2 (3) is a provision that prevents CSOs from securing resources from foreign sources to carry out their activities—a provision that indirectly prohibits foreign funding;
- ii. ***Barriers to operational activity:*** As article 14 (5) is a provision that prohibits legitimate activities. This provision indirectly imposes restriction on those Ethiopian CSOs, which receive substantial part of their funding from foreign sources, not to participate in advocacy activities such as advancement of human rights, women, child and disabled persons' rights, conflict resolution, and the efficiency of

the justice system; which is against the Constitution that guarantees the rights of “everyone” to associate for any lawful “cause or purpose.”; and. The same provision also directly prohibits foreign CSOs from engaging in such designated areas.

- iii. *Barriers to speech and advocacy*: As article 2 (3) when read in conjunction with article 14 (5) poses restrictions against expression of speech mainly in advocacy and policy engagement.

These are the three major legal impediments that are used by the government to undermine and constrain civil society organizations, but organizations pursuing human rights and democracy are unreasonably affected. From this discussion, one can safely say that the law is so repressive that could effectively narrow the space available to CSOs, particularly advocacy-based organizations.

### 3.5. Justifications of the Government

#### 3.5.1 Declared Justifications

The rationale offered for repressive measures vary from country to country depending on the political and country particularities. Ethiopian government has expressed a set of official rationales for the enactment of the CSP in the preamble of the law itself and other relevant documents. For instance, one of such rationale, according to prime minister’s response for the “Task Force” query in the second round discussion, is ‘to put a traffic light or a sign post for at least some grand abuses and deviances’. The other most important purpose is ‘to take administrative

measures against foreign NGOs, who under the disguise of NGOs propagate terrorism and finance, collaborate with terrorists’, said the Premier (Task Force, 2008:2). The other rationales of the law include the following (Debebe, 2004:11; MOJ, 2008:1):

- To ensure that citizens’ right to association enshrined in the constitution of the Federal Democratic Republic of Ethiopia;
- To aid and facilitate the role of Charities and Societies in the overall development of Ethiopian people;
- To provide varieties of measures to be taken against CSOs in case of fault;
- To ensure the accountability, transparency and consistency of CSOs and their objectives to the public;
- To provide legal basis for the relationship between CSOs and sector Administrators, which did not exist before; and
- To determine the amount of money CSOs may spend for administrative purpose and project activities.

But, neither of those restrictive provisions of the law nor the adverse impact that CSOs, particularly advocacy-based organizations, are currently experiencing suggests that the first two of the above-mentioned justifications are genuine. The law rather seems to have the opposite of those two objectives as suggested by its nature and the outcome. Of sample respondent CSOs asked about the intention of government, only 44 percent had a courage to answer the question, of which 22 percent cited one of the above objectives as the intention of the government, that is, guarding the sovereignty of the country; and the rest 22 percent indicated that the intention of the government is to stifle peoples’ initiative.

The government has also alleged that the law is essential for the aforementioned 3 through 6 goals. Though these goals are legitimate, the means used to achieve them are disproportionate as well as unjustifiably harsh and overreaching, more restrictive than necessary to fight CSO, particularly NGO malpractice or poor governance, and are often contrary to the obligations to protect the right to free association required by international conventions that the country has signed, or even by its own constitution. True, some groups have not conducted themselves in transparent ways, and some have been involved in questionable activities; the responses however is disproportionate to the behavior displayed by civil society.

### **3.5.2. Underlying Justifications**

There has been a persistent atmosphere of distrust and suspicion between the CSOs and the government in the country. The government has been highly watchful of its power and too easily interprets the emergence of CSOs, particularly advocacy-based organizations, as challenge to its very legitimacy.

The government has frequently used its registration laws to effectively ban the work of human rights defenders. For example, the Human Rights Council (HRCO), prominent human rights group that participates in civic education, human rights advocacy and monitoring, was denied registration approximately for seven years. HRCO was formed in 1991, but it was not until 1998 when the organization sued the government that its registration was approved (Sisay, 2002:13; Yalemzewd, 2009:4). Similarly, the Ethiopian Free Press Journalists Association, which was formed in 1993,

was denied registration until 2001 when it too filed suit against the government (Sisay, 2002:13; Yalemzewd, 2009:4).

In September 2001, the Ministry of Justice accused EWLA of partaking in activities beyond its mandate when the organization publicly criticized the Ministry for failing to take measures against persons charged with violations of women's rights. EWLA also criticized the Ministry for the absence of an independent court system in Ethiopia. Following these vocal critiques, the Ministry closed EWLA's office and banned its work (Sisay, 2002:12; Yalemzewd, 2009:4-5).

In 2005, the government issued a directive aimed at prohibiting local independent human rights and civic organizations from observing the 2005 elections. Issued only six weeks before the May 15<sup>th</sup> elections, the directive required Ethiopian civil society organizations to produce evidence that election monitoring was considered part of their mission on the day they were formed and registered. On 20 April 2005, the Organization for Social Justice in Ethiopia (OSJE) filed suit against the National Election Board of Ethiopia (NEBE) on behalf of 35 local CSOs before the Federal High Court. The suit challenged the legality of the directive, alleging it violated the Ethiopian Constitution and several domestic laws. The court ruled in favor of the CSOs on 3 May 2005 (Emyshitaw, 2008:84; Yalemzewd et al, 2009:5).

The government's hostility toward CSOs extends to foreign NGOs and is exacerbated by their foreign status. The Ethiopian Ministry of Foreign Affairs ("MOFA") has stated that the primary objective of foreign NGOs that come to work in Ethiopia is "the promotion of the agenda of their

country.” According to the MOFA, foreign NGOs work at their countries’ bidding to provide “every kind of information ranging from political to economic and others.” And only by default do foreign NGOs provide aid to Ethiopia, which they “will sometimes try to use . . . for political influence.” (Yalemzewd et al, 2009:5). According to the government’s fearful and skeptical view, foreign NGOs may occasionally provide assistance to Ethiopians in need, but their true agenda is political manipulation. As indicated above, government claims that democracy assistance is designed to promote foreign interests and hence is unacceptable and illegitimate form of interference in its internal affairs and a violation of national sovereignty. It is this conception of democracy assistance that made the government to ban foreign funding.

The aforementioned few major and noticeable examples indicate how the pre-2005 election period was full of distrust and the government has seen the activities of CSOs, particularly those advocacy organizations, as potential threats to state power. The most revealing indicator underlying the enactment of the CSP is the generally skeptical attitude adopted by the state regarding the role and participation of CSOs in the national political space. The government displays a hostile attitude towards-rights watchdogs and human rights organizations, which it brands as funnels for civil and political discontent and mouthpieces of the opposition. In the context of political party debates and rights-based CSO activities during the May 2005 election, the government grew more hostile toward CSOs.

Some CSOs have also been active in monitoring and exposing human rights violations. Moreover, the government has shown a tendency to consider the advocacy-based NGOs as petty fault-finders who capitalize

on the weaknesses and mistakes of the government to promote their own interests. In line with this perception, the government holds that the main cause for such –belligerence on the part of the CSOs is the financial support received from abroad.

The government also accuses some of the human rights CSOs and their leaders of abandoning their impartiality and aligning themselves with the opposition. Consequently, the government resorts to vindictive measures toward the CSO leaders, whom it has labeled as–angry elites in league with opposition leaders. The restrictive legislation also seems to be a manifestation of these vindictive measures. The controversy that followed the election made the CSOs, particularly advocacy organizations, to be the target of government wrath. According to, Brown and Kalegaokar (1999:7) this mostly happens when only CSOs become central players in social, political and economic transformations of a country.

There is no other civil society law in the world that requires that foreign funds stay below a limited percentage of CSO’s total funding except that of Zimbabwe, which is, of course, a draft bill that finally remain unendorsed by the president because of intensive international critics and condemnation it encountered, although the national parliament passed it (Yalemzewd, 2009:10). Now the government has blocked the source of foreign funding that almost 99 percent of advocacy–based organizations made use of to carry out their activities. By doing so, those CSOs, which were/ have been engaged in human rights and governance issues, have been almost deterred; this of course has no intrinsic relation with constitutional right of engaging in such activities.

Civil society proclamation is not the only law that affects CSOs in Ethiopia; to strengthen the impact of the law, government has added various restrictions. Illustrative of these laws are Tax law, terrorism Bill, Media and Freedom of Information. All these often establish significant obstacles to the operation and free movement of CSOs, particularly advocacy-based organizations. Given the repressive nature of the law and other aforementioned additional obstacles, the vibrancy of the sector, particularly those organizations engaged in governance and human rights issues, is unthinkable.

As mentioned earlier, all these appear to be the result of shift in development paradigm/ ideology of government that emphasizes on the role of government in development endeavor. The concept of Developmental state that focuses on development and seeks to secure development by all means, gives only marginal attention for the protection and promotion of human rights and democracy and muzzles any body or group that it regards as an obstacle to development and threat to its legitimacy, mostly by adopting various restrictive laws. Pasha (2004:8) cites change in development paradigm as one of the impediments to civil society development in developing world. He indicated, in his writing, that the swinging of development paradigm between the market and government for last many decades, though there are failures in both sectors, neglecting the role of the third sector. In the same logic, the role of Ethiopian civil society organizations, particularly advocacy-based organizations, is neglected as the ideology of Developmental Democracy gain dominance.

So, who is in charge of those activities that are related to human rights violations and corruption in governance in Ethiopia? Now in Ethiopian the role of those human rights defenders looks come to an end. Who would be in charge of those activities? Are they the sole domain of government? Could government alone discharge this important responsibility? Who is the major violator of human rights in many countries? Where are corruption, abuse and mismanagement of public resources prevalent? Aren't they in government institutions? Isn't another organized body that serves as watchdog over the actions and performance of government necessary? Who can expose mean deeds of those individuals who have money and/or power (the mighty) and able to stifle any movement by individual victim to redress the situation?

In this regard the stance of government seems that these activities are the domain of the government. In relation to this, it looks worthwhile noting the statement made by the Chief of Cabinet for Prime Minister Berhanu Adelo in response to the criticism of the law, "protecting the rights of citizens is the role of the government and...not the role of the CSOs." Yoseph Mulugeta, the then Director of HRCO, pointed out in response that "in many countries the government is the biggest violator of human rights and thus there needs to be independent watchers" (Yalemzewd et al, 2009:5).

### 3.6. The Implication of the Law for Democratization and Development Process, and Realization of Human Rights in the Country

The above-identified adverse impacts of the law on the engagement and development of CSOs will have far-reaching implication for the democratization and development endeavor of the country. Some of the major implications of the law for governance and development process of the country include:

- Most of CSOs are not able to continue their intervention by mobilizing and empowering different sections of the society to engage in governance and human rights issues and this will result in reduced participation of citizens. This, in turn, leads to less pluralism, democracy and respect for human rights in the country.
- Most of CSOs have been prohibited from participating in the formulation of policies, laws and programs related to governance and human rights. This will minimize policy dialogue among public, which will, in turn, affect the formulation of appropriate and responsive policies.
- Most CSOs that have been engaged in promoting development or poverty alleviation could not be successful in addressing those causes of poverty that are related to governance or policy frameworks. This will deter CSOs from making effective and sustainable contribution to the development process of the country. As a result, many of the poor and disadvantaged may not get the support and services that they were provided with before.

- The enforcement of the law has led to a decrease in the size and scope of engagement of the civil society sector. This will have impact on the country's development, since it will result in loss of significant amount of foreign currency flowing to the country; it causes loss of significant number of jobs as well.

### 3.7. Conclusion

The law appears to have some aspects that could be considered as positive developments for the formation and engagement of civil society organizations at least on paper. For instance, the law recognizes several types of CSOs and provides different formation and regulatory frameworks for each; allows the establishment of consortiums of charities or societies; recognizes the establishment of autonomous Agency to undertake the registration and supervision charities and societies; allows charities/ societies to engage in income generating activities; and grants space for the participation of two CSO's representatives in the board, though nominated by the government.

However, the law has more aspects that have serious negative impacts on the development and engagement of CSOs, particularly on the work of advocacy-based organizations. For instance, since the enactment and subsequent implementation of the law, the total number of CSOs has dwindled at least by half; the majority of CSOs that were engaged in activities related to human rights and governance have changed their area of engagement and yet are not as effective as before due to relative lack of funding and experience in their current areas of engagement, and inability to undertake activities related to another aspect of development

like governance; CSOs that opted to remain undertake their former activities are very few in number and their survival is highly threatened due to serious financial constraints they are facing.

Therefore, it is sensible to conclude that the law has adverse impacts on the effectiveness, development and engagement of the CSOs, particularly those organizations that have been engaged in protection and promotion of human rights and democracy.

There no disputes that regulation is necessary and is international practice. True, some groups have not conducted themselves in transparent ways, and some have been involved in questionable activities; the responses however is disproportionate to the behavior displayed by civil society.

The government has also alleged that the law is essential for countering terrorism, curbing CSO abuse, and national security. Though these goals are legitimate, the means used to achieve them are disproportionate as well as unjustifiably harsh and overreaching, more restrictive than necessary to fight CSO, particularly CSO malpractice or poor governance, and are often contrary to the obligations to protect the right to free association required by international conventions that the country has signed, or even by its own constitution.

## CHAPTER FOUR: Conclusion and Recommendation

### 4.1. Summary of the Findings

The following points can be considered as the findings of this research work:

- Most of Ethiopian CSOs, which were previously engaged in human rights and governance issues, abandoned their core activities they were primarily established for; accordingly, their area of engagement is limited mainly to service provision, and relief aid, and development;
- Most of CSOs, which were previously adopted rights-based approach to development including all foreign charities, terminated the governance component of their intervention; thereby their effectiveness of their intervention has reduced;
- The total number of organizations that are currently operational in Ethiopia is only about half of what was before the reform; implying a substantial reduction in the size of the sector, particularly that of advocacy-based organizations;
- Ethiopian charities/societies, which opted to undertake their former activities they were primarily established for, are facing a serious financial constraint; accordingly, their effectiveness and development has substantially reduced;
- Some of Ethiopian charities/ societies have closed their branch offices and significantly reduced the number of their employees mainly due to lack financial constraint; thereby their status

dwindled from national to local and their development is highly limited;

- The Charities and Societies Agency has shut down many CSOs and denied the licenses of some CSOs operating both in the regional states and the capital city; thereby caused a reduction in the size of the sector;
- The money of some CSOs- that was in their bank account before the implementation of the law-has been blocked by the Agency following their re-registration as Ethiopian charities/societies;
- Some of the on-going projects of some Ethiopian charities/societies have been suspended mainly due to lack of funding, and some projects Ethiopian residents have been ceased altogether due to financial problems and others being beyond the current mandate of the organizations;
- Some of the former donors, of those CSOs that have changed their areas of engagement, are not willing to continue funding some of the projects mainly due to change in their area of engagement; and currently funding is mostly secured on the basis of specific project; and
- Even those CSOs, which have changed their area of engagement for financial security and terminated governance component of their intervention, are not currently securing as sufficient funding as before due to change in their area of engagement.

## 4.2. Conclusion

As we have seen from the previous discussions and analysis, the total number of CSOs has significantly declined as compared to pre-reform period; most of Ethiopian CSOs have become “foreign” (Ethiopian Residents) and hence can not engage in activities related to governance and human rights. All those significant number of CSOs, which adopted right-based approach to development, terminated governance component of their interventions. Those few Ethiopian CSOs that opted to undertake their former activities they primarily established for, (Ethiopian Charities) have been facing serious financial constraint. Accordingly, they are not currently pursuing their objectives as effectively as pre-reform period. Those Ethiopian CSOs, which were previously working on issues related to human rights and governance, have been dwindled both in size and effectiveness.

All the above effects are mainly the outcome of two related provisions of the legislation that effectively muzzle CSOs, particularly advocacy-based organizations, and hence they are the most restrictive provisions of the law. These include the following:

- i. Article 2 (3) of the proclamation that requires that foreign funds stay below a limited percentage of CSO’s total funding (10 percent); and
- ii. Article 14 (5) of the law that directly prevents those organizations that receive more than ten percent of their funding from foreign sources.

The three major types of legal barriers, which have emanated from the above-mentioned restrictive provisions of the proclamation, have been undermining the operation of those CSOs, particularly organizations that are involved in human rights and governance issues. The three legal barriers are barriers to resources, barriers to operational activity and barriers to speech and advocacy.

Therefore, it is safe to conclude that the law has adverse impact on engagement, growth and effectiveness of CSOs, particularly those organizations that opted to remain in their former area of engagement (governance and human rights issues). What this makes clear is that the law is repressive. Accordingly, it is not up to the international standards and national laws; however, the current global and local contexts have backed its perpetuation.

#### **4.3. Recommendation**

Based on the findings of the research, the writer of this research dare to urge the following steps to be taken as soon as possible:

- i. The two most restrictive provisions of the proclamation that are causing a serious damage- article 2 (3) that defines any Ethiopia CSO that receives more than 10 percent its income from foreign sources as “foreign” when read in conjunction with article 14 (5) that forbids any foreign CSOs from engaging in governance and human rights related activities-should be repealed;
- ii. Those legitimate security concerns of the government be handled with other less restrictive but more effective mechanisms, without

forfeiting the development goals of the country. Maintaining such a restrictive law might in itself be another source of instability;

- iii. Article 105 (2) that denies those CSOs, founded and controlled by Ethiopians, the right to appeal to court should be repealed and all Ethiopian CSOs, regardless of their sources of finance, be allowed to appeal to court in case of any undesirable administrative decision; and
- iv. Article 90 (1) that specifies/fixes the amount of administrative and project costs should be amended in a way that the administrative costs can cover all administrative expenses, for instance, by raising it to some more reasonable amount.

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## Appendices

### Appendix1: Questionnaire1

A questionnaire to be filled out by Advocacy-Based civil society organizations

Dear respondent,

The aim of this study is to collect data from civil society organizations concerning the post-legal framework situation of civil society organizations operating in Ethiopia. In order to meet the goal of this study, it is imperative to gather and analyze reliable data. Therefore, I humbly request your esteemed office to answer all questions responsibly.

I thank you very much in advance for filling this questionnaire, sacrificing your precious time to me.

Notice:

I humbly request all respondents to send back the completed questionnaire via the same media.

22 April 2010

**Instruction:**

Please answer the following questions completely. Try to be as clear and precise as possible in your response. You can use extra paper if needed.

- A. Your organization's current organizations status (✓)
  - International     national     local     others, please specify.....
- B. Your organization's status before the legal reform (✓)
  - International     national     local     others, please specify.....
- C. Your organization is established by (✓)
  - Ethiopians     Ethiopian Residents     Foreigners
  - Others, please specify.....
- D. Has your organization been re-registered?
- E. If not, why?
- F. If your organization has not been registered, what are you planning to do for the future and why you opted to do so?
- G. How is your organizations relationship with your donors?
- H. How is your organization's relationship with beneficiaries/ your clients?
- I. How is your current relationship with authorities at different levels of government?
- J. What percentage of your organization's budget is secured from domestic sources?
- K. Do you think your organization's current source of funding is reliable?  
(✓)  yes or  no
- L. If no, why?

- M. Is your organization currently getting sufficient funding to carry out its mission? (✓)  yes or  no
- N. If no, why?
- O. Has your organization changed its former area of engagement? (✓)  yes or  no
- P. If yes, what was your organization's previous area of engagement?
- Q. What is your organization's current area of engagement?
- R. What do think the effect of changing your organization's former area of engagement would be on both the organization and the country as whole?
- S. Has your organization changed its former name? (✓)  yes or  no
- T. If yes, what do you think the effect of changing your organization's previous name would be on the organization?
- U. What has been happening to your organization's employees (both in terms of size and salary)?
- V. What has been happening to your organization's budget as compared to the previous years?
- W. What has been happening to your organization's ongoing projects?
- X. What are planning for the future given the current legal environment of civil society organizations?
- Y. Have you cancelled and/or transferred any of your projects to other countries? (✓)  yes or  no
- Z. If yes, how many are they and why?
- A2. What has been happening to your organization's annual plan in terms of budget, manpower, number of new projects and area of coverage?
- B2. Do you think your organization can sustain with current source of Funding? (✓)  yes or  no
- C2. If no, what do you think the solution would be?

D2. Is your organization as active as it was before the reform? (✓)  yes  
or  no

E2. If no, why?

F2. Has the new law affected your organization's operation? (✓)  yes or  
 no

G2. If yes, how?

H2. What do you think the intention/ motivation of the law is?

I2. How does the government perceive your organization's mission?

J2. Is there any change your organization has made so as to adapt the  
current legal environment? (✓)  yes or  no

K2. If yes, what are those changes?

L2. What other challenges your organization has been facing since the  
enactment of the law?

M2. Which provision/s of the law affect/s your organization's operation  
most?

N2. Any comment on the law?

## Appendix2: Questionnaire2

A questionnaire to be filled out by Network civil society organizations

Dear respondent,

The aim of this study is to collect data from civil society organizations concerning the post-legal framework situation of civil society organizations operating in Ethiopia. In order to meet the goal of this study, it is imperative to gather and analyze reliable data. Therefore, I humbly request your esteemed office to answer all questions responsibly.

I thank you very much in advance for filling this questionnaire, sacrificing your precious time to me.

Notice:

I humbly request all respondents to send back the completed questionnaire via the same media.

12 April 2010

**Instruction:**

Please answer the following questions completely. Try to be as clear and precise as possible in your response. You can use extra paper if needed.

- A. How many member organizations had your network organization before the issuance of the law?
- B. How many member organizations do your network organization has after the issuance of the law?
- C. Why is such disparity, if any?
- D. Are there any member organizations that ceased their operation?  Yes or  no
- E. If yes, what do you think is the reason?
- F. Are there any member organizations that have moved to other countries?
- G. If yes, how many are they?
- H. Are there member organizations that have been denied operating license?  Yes or  no
- I. If yes, how many are they and why?
- J. How many of your member organizations are Ethiopian Charities; Ethiopian Resident Charities; and how many are foreign Charities?
- K. Is there any organization that raises more than 90 percent of its funding from domestic source?  Yes or  no
- L. If yes, how many are they?
- M. Do you think the new law has influence on the operation of advocacy-based organizations?  Yes or  no
- N. If yes, how?
- O. Which provision/s of the law do you think affecting the operation of

Advocacy-based organizations most and why?

P. Any comment on the law?

### Appendix3: Semi-structures interview questions

#### Interview questions to be answered by the implementing Agency

- A. How many organizations were expected to re-register?
- B. How many organizations were re-registered as per the deadline?
- C. What do you think the reasons for such disparity between the expected and the re-registered would be, if any?
- D. What do you think the fate of those organizations that failed to re-register within the deadline?
- E. How many of those re-registered are registered as Ethiopian Charities/ Societies?
- F. How many of those re-registered are registered as Ethiopian Resident Charities/ Societies?
- G. How many of those re-registered are registered as foreign Charities?
- H. Are there any organizations that have been denied license?
- I. If yes, how many are they and why?
- J. How many organizations were made to change their former names?
- K. How many organizations have changed their area of engagement?
- L. How many new organizations have been registered after the adoption of the law?
- M. How many of those newly registered organizations are Ethiopian Charities/ Societies?
- N. How of those newly registered organizations are Ethiopian Resident Charities/ Societies?
- O. How many of those newly registered organizations are foreign Charities?

