


Civil Society at the Crossroads

Challenges and Prospects in Ethiopia

Edited by

Taye Assefa & Bahru Zewde

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Preface

Civil society has emerged as an important catalyst of change in the development and democratic processes at both the national and international levels. It has begun to play a critical role in the worldwide drive for equity, social justice, human rights, fair trade, debt cancellation, and the elimination of poverty. It has amply demonstrated its enormous potential for fostering democratic values, for engendering innovative approaches, for rallying public opinion and mobilizing grassroots communities. It is in recognition of its capacity to articulate and promote the interests of the weak, the marginalised and the voiceless in our societies that major international organisations, including UN agencies, continue to provide space for the participation of civil society in their development and democracy initiatives. For example, the Cotonou Agreement of June 2000 between the European Union and 77 African, Caribbean and Pacific (ACP) countries clearly recognises civil society and other non-state actors as partners and seeks to promote their contribution to national development efforts. Various international instruments developed both in the African continent and beyond set minimum standards and legal guarantees for the formation and legitimate activities of civil society in pursuit of the welfare of humanity.

In Ethiopia, civil society as we know it today, is a recent phenomenon. The earliest predecessors of civil society organisations (CSOs) in Ethiopia were traditional community-based organisations such as the *iddir*, the *Iqub* and other self-help organisations. During the Imperial period, trade unions and professional associations became the dominant forms of the voluntary sector. The droughts and famines of the 1970s and '80s paved the way for the formation of a number of national Non-governmental Organisations (NGOs) that primarily engaged in emergency relief operations. This was also the period when many international NGOs began to move into the country. The political upheaval following the 1974 revolution also led to the formation of politically-affiliated mass organisations, such as peasant associations, youth associations, women associations and cooperatives. With the fall of the Derg regime in May 1991 and the political liberalization during the Transition Period, the voluntary sector saw a marked transformation in both quality and size. Not only was there a sharp rise in the number of NGOs, both national and international, but there was also a shift from relief operation to development interventions. Furthermore, several CSOs that focus on rights-based advocacy have also appeared on the scene. The recognition of civil and political rights in the 1995 constitution of the Federal Democratic Republic of Ethiopia (FDRE) and the country's ratification of major international human rights instruments have certainly been encouraging factors in the proliferation of CSOs and NGOs in the country.

Nevertheless, despite the liberal orientation of the constitutional framework, State-civil society relations have been uneasy for quite a while, especially following the general election in May 2005. The lack of an official policy towards civil society has remained a cause for uncertainty about government attitude towards civil society. Government's hostile reactions to concerns voiced by civil society organisations regarding its handling of human rights has created the impression that it wants governance to be off limit to independent CSOs. This has been further reinforced by the restrictions imposed on rights-based advocacy in the draft charities and societies proclamation issued in May 2008.

Most of the indigenous civil society organisations currently operating in Ethiopia have a life-span of less than two decades. They are predominantly donor-dependent and mostly engaged in development and service delivery. While many have benefited from the capacity-building initiatives of international NGOs and other donor agencies, their level of organisational development and democratic culture is still at an early stage of growth. Most have a narrow constituency base and many have little or no program for policy engagement. Public forums on civil society issues are not only a recent phenomenon, but also quite few and sporadic. The institutional culture of networking and coalition building is lately beginning to catch on, but needs considerable efforts to take root and serve as a vehicle for social mobilization and a collective voice.

Cognizant of this situation, and prior to the issuance of the May 2008 draft proclamation for charities and societies, the Forum for Social Studies (FSS) launched an EU-funded project to undertake research on the status, environment, opportunities and challenges of civil society in Ethiopia. A follow-up of this research was the launch of a series of public fora to discuss the research findings, share experience and deliberate on the way forward especially in regard to engaging policy-makers in the legislative process for a new civil society bill. The works presented in this volume are thus part of the papers discussed in two such public forums: a national conference in October 2007 and an international conference held in March 2008 in Addis Ababa.

The findings of the studies presented at the jointly organised October 2007 CSO conference under the theme of "Creating an enabling environment for civil society in Ethiopia," amply demonstrate that the tradition of program-based policy engagement and social mobilization by civil society in Ethiopia is still not well developed. Several factors have constrained civil society from making an appreciable impact on the policy-making processes in Ethiopia. The challenges they encounter include: the lack of an enabling legal and policy environment for effective civic engagement, lack of confidence and commitment to engage policy, poor resource base and organizational capacity to scale up their advocacy efforts, a rudimentary culture of transparency and accountability that secures the

respect of the policy-makers, a poor supply of locally generated and relevant information resources to engage in policy analysis or influence policies, inadequate networking and constituency building experience and limited exposure to international best practices in fostering a collective voice and sustaining policy dialogue. Among government actors, there is little indication of appreciation of the benefits of engaging civil society in the policy-making process and genuine partnership for development and democracy.

The second conference organised in March 2008 to coincide with the 10th Anniversary of the Forum for Social Studies was meant to provide the benefit of insights from international best practices for developing a democratic and enabling legal framework. This was necessitated by the then widely circulating information that the drafting of the new legislation was primarily drawing upon the Singapore model for regulating civil society, which became evident once the draft bill was released to the public in May 2008.

All but one of the works in this volume were produced prior to the issuance of the 2008 draft bill and hence without the benefit of knowledge of the restrictive provisions that would be applicable if the bill were to be approved in its current form. However, the paper written by Tsehai Wada, which initially focused on the applicable laws and regulations of the 1960s, had to be rewritten after the conference because of the imminent change of the legal framework with the passage of the new bill. Thus his paper has been made to focus on the most critical elements of the third version of the draft bill.

At the time of going to press, it was announced on the state media that the bill was unanimously approved by the Council of Ministers and referred to the House of Peoples Representatives for approval. The bill prohibits CSOs that receive most of their funding from external sources from engaging in rights-based advocacy and the promotion of conflict resolution, ethnic and religious equality, and the efficiency of the justice system. Indigenous CSOs currently engaged in such activities fear that if the bill is approved with all the restrictive provisions unchanged, it will pose a serious threat to their very survival by undermining their financial viability. Civil society in Ethiopia has now reached the crossroads with respect to its future role in democracy building and sustainable development. The immense financial and legal challenges posed by the bill will test to the utmost its ingenuity, agility and resilience to adapt to a difficult environment and will determine its future prospects.

Taye Assefa

I. The International Context

The Resilience of Civil Society and Its Implications for Policy: The European Experience

*Gerry Salole**

Postcommunism, with its exaggerated emphasis on the power of the economy, politics, law enforcement, justice and the media, can be seen, to some extent, as echoing the communist period. Newly formed mafias have often enough simply replaced the old communist authorities, not uncommonly brandishing nationalist flags and slogans. The patience of people has been enormous, but it is not without limits. Fortunately, the ethos of the anti-communist revolutions of 1989 and 1990, the natural self-organization of civil society and the international context made a return to totalitarianism impossible. Sooner or later, the situation in various postcommunist countries ripened into civic protest against the abuses of power. But, in each country this development took a different path and, therefore, one should not equate developments in Slovakia with those in Serbia or Georgia.

(Havel 2007)

Introduction

In writing this paper I found myself forced to cast my mind back over a thirty year period of working on or in development and civil society institutions and I was somewhat surprised and disconcerted (at least at first) in recognising that this thinking was affording me a unique opportunity to at least begin to tie up some loose ends by articulating some hunches that I had more or less arrived at without ever really acknowledging I had reached this point. It has been a rather interesting journey and I have to confess that, although I have been asked to talk about European civil-society and the policy implications, I have ended up (in a

* Gerry Salole is currently working with the Brussels-based European Foundation Centre (EFC), an international association of foundations and corporate funders dedicated to creating an enabling environment for foundations. His paper was first presented at an international conference organized by FSS on 28th March 2008 in Addis Ababa.

rather free-association way) in actually coming full circle. I was astonished to find that in the specifics of the sub-set of European civil society that I focus on below, there were distinct echoes that reminded me strongly of some half-remembered and half-baked insights from the past. Initially embarrassed, I then felt somehow invigorated by the realization that either I am imposing some inner-pattern on everything I observe and get involved in or, after thirty years, I am finally beginning to clarify something in my own head. I trust, therefore, that you will indulge me in letting me lay it all out and that you will let me know if what I am saying is facile, irrelevant or simply a figment of my own mind.

I would like to start by trying to be straightforward and direct about what I am going to say below: to acknowledge first and foremost my own biases and perspectives which may give me a rather idiosyncratic view of this particular topic, and then to explain why I am so insistent upon the twin notions of home-grown institutions and the remarkable, but paradoxically still underestimated or overlooked, resilience of innovations that humanity throws up. I am, more than ever, convinced that there is need for policy makers to recognise the value of organic scaffolding and civil-society infrastructure to nurture, protect and strengthen this rich repertoire.

A simple rephrasing of the title of this talk would perhaps also make it less ambitious and ambiguous. Rather than ask what the policy implications of resilient home-grown civil society are, perhaps it is better to ask the question: “How can resilient civil society be encouraged and fostered?” I am, I confess, extremely skeptical of a rather simplistic view of civil society that considers it as a static form or model rather than as a constantly changing and evolving coping mechanism – one that defies facile description and torments typologists and classifiers.

In this regard, as I will try to show below, we are very seriously undervaluing the fluidity and evolution that civil society organisations play in contributing constructively and, what is more, in a nuanced, calibrated and holistic way, to the engagement of citizens in everyday political life. Apart from being ubiquitous, the construct “civil society” has become somewhat polisemic, conveying completely opposite and conflicting meanings to different people.

Given that this conference is about making an explicit link between international experiences and their relevance to the Ethiopian context, this presentation is concerned with making two interconnected arguments:

- First, that the efficacy of civil society is ultimately rooted in its being able to operate skillfully, instinctually and meaningfully in a context that it has mastery and ownership of, especially now that we are probably on the cusp of a fresh era for non-governmental actors that is likely to usher

in totally new opportunities, roles and responsibilities for civil society to fill.

- Second, to make the case that what civil society needs most is a special kind of flexible infrastructure, perhaps more exoskeleton than endoskeleton, that permits – nay- facilitates and protects, diversity, separate development, ambiguity, some confusion, some overlap, rapid change, creativity, movement and, above all else, resists ossification and standing still. It is the latter that incubates and encourages vibrant civil society organisations to live up to their potential. This kind of organic scaffolding is the perfect incubation for emergent civil society that policy makers should be encouraged to foster.

So...What Do We Mean by “Civil Society?”

I cannot continue this without a short acknowledgement of how jargon creeps into our everyday usage unnoticed and then becomes an integral part of how things are understood. As Michael Edwards has humorously put it:

According to whose version one prefers, “civil society” means “fundamentally reducing the role of politics in society by expanding free markets and individual liberty” (Cato), or it means the opposite - “the single most viable alternative to the authoritarian state and the tyrannical market” (WSF), or for those more comfortable in the middle ground of politics, it constitutes the missing link in the success of social democracy (central to Third Way thinking and supposedly-compassionate conservatism), the “chicken soup of the social sciences” – you know those books that provide much-needed comfort without that much substance, so if you can’t explain something, put it down to civil society! Adam Seligman, tongue firmly in cheek, calls civil society the “new analytic key that will unlock the mysteries of the social order”, Jeremy Rifkin calls it “our last, best hope”, the UN and the World Bank see it as the key to ‘good governance’ and poverty-reducing growth, and even the real reason for war against Iraq – to kick-start civil society in the Middle East, according to Administration officials in Washington DC. As a new report from the Washington-based Institute for Foreign Policy Analysis puts it, “the US should emphasize civil society development in order to ensure regional stability in central Asia” - forgetting, of course, that citizens groups have been a prime cause of destabilization in every society since the Pharaohs.

(Edwards 2005)

I am, however, a development worker, and I would like, with your indulgence, to concentrate my remarks to an aspect of organic “civil society” that I have long been fascinated by: namely, the magical power and peculiar

invisibility of civil society. It is this specific aspect of civil society institutions, so often ignored and neglected, that encapsulates the potential of people's own inventions in framing the development agenda. Robert Chambers, as so often in this context, puts it best. In his recent angry, reflective and powerful *mea culpa* book, he notes that the language of development has changed since the nineteen seventies and he goes on:

The terms NGO and civil society were not in use. The future was seen to lie primarily with government. And it was to university and government that we looked for innovation in participatory approaches and methods when, in the event, it was people working in NGO's who were to be the main innovators. Yet, what we now call spontaneous participation was there under our noses. The self-help groups were appraising, planning, implementing, monitoring and evaluating all the time, largely inventing their methods for themselves. And we had little idea how they were doing it and no idea of learning from them.

(Chambers 2005)¹

In 1725, the Neapolitan Giambattista Vico, the father of the human sciences, (1668-1744) published *Scienza Nuova*. Vico made a remarkable claim, about what he called civil society, as he put it:

There shines the eternal and never failing light of truth beyond all question: that the world of civil society has certainly been made by men, and that its principles are therefore to be found within the modifications of our own human mind. Whoever reflects upon this cannot but marvel that the philosophers should have bent all their energies to the study of the world of nature, which since God made it, He alone knows: and that they should have neglected the study of the world of nations, or the civil world, since men made it, men could come to know.

(Watson 2005)

This was really the very start of human sciences being given the same sort of objective attention as the physical sciences and it is ironic that, despite Vico's use of the term civil society, this still remains a term that can mean almost anything to anyone and the fact that civil society is constructed by ordinary humans is still often lost on pundits and commentators.

In the context of the anti-Iraq war movement, Kofi Annan has referred to civil society as "the other superpower". With hindsight and given that we are

¹ The speed at which terminology changes is sometimes startling. I was amused when recently rereading my contribution to the Eighth International Conference of Ethiopian Studies (Salole 1989), I did not even have the term Non-Governmental Organisation in my vocabulary at the time, and referred throughout the article to Volags (Voluntary Agencies). I also found it very interesting how similar my description on international voluntary agencies was to the way in which today I would describe foundations.

approaching the fifth anniversary of the war, perhaps we might be less inclined to equate civil society with quite such potency. But there has, nevertheless, been a palpable growth in organised associational life throughout the globe in recent years. Known variously as the “non-profit”, the “voluntary”, “the associations”, the “third”, the “non-governmental organisation”, the “philanthropic” or the “charity” sector, this form of institution includes hospitals, universities, social clubs, professional associations, labor unions, grassroots development organisations, clinics, religious groups, community organisations, issue- and identity-based associations, burial associations, rotating credit associations, professional clubs, sports and fitness clubs, community associations, foundations (stiftung),² homeless shelters, emergency relief organisations, hospices, and orphanages. This list could go on and on. The famous internet encyclopedia, Wikipedia, defines civil society thus: “[it] is composed of the totality of voluntary civic and social organizations and institutions that form the basis of a functioning society as opposed to the force-backed structures of a state (regardless of that state's political system) and commercial institutions”.

Since these institutions are essentially engaged in the delivery of public goods, but are characteristically small, flexible and tuned into citizens thinking, they are known to play a very significant part in the delivery of key services, such as health and education, but are perhaps most potent as socialisers and invariably the instruments that provide normative rules. They are also highly calibrated instruments for measuring the freedoms and rights of individuals as they play a momentous role in holding the state to account. They therefore serve as very good antennae that bring invisible problems to public attention. The irony is, of course, that it is only recently that the media, policy makers and other pundits have started to take serious cognizance of civil society organizations.

My Take on Organic and Successful Civil Society

With respect to my own perspective on civil society, I am particularly interested in that part of civil society which is infinitely adaptive, responds to different contexts and impulses, and encompasses vigorous and thriving

² A word about foundations: foundations are a small but very important part of civil society. They are essentially private organisations with a secure source of income (usually an endowment) that are committed to using private resources for public good. Luc Tayart's (2005) three fundamental characteristics are relevant here: foundations are independent, they have an endowment, and they serve the public good. Although foundations are a very distinct part of civil society, they are also, as I demonstrate below, an integral part of civil society. There are, of course, organisations that call themselves foundations that are not embedded in their own societies, but these are unlikely to be foundations as defined above.

indigenous institutions which, alas, as I have said above, continue to be somewhat invisible or perhaps, to be kind, simply intangible, to development organisations, governments and academics. With the incredible arsenal of jargon and social science gobbledygook that is at their disposal, it is so easy to dismiss, degenerate, put down and otherwise simply undervalue this very significant aspect of civil society. It is good therefore to declare my biases, as I put it many years ago in describing the ubiquitous self-help institutions of *edir* and *meredaja mahber* in Addis Ababa:

Put simply, one cannot go far wrong in development if one is building on institutions which have been dreamed up, erected, modified, maintained, and improved upon and put up with by the societies themselves without outside pressure or assistance.... It is arrogant to ignore these and seek to replace them by interventions or imports which are untested and have not been fashioned in situ. It is a waste of energy to attempt to invent structures which resemble bad copies of what has evolved naturally.

(Salole 1991)

My argument is based, therefore, on the premise that it is in civil society institutions, forged in the anvil of experience and invention, that the most promising examples of effective and resilient indigenous repertoires are to be found. In what follows, I am talking about forms of resilient, albeit chameleon-like, civil society institutions that have been routinely thrown up by ordinary and extraordinary people and have recently become omnipresent on the European and global scene. I am particularly interested in making the case that perhaps the most important lessons for policy are that these ubiquitous and thriving institutions are here to stay, partly because they have always been part of humanity, because humanity has invented them for itself, but that they are very unlikely to stay in an easily classifiable form because they are living organisms that are forever adapting and changing.

The most promising way for policy-makers to react to such entities is to recognise that there are incredible strengths in allowing these resilient institutions to adapt and evolve freely. I am arguing that it is important for policy-makers to resist responding in a situational way as opposed to a contextual way to civil society invention and creativity. Since much of what follows hinges on what may, to some, seem too subtle or academic a distinction, a few words need to be said about the differences between contextual and situational responses.

The dictionary definitions give a sense of the fundamental difference between these two approaches. **Context** is defined as “the parts of a discourse or treatise which precede and follow a special passage and may fix its true meaning; associated surroundings, setting”. **Situation** is defined as “location,

place, a juncture: a critical point in the action of a play or the development of the plot of a novel: office, employment”. A contextual response, therefore, would entail not dealing with a perceived problem piecemeal but would rather impose a serious prerequisite of understanding the environment in which the situation unfolds.

My personal metaphor for civil society in this globalised world is what I call the “civil society hamburger” which illustrates both the simplicity and the infinite adaptability of civil society. The metaphor also stresses the need for infrastructure to “hold together” the various key and “must have” ingredients (NGO’s, Foundations, Governments, and Communities and Government) together with the almost unlimited variations or assortments and accessories (Business, Corporates, Parastatals, voluntary associations, community foundations). The context defines that the key ingredients need to relate to one another according to a response to a specific situation by incorporating different elements as and when needed.

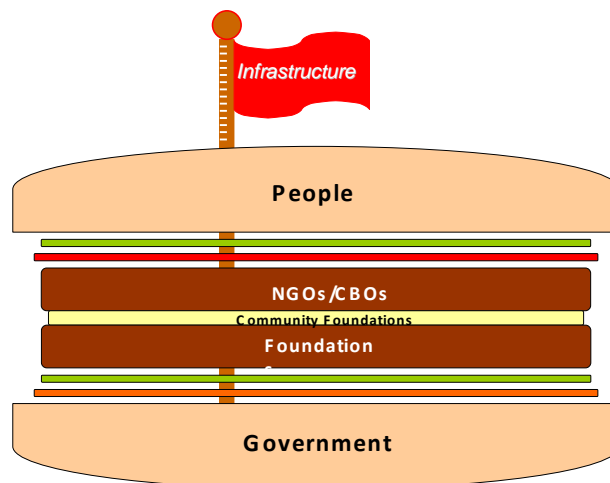


Figure 1: The civil society Hamburger

Why Unapologetically Organic and Shifting Civil Society?

The great Clifford Geertz warned vehemently that “common sense wisdom is shamelessly and unapologetically *ad hoc*. It comes in epigrams, proverbs, *obiter dicta*, jokes, anecdotes, *contes morals* – a clatter of gnomic utterances – not in formal doctrines, axiomised theories, and architectonic dogmas” (Geertz 1983). I dare say that much common sense wisdom is also embedded in civil society organisations. Much of what passes for civil society can easily be seen as a copy or approximation of imported institutions and mechanisms. This is a curious process whereby even local institutions begin to be thought of as actually being borrowed from elsewhere. The hype surrounding some of the “modern” forms is such that journalists, academics and practitioners automatically conclude that these are successful imports rather than successful articulations of something that is already there. In some ways this is analogous to a process of shooting oneself in the foot.

The growth in Europe of foundations has been truly remarkable. When I first started working in the foundation sector it was very normal for European foundations to speak about themselves as if they were relative newcomers on the scene – almost invariably speaking about their United States counterparts in awe. Only more recently has the tendency for European foundations to stress their roots in European historical processes and realities become more apparent. As Piero Gastaldo, Secretary General of Compagnia di San Paolo (CSP), one of Europe’s largest and oldest foundations, recently put it:

Much of what has happened can be described as the unveiling and recasting in different institutional forms of a deep philanthropic structure of Italian society. One could talk, with a greater degree of historical accuracy, about Italian banks being of foundation origin, the novelty being the birth of a for-profit banking system, while foundations – which had always been there, even though lately in the background – returned to the forefront, with a more specific legal profile for their action, and with the possibility of diversifying their portfolios (which they did well). Similar conclusions may be drawn when looking at the texture of mutualistic, cooperative, voluntary and charitable bodies, which are one of the main expressions of the rich social capital that Robert Putnam identified in Northern and Central Italy. As in Putnam’s societal model, these entities (the Tuscan Misericordie, the IPABs, many operating foundations) are very often the final result of centuries-long transformations.

(Gastaldo 2007)³

³ The Compagnia di San Paolo (The Fellowship of St. Paul) was established by a group of seven Turinese citizens, who joined together to work with destitute migrants from the countryside in 1563. Technically, the Compagnia di San Paolo is not one of the eighty-

Models of European Civil Society

I feel somewhat fraudulent in glibly talking about European civil society because this is a very strongly contested territory. First, one should be clear what one means by Europe, as Europe is both a geo-political entity as well as a construct. Moreover, Europe has some very diverse contexts and it would be wrong to give the impression that there is such a thing as a commonly recognisable European civil society. These aspects of the differences in European civil society have been very succinctly described in an online paper by Andrew Crook of CIVICUS (Crook, n.d.). For the purposes of this paper I accept Crook's rough delineation of the problem:

In practice, most informal discussion of civil society typically assumes both that there is 'something' which can be called civil society in virtually all parts (nations) of the world and that the features of civil society vary considerably from place to place. This paper proceeds on that assumption. That is to say, it assumes that the sphere of civil society is present in all European nations but that the characteristics of civil society vary from place to place.

Crook then suggests that there are four characteristics of European civil society which are:

- a belief in, and the practice of, (more or less) democratic forms of government (and of governance more generally);
- an adherence to the rule of law;
- respect for human rights, including those of free communication and free exchange of ideas; and
- the separation of powers.

Crook adds that European "culture" tends to be confessionally Christian, marked by a preference for free markets in economic matters and with a concern for human solidarity; he therefore postulates that this permits a high degree of different permutations within the continent. He also suggests that in Europe one could see civil society as occupying and mediating the space that is not occupied by the state and economic society. He offers five main models of civil society in Europe:

eight foundations of banking origin which are discussed below because it is not a member of ACRI (Associazione di Fondazioni e di Casse di Risparmio), but it is definitely an integral part of the Italian foundation renaissance and is itself one of the biggest foundations in Europe with considerable international remit. I find it refreshing to think of the CSP as having had essentially the same beginnings as an informal voluntary association.

- the Anglo-Saxon – ancient roots and unbroken history, very well established, non-political party, extensive and free co-operation with public authorities;
- the pillarised – tendency to be marginalized in favour of state and church, co-operation with public authorities in practice necessary;
- the ‘Southern’ - tendency towards co-operatives and mutual’s (post-Risorgimento), politicized, some clientism;
- the ‘statist’ – associations seen by the state as contributing to ‘solidarity’ but otherwise still strong;
- traces of historical distrust – emphasis on ‘social’ rather than ‘civil’ dialogue and consultation;

I am not altogether sure what to make of Crook’s five types of civil society in Europe, as I recognise some but not all of these as separate types and I am not so sure that, geopolitically, it is easy to understand where one model begins and another ends. It also tends to see civil society as being rather “fixed” and therefore seems singularly unable to incorporate civil society in Eastern European countries despite the fact that the construct (if I may call it that) is being postulated in Bulgaria.

Perhaps a more useful breakdown of European civil society, at least Western European civil Society, is contained in Luc Tayart’s provocative and elegant tour de force in his book *Foundations: Creating Impact in a Globalised World* (2005). Tayart, partly following Crook, offers five distinct forms of civil society in Europe, forms that are perhaps easier to recognise - not least geopolitically - than Crook’s classifications. For Tayart, there are five distinct types which I offer in the table below. Tayart’s models are much less static than Crook’s but the treatment of civil society in Eastern Europe still essentially begs the question of what is happening in these countries. The implication of the juxtaposition of the western European models, of course, is that the “countries of transition” will converge with Western Europe, that these “types” are pretty exhaustive and that new models will fit into one or another of these types.

East European civil societies, especially since the color revolutions and as suggested by Havel’s comments about Slovakia, Serbia and Georgia, in the quotation at the beginning of this contribution, already seem to have charted distinct trajectories of their own and are beginning to look like another new set of models in their own right.

The Resilience of Civil Society and Its Implications for Policy

Model	Characteristics
<i>Scandinavian</i>	State plays strong role, dominant welfare state but strong volunteering system. Civil Society successfully “pulls” Government into gaps. Good complementarity.
<i>Rhine (includes Belgium, Germany and the Netherlands)</i>	Strong civil society organizations, often receive contracts from state. In sectors such as health and education function much like subcontractors. Paradoxically independent from state but almost 100% publicly financed. Historically organized in ideological pillars, such as socialist, liberal or Christian Democrat. Because of the dependency on government, fiscal and legal climate does not strongly favour donations and gifts.
<i>Latin/Mediterranean</i>	Civil Society faces challenge in being accepted as independent and autonomous. There is a persistence in trying to control organizations and associations politically, either through representations on boards or by legal measures.
<i>Countries in Transition</i>	Still in transition. The overall picture suggests convergence with the rest of EU in terms of competitiveness, trade specialization but civil society is still discovering the space that it can occupy.
<i>Anglo Saxon</i>	Civil Society organizations are seen as counterweight to government and state (check and balance role?). Foster pluralism and “cast themselves” in the role of critic of state and advocates of change.

(Adapted from Tayart 2005)

I am very pleased to note that in a forthcoming publication, MacDonald and Tayart (2008), whilst they have reiterated these models as a starting point, have nevertheless moved our understanding of civil society models significantly forward by making it clearer that these models are, in fact, less distinct and given “types” but are really ways of understanding the legislative backdrop, and that they are, in any case, evolving very rapidly. They take exception to the fact that theorists and practitioners cannot see often past the “Anglo-Saxon” model, which is prevalent in the US and the UK, and they tellingly ask whether the reality of these different models raises the question of “whether the standardised methodological approach”, for example by foundations, especially in the context of newly globalised cross-border, regional and international challenges, is really effective. Instead, they suggest that the sample of European foundations that they highlight in their book are reaching beyond these models in new and interesting ways that reflect their diverse responses to change and – I would add – context!

In following Macdonald and Tayart's very important delineation of the fluidity of these models, and frankly the inadequacy of the heuristic value of the "model" of the "countries of transition" (this had been merely a placeholder to grapple with the situation in Eastern Europe as it has developed recently), I am somewhat less concerned that these "types" are merely a situational snapshot that distorts by accentuating difference in form without taking in the rapidly shifting context of Europe. Demeš and Forbig (2007) have forcibly said this about the aftermath of the "colour" revolutions in Slovakia, Croatia, Serbia, Georgia, and the Ukraine between 1998 and 2004:

Yet, whatever the difficulties encountered on the further road to democracy, one fundamental change has taken place in all five countries and that concerns the role of citizens in society. Citizens discovered the power they can have, and politicians were forced to accept, that citizens have the right to, and are capable of, shaping the democratic process through their imitative and through independent civic organisations. Across these countries, it has become a natural ambition of civil society and the free media to closely monitor the performance of political leaders and public officials, locally and nationally. The continuing role of citizens and their organisations for the political modernization of their countries is the most important legacy of recent electoral breakthroughs to democracy.

(Demeš and Forbig 2007)

This would suggest that we should begin to postulate a "model" – at least for those five countries – that clearly gives civil society an important "watchdog" or government-monitoring role that differs quite considerably from the four western European "models" (Anglo-Saxon, Scandinavian, Latin/Mediterranean and Rhine), where civil society's take on authority is basically more benign and does not see the same need for such fearsome vigilance. This has serious ramifications for the relationship that is likely to obtain between policy-makers and the civil society infrastructure and I am sure that it makes for a very different predictive model for collaboration between the former and the latter.

In this regard, it might be useful to take a slightly more objective view of whether it is healthy to posit civil society and legislative authorities in such stark terms. Consider, for example, the colour revolutions in hindsight. Krastev (2007) makes a very telling critique of some of the rather preposterous claims that have been made about the role of NGOs in these revolutions. He argues that while conventional wisdom still sees NGOs as playing the same role for the color revolutions as the "third estate" played for the French revolution or the Bolshevik party in the 1917 revolution in Russia,

The birth of the NGO-centric interpretation of the color revolutions was a happy accidental encounter between ideological convenience and institutional self-promotion. If one wants to be written about in history textbooks, it is necessary to ensure that one has something to do with writing them. That is what the NGO leaders did. They were not only among the leaders of the color revolutions, but more importantly, they have been the most active interpreters of the events. They were the ones fluent in English and in democracy/speak. The anti-political mood, prevailing in both East and West, has contributed to the success of this NGO-centric interpretation.

Beyond “Models”, Typologies & Classifications

I have a conviction, however, that, in fact, the diversity and mutability of civil society is even more complex than even these models allow for. There are, for instance, sometimes as much difference between civil society organisations within a given country as there is between those across borders, and we are only now beginning to recognise that we are always faced with an increasingly complex and rapidly changing situation where civil society is constantly mutating and changing and adapting to different contexts. It appears to be invisible, but that should not mean that one should underestimate how quickly mutation, change and appropriation begin. Let me illustrate my point with an example that offers a rather interesting “laboratory” for how quickly variation and mutation sets in – the Italian foundations of banking origin, a version of which we encountered above with the Compagnia di San Paolo of Turin. In order to make my point some historical background is necessary.

There are eighty-eight Italian foundations of banking origin, with total assets in excess of 65 billion Euros and an annual expenditure of over of 1.5 billion Euros. These numbers reflect the figures that were available in 2006, and we can assume that these figures will continue growing as the annual growth rate in grants for the past five years has been 5.65% and appears to be accelerating. These foundations were formed in 1990 by fiat when the Italian state privatized state-controlled savings banks. Interestingly, the Italian juridical system has no basic legal definition for a foundation, although pundits define a foundation as a private autonomous non-profit organisation consisting of assets devoted to a purpose defined by the founder. The growth of these foundations has made a significant difference in Italian civil society and has made fundamental changes in the perception of third sector involvement and engagement.

The fact that these foundations – at least in their modern and current format⁴ - were created at more or less the same time, with the same strict and

⁴ I fully recognise, of course, that most of these foundations of banking origin date back at least to the nineteenth century and are very specifically steeped in either the parochial

clear fiscal and legal framework regulating them, as well as comparable if not identical governance structures, could lead one to conclude that these foundations form a very particular sub-set of civil society and one could therefore expect them all to be alike and to operate with little differences between them.

I find it particularly fascinating and telling, however, that, in actual fact, this is far from being the case.⁵ If anything, there are already palpable differences between these close cousins, ranging from the miniscule to the more substantive. Variations can be noted in their governance, decision-making processes, the autonomy of staff, the focus of their interventions, investment policies, differing perspectives on international grant making, levels of operation, as well as ways of working at local levels, to name just a few obvious points. If this level of difference can be so pronounced already, after such a short span of time, and in such a concentrated region, what can one say about mutation, diversification and human creativity when these organisations are born spontaneously and simultaneously in completely different periods and places? And yet, of course, there is still something that is similar and familiar about the different types. It is possible to try to categorise and familiarise oneself with them.

I often say that I have yet to meet two foundations anywhere that are exactly alike, and recently I became aware that I had said the same thing about non-governmental organisations from the same family in the mid-eighties. My impression of rotating credit associations and burial associations in the mid-seventies also echoed this point. I believe that this strong tendency for civil society organisations to mutate, adapt, change and emphasise different things is more than mere coincidence; it is actually one of the defining characteristics of civil society organisations that is completely underestimated or simply overlooked.

For nearly twelve years, the European Foundation Centre (EFC) used a typology system for classifying foundations which was last overhauled substantively in 1995. While it serves as a good basis for understanding foundations in Europe, we will be the first to admit that it does not go far enough in taking into account new forms, variations and exceptions to the rule. Is it even possible to create an all-inclusive typology of foundations in Europe? After many debates, we have had to accept that the typology had become something of

or the municipal charitable and self-help impulse and that they were not created wholesale over the last decade.

⁵ This suspicion has been confirmed by numerous contacts in the Italian foundation sector, most recently during a phone call on 19 March 2008 with Mr Sergio Perruso, the International Relations Manager of ACRI.

an albatross over our heads because we were beginning to create virtually a classification for every variant that we were identifying. Instead, we continue to strive to do our best to capture a situational snapshot of the foundation sector in Europe, through stories, relationships and photos, as it exists at any one point in time, but have abandoned the attempt at developing a typology of European Foundations. It has reached the point that EFC staff has developed a cartoon superhero called “Phil Anthropy” whose first rescue mission was to save someone lost in the typology forest (see below); the cartoon will make its first appearance in the forthcoming edition of *EFFECT*.



Figure 2: An EFC cartoon talking about the typology forest at the EFC (*EFFECT*, vol. 2; forthcoming 2008)

The irony of all this is, of course, that it is still imperative for civil society itself, for governments and legislators to have a precise idea of the statistics of civil society organisations. Nevertheless, possibly one of the most important lessons for policy-makers is surely going to be the fact that civil society mutability is self-evident and is an integral part of the success of such organisations.

Community Foundations in Europe

A community foundation is a philanthropic organisation that combines the charitable gifts of many (both from within and outside the community) to provide leadership and financial leverage in addressing the current and future needs of the community through grant-making or direct project work designed to improve the lives of its citizens. Community foundations are not-for-profit organisations designed to bring an efficiency of scale to multiple donors with multiple interests who are nevertheless agreed to pool resources to benefit a specific area or region. Typically, a community foundation is governed by a Board of Directors or Trustees. The looser term that has been coined, community philanthropy organisations, does not quite meet the criteria of a community foundation. Community foundations are growing rapidly and constitute one of the most dynamic areas of organised philanthropy in Europe today. They exist, or are being considered, in at least nineteen countries or regions⁶. These relative newcomers to the scene are likely to assume very important roles in the world because they speak directly to the issues of community ownership of assets and development in their own areas. It is also an arena where the tension between indigenous and imported and adapted “models” is likely to be played out in the coming years.

The oldest and most advanced community foundations can be found in the United Kingdom, where more than fifty community foundations have developed in the last years. Others exist, or are under development, in countries such as Bulgaria (11), Germany (100), Italy (17), Poland (21), Portugal (1), Slovakia (12), Slovenia (4) Estonia (3), Lithuania (8), Latvia (4) and Russia (20). Developments in this field can also be observed in countries such as Bosnia & Herzegovina and Turkey.

This growth, much of which has taken place in the past fifteen years, has been fueled by a number of trends affecting local communities. These include: decentralisation and reduced spending by national governments (e.g., welfare cuts); changing roles of local government; the failure of conventional approaches in solving local problems; desire by local residents to have a direct voice in helping to set community priorities and identifying potential solutions; and increasing interest in strengthening grassroots groups and community-based non-profit organisations to tackle local problems.

⁶ There is a phenomenal growth of community philanthropy elsewhere as well – in Africa, Asia, and Latin America. There is also a growing body of literature on them: see EFC’s website on community philanthropy organisations (http://www.efc.be/projects/philanthropy/default.asp*) or the website for the WINGS Global Fund for community foundations (<http://www.wings-globalfund.org/>)

In several countries, national support organisations and informal networks have been formed to provide information, technical assistance, training and promotion services to CPOs at the local level. Some are free-standing and others are located within another organisation. Such groups have been formed, for instance, in the Czech Republic, Germany, Italy, Poland, Slovakia, Russia and the UK.

Some people talk of a community foundation “movement” or “model”, and indeed it is easy to see how this form of community philanthropy has evolved from what was basically a North American phenomenon. I think that the policy implications for this specific kind of organisation, which can work where Government, Business, rich individuals agree that they could become more effective by allowing local communities to manage resources in their own areas, are very significant.

Some Policy Implications

As I have tried to argue above, civil society – in its organized, informal, organic and other forms⁷ - tends to be , when it its value and unique contribution to the mix of state and business is recognized, a vibrant and useful player. I would see two broad forms of policy implications: official policy implications that need to be digested by governments and policy implications that need to be digested by sub-sets of civil society and its organs.

Of course, these two need to be constantly revisited and a good deal of communication between the formal and official on the one hand and the self-regulated and informal on the other should be envisaged. The EFC, as a membership organization for foundations, for example, sees one of its principal roles as monitoring and keeping a close eye on the legal and fiscal environments in the EU. As such, I see the EFC as essentially playing an integral part in the flexible infrastructure that I have characterized as “more exoskeleton than endoskeleton”, that facilitates and encourages diversification and collaboration, incubation in civil society. However, it is important that the legislative and

⁷ Just to make the point, one casual list I found on the net contained the following sub-sets or “contrasting forms of NGOs: consultative relationships, consultancy relationships, public information programmes, conference participation (?), transactional corporations, press and media, citizen’s movements, “fundamentalist” NGO’s, humanitarian NGO’s, foundations, community foundations, corporate foundations, political foundations, field-level NGO’s, semi-autonomous organisations, staff associations, voluntary associations, cooperatives, trade unions, social movements, cartels, lobbies, political parties, elitist secretive clubs, religious orders, international crime rings, terrorist groups, liberation movements, informal organisations and networks, hybrid organisations, self-redefined organisations. The list could, so easily, just go on.

governmental authorities are also seen as an equally integral part of this process. Within the diversity of legal and fiscal rules inside the EU, there are of course, areas of consensus. For example, all member states require that a foundation's assets be devoted to a specific purpose, that they file annual reports and financial records with relevant authorities. In other respects, the legal and fiscal environment, even within the twenty-seven EU member states, is such that there are many differences. It is thus very important to be very vigilant about these changes.

The policy implications of validating organic civil society institutions are quite distinct and should be looked at through different lenses – but perhaps none more obviously than the legal lens. It is paramount that optimal support for strong civil society necessitates the development of a robust but fair legal and fiscal infrastructure that safeguards the institutions and the individuals within them and provides these with relatively easy paths for the creation and maintenance of organisations (such as easy registration, protection, tax breaks, etc.). To begin with, however, it may be necessary to explicitly state that the basic starting point must rest with the fact that people have the right of *freedom of association*. This is paramount, as it is from this basic right that all indigenous civil society emanates.

It follows, therefore, that an enabling environment and a culture of self-regulation and a strict adherence to a code of conduct is necessary. Such a regime can only come about if civil society creates strong membership and guild associations where like-minded organizations can begin to develop coherent and self-imposed and regulated environments. It is this mutual interrelationship that is of paramount importance.

I do not think it is possible to overestimate the importance of serious self-regulation by civil society institutions. It is important, given the myriad forms and permutations of civil society organisations, that there is some way of requiring civil society to be more transparent about its own take on organizations within the sector. They are, in my opinion, the best place to do this. It is also true that unless civil society is required to do so, it will avoid doing so because there is a certain level of “live and let live” thinking that has set in. I know, for example, that twenty four years ago, when I served on the CRDA (Christian Relief and Development Association) Executive Committee in Addis Ababa, we “knew” – both from having direct experience and from hunches – which organizations were likely to be able to perform well in various contexts but that it was not always easy to act on this. I experienced the same ambiguity in working with the Southern African Grant Makers Association (SAGA) and I think I can see some of the same patterns both in Europe and the United States with some associational forms. I think this is an arena of great significance in terms of policy implications.

I sincerely hope that the era of civil society becoming an equal partner center stage with business and government is now firmly upon us. It is very rewarding to see that organic formations of people will be able to play a mitigating role on how global development plays out. My hope is that we can keep the hubris (and there is too much of it in civil society work) and the lack of discipline to a minimum whilst accentuating the flexibility and organic adaptability to a maximum.

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Challenges and Opportunities for Civil Society Coalition Building in an Era of Globalisation

*Kumi Naidoo**

Introduction

There are different definitions of the term civil society, but there is consensus in most definitions that civil society activities by groups, individuals and associations are driven to benefit citizens. More often than not, the term Non-Governmental Organisation (NGO) is erroneously taken to mean civil society. Civil society involves a broad range of civic elements including trade unions, faith-based organisations, community-based organisations and associations, social movements and networks and people who participate in public discourses and activities. Over the last decade or so, there has been a profound increase in the number of civic organisations, with concomitant increases in their capacity, scope of influence, public profile and audiences. This proliferation of civic networks has been facilitated by the same factors that enhanced globalisation, including technological advancements and socio-cultural, economic and political integration. In this era of globalisation, these processes have not been devoid of challenges for coalition-building for civil society but they have also been accompanied by new opportunities.

Civil Society within the Context of Globalisation

In the early 1980s, there was a slogan that said “think globally, act locally.” The idea behind that slogan was that, irrespective of the issues that citizens were trying to tackle at the national and local levels, they needed to better understand how global institutions, global processes and global thinking had an impact on what they could or could not achieve at the local and national levels. However, one of the ironies of this particular moment of world history is that, precisely at the time when many countries were getting formal electoral democracy for the

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first time, real power around many issues such as trade, the environment and so on was shifting from the national to the global level. So it is not surprising that feminist activists in India in the early 1990s said “if we think globally and we act solely locally, and if real power is shifting from national to global levels, then we are moving ourselves where real power actually lies today.”

Globalisation has drawn people in the world into closer proximity with one another; it has intensified contact between them, lowered many but not all types of barriers to the movement of goods, ideas, technology and cultural products and accelerated the pace at which information is shared. At the same time, this movement towards economic, political and cultural integration weakens the ability of national governments to take decisions that will be in the national interest. Local control over decision-making is rapidly shifting upwards to structures and processes that are not accountable to ordinary citizens. In this context, globalisation has accelerated profound changes in the economic, socio-cultural and political spheres.

In the economic sphere, the emergence of global markets and competition between its suppliers are facets of globalisation. On a macro level, the existence of the global market has assumed a hegemonic position, with its main characteristics of free trade relations and reduced state expenditure, especially in the field of social services. In the global South, the dominance of neo-liberal policies of multilateral donors was turned into reality through Structural Adjustment Policies (SAPs), which tied further development aid to the implementation of strict fiscal policies by respective governments. The failure of most SAPs and the reign of the free market ideology increased the global gap between the rich in the North and the poor in the South.

The main feature of globalisation at the socio-cultural level concerns the new opportunities of communication and information through the widespread access to mass media and the use of high technology, especially the internet. These technical developments have profound social impacts; they introduce non-hierarchical, social and non-exclusive means of communication and sources of information. More importantly, cooperation, networking and collective action that transcend national boundaries have greatly been facilitated. These global, issue-specific aspects play down the importance of national identities and allegiances to territorially-bound political communities and instead pave the way for what could develop into a common identity of global citizenship.

In the political sphere, recent global processes have led to a profound transformation in the power of the state, though not necessarily to a decline; some Organisation for Economic Cooperation and Development (OECD) states continue to play a significant role in the various decision-making processes at the global level. It is important to note that those who are making the rules for global institutions like the IMF and the World Bank are national governments of

the G8. Furthermore, the increasing regional cooperation of states in such powerful institutions might have led to a decline in their individual sovereignty, but it has represented a definite gain in their common bargaining power at the global level. The current state of geopolitics is characterised by a high level of hierarchical relationships and undemocratic structures.

We know clearly that issues such as the environment and trade, which are critically important for the growth and development of this continent, are not determined by us alone but by the World Trade Organisation (WTO), where power resides and which is increasingly dominated by the rich countries of the world. Globalisation promised unhindered movement of goods, capital, ideas, and so on, and it was supposed to give an impulse to economic growth, but the reality is actually the opposite. Today, there are more losers than winners and, more importantly, in every single country around the world, partly in the name of globalisation, we have seen the deepening of inequality while the gap between the rich and the poor is growing, at a fast and completely unsustainable pace.

Several challenges and opportunities have emerged for civil society coalition building within the context of a globalising world. These challenges can be divided into those that arise from within civil society and those that come from outside civil society.

Challenges for Civil Society Coalition Building

Internal Challenges

The first major challenge that comes from within civil society is the challenge of power and power imbalance. Civil society is vibrant and diverse, it encompasses both major transnational NGOs with multimillion dollar operating budgets and tiny citizen-based organisations with highly constrained resources, access to information and capacity. It embraces highly structured groups such as trade unions alongside loose issue-based social movements. While this diversity adds to the sector's richness, it also throws up fundamental questions about whose voices are heard and in which venues. A major challenge for progressive civil society is for us to be able to recognise that one of the strengths of civil society is its diversity, but there are some common values that need to unite us, and at CIVICUS and GCAP (Global Call to Action against Poverty), we have used the Universal Declaration of Human Rights as a framework for who should become members of CIVICUS. While at CIVICUS and GCAP we make sure we don't exclude anyone, people exclude themselves if they violate basic principles by promoting racial intolerance and similar bigotries.

A second challenge centres on the issue of bridging narrow interests and broader goals. Many civil society actors are committed to advancing a specific

issue, whether this involves protecting rainforests, promoting labour practices or advancing women's rights. While recent civil society activity has been noteworthy for the alliances that have been formed among groups with different areas of interest, there remains a type of 'silo' mentality which prevents civil society organisations from working across specialised areas and toward common goals. For example, dialogue between human rights organisations and development organisations has historically been weak and many potentially productive synergies have evaded us. With many human rights organisations now embracing social and economic rights and with many development organisations adopting a rights-based approach to their work, the time is ripe to bridge this divide. We need to create an environment where, for example, NGOs rise to defend workers' rights of association and where trade unions vocally defend the rights of expression and assembly of NGOs.

A third internal challenge is for civil society to articulate a coherent vision for a more just and equitable society. One of the criticisms of the so-called 'anti-globalisation' movement is that it is against everything imaginable, but not for anything discernible. Although many within the movement are working proactively for social and economic justice, civil society is challenged to move beyond debate and *ad hoc* mobilisations and to formulate a strategy for achieving its vision. The core issue, however, may not be an absence of alternative visions, but rather the fact that the world's powerful governments appear unwilling to engage with these alternatives.

The fourth challenge stems from within our movements as well as from external sources and relates to the legitimacy, transparency and accountability of civil society. Civil society continues to influence policies and set the trend for debates on several issues ranging from respect for human rights, debt relief, gender equality, freedom of expression, to name but a few. Following the success of civil society in articulating these issues, civil society is at risk of becoming a victim of its own and sometimes the exaggerated expectations of other people. Critics have identified and targeted the vulnerable aspects of civil society. They have called upon civil society groups to 'practice what they preach' by instituting high standards of legitimacy, transparency and accountability. It is often said that civil society groups do not represent the views of anyone but themselves and that if they are accountable at all, it is usually 'upward' to those who provide funds to them rather than 'downwards' to those they purportedly serve. Legitimacy cannot be taken for granted and must be continuously earned. Civil society groups are, however, confronting this challenge. Self-regulation mechanisms such as codes of ethics and standards of excellence have been adopted at the national level by civil society organisations in several countries; a culture of transparency in governance structures is also gaining strength across the sector. Civil society groups work to derive mandates

and legitimacy for their activities by consulting extensively with relevant stakeholders in society.

It is important to mention the fact that as civil society continues to influence public policies and responds to the ever increasing challenges faced by citizens in this era of globalisation, it is crucial for civil society to build capacity, human and otherwise, and to develop appropriate research tools so that contributions to public policy and response to critics are credible and of high quality. The changing dynamics of global events also means that civil society should be kept abreast of social, political and economic developments. There is also the need for civil society to develop an effective global infrastructure that would monitor and highlight challenges to civil society at local, national and global levels and provide adequate responses to these challenges.

To conclude this section, building coalitions of civil society networks becomes easy if the power imbalances between civil society organisations are reduced through an agreed set of norms between local/smaller civic groups and those that work at national, regional and global levels. By adopting measures to enhance transparency, accountability and legitimacy, civil society concedes to be open to inputs from those they serve and identify areas that need improvements in their work and areas where impact will be greatly felt if they build coalitions.

External Challenges

The first challenge that originates from outside of civil society is the threat to its very existence which is closely associated with the so-called 'global war on terror.' Civil society organisations have been opposed to the ideas behind the kind of ideologies that have been promoted by some of the proponents of terror. Civil society has been consistent in denouncing terrorism. But many countries are increasingly passing legislation that is premised on the 'global fight against terrorism.' Some of the legislation restricts the activities of civil society organisations. The implementation of laws related to the 'war on terror' attacks the activities of civil society organisations and has led to the abuse of human rights of some citizens. Following the events of September 11, there is now a tendency for the reduction or total cutting of funding for organisations or groups that are perceived to be having links with 'terrorists', even though sometimes such allegations cannot be substantiated with credible evidence. This impedes the ability of civil society networks to build coalitions as collaboration with other groups is seen by donors as having links with terror groups and donors withdraw funding on that basis. Perhaps what we also need to start debating as civil society is our over-dependence on donors of the global North for funding.

Secondly civil society has grown in terms of numbers and influence in certain countries and regions of the world but, in other countries, the pace of

growth is slower. Governments in countries like Russia, Egypt and Zimbabwe have attacked civil society and instituted policies that restrict their operations because they feel threatened by the activities of these networks. What is encouraging within the Ethiopian context is that the government has agreed to engage in a stakeholder consultation process before finalising the forthcoming NGO Bill. This hopefully means that civil society will have a say in the formulation of the Bill.

In Zimbabwe, the government finds it difficult to make a distinction between civil society and the opposition and perceives both as cohorts of countries of the North. Furthermore, some organisations now claim to be part of the civil society family and benefit from the rights and enjoy the status of civil society organisations but prevent others from enjoying such rights. This compels some civil society networks to spend more time and resources responding to government policies and asserting their legitimacy and constrains their effectiveness in forming alliances and building coalitions with other associations or networks.

Thirdly, there is a disturbing trend in the manner in which funds are disbursed. Funding is now channelled to local civil society organisations and accompanied by well-defined mandates and details on how the funds should be used. This sometimes compromises the objectives and mandates of these groups. At times emphasis is placed on service delivery and related activities at the micro level. The decrease in funding to civil society poses a challenge to those regional and global civil society groups that would want to focus on activism and advocacy and not necessarily service delivery. Civil society organisations may want to build coalitions with associations or networks that focus on other sectors but may not be able to do so in a flexible manner since limitations have been imposed on their operations by donors.

To conclude this section, the imposition of anti-terror legislation restricts the space for civil society and even prevents civic groups from engaging and forming coalitions with other organisations that are perceived by governments as ‘terrorist’ organisations. Growth in civil society is uneven and repressive legislation in some countries weakens civil society. In some cases, governments have actually hindered the process of coalition building by preventing civil society networks from working with or engaging other networks in their respective countries.

Opportunities for Civil Society Coalition Building

Despite the above challenges, globalisation has brought the peoples of the world closer together. It is now faster and easier for citizens in one part of the world to

Challenges and Opportunities for Civil Society Coalition Building

be aware of the human rights abuses taking place in another part of the world. Globalisation has opened up several opportunities for citizens and groups to form alliances and advocate for common goals. Some of these opportunities are highlighted below.

In the past, most of the work of civil society focused on the micro level and constituted involvement with the provision of important services to vulnerable communities in health care, education, legal advice, professional training, humanitarian relief and women's empowerment. Civil society groups have recognised the need to review the slogan that said 'think globally but act locally', as experience has shown that, in and of itself, acting locally will not get to the root causes of many social and economic problems. Since power and decision-making processes now reside at global levels with supranational bodies, civil society groups are aware of the fact that they need to 'think locally and act globally' as well. Conscious of this fact, civil society groups are now coming together in coalitions at the global level to advocate in favour of issues that affect citizens at the local level, such as debt cancellation and climate change.

As civil society has matured, its credibility with outside audiences has grown. Many governments increasingly seek to harness the expertise and local knowledge of civil society groups in policy making. High profile civil society groups have developed a certain 'brand recognition'; their endorsements or criticisms carry weight with the public. Civil society organisations should take advantage of such opportunities when they arise and build capacity so that they are able to respond effectively to the needs and requests of governments.

Other opportunities for civil society action have opened in terms of the spaces that are increasingly being created for civic action. For example the space offered by the World Social Forum (WSF) indicates that civil society is making progress but there is more that still needs to be done. The WSF and other meetings that bring together civil society groups provide spaces where citizens' voices are taken into consideration when debating issues related to social, political and economic justice. These meetings are venues where citizens and groups who feel increasingly alienated from the prevailing global system join together to explore alternative visions for a more ethical form of globalisation that works for the benefit of average people rather than simply for the benefit of powerful interests.

Further opportunities have been created as civil society organisations, trade unions, associations and other networks build coalitions to respond to transnational issues. For example, there has been the unification of the International Confederation of Free Trade Unions (ICFTU), the World Confederation of Labour and a few other independent trade unions. Such coalition building exercises enable civil society to act in unison in a given array of areas and to respond in a credible manner to global challenges.

Another example of civic groups coming together to confront transnational issues is seen in the activities of the Global Call to Action against Poverty (GCAP). GCAP represents a sign of hope for a more united civil society that cuts across different sectors, countries and regions. GCAP brings together international NGOs, trade unions, grassroots organisations, youth groups and other networks that engage and work together in over 100 countries. Supporting the GCAP Facilitation Team has helped CIVICUS build effective collaboration within civil society, enhanced its capacity to engage governments and international institutions and increased civil society's experience with political processes. Once again GCAP provides another opportunity for citizens, associations and groups from different parts of the world to come together in coalitions and highlight issues related to poverty, inequality and the debt question that affects citizens all over the world.

The strength embedded in issue-based coalitions is seen in the activities of the International Campaign to Ban Landmines (ICBL). The ICBL started as an NGO in the global North in 1992 and was taken up in the global South in 1995. The ICBL now consists of over 1200 NGOs in sixty countries, some of which are grouped in national campaign structures, forums and coalitions. The ICBL and GCAP highlight the need for and the strength of powerful coalitions. The strength inherent in these coalitions is also evidenced by the fact that governments have begun to address some of the issues raised and some even include these issues in their national agendas. However, these networks have more to do with issues of 'global concern'. What we ought to do now is to start creating movements of global coalitions that focus primarily on civil society existence, expression and engagement.

Where to from here?

Decision-making has transcended national boundaries and policies that affect citizens are formulated at the global level by actors who are not accountable to citizens, especially those in the global South. It therefore becomes difficult for local civil society groups, because of capacity and the scope of their work, to effectively respond to issues that evolve from the global arena. One way of addressing this problem is to form coalitions between local, regional and global civil society. If local civil society groups are able to forward information on domestic human rights abuses to partners with transnational human rights networks, the transnational networks can place these issues on the global agenda and, together with local civil society, exert pressure on the state where these abuses are committed.

The grassroots action we have witnessed on the streets of Porto Alegre and outside the headquarters of the World Bank and IMF is emerging in direct response to a perception that increasingly important decisions affecting peoples' lives and well-being are being made in non-transparent ways in supranational institutions that are not accountable to citizens or accessible to citizen engagement. Grassroots action has brought together citizens from different countries that have formed coalitions to advocate in favour of specific issues. Coalitions increase pressure on the actors in the North and expand the scope and influence of those that belong to the coalitions.

There is need to democratise individual global governance institutions such as the United Nations, World Bank, IMF and WTO to allow for coalitions of networks to be represented in the decision-making processes of these institutions. Such coalitions would represent a broad range of citizens from different regions but would focus on common goals or objectives. The Bank and IMF are now less dependent upon contributions from rich countries than they once were and it is essential that their governance structures be changed radically to reflect these shifts. It is naïve to expect that institutions established sixty years ago in a different global context can be more appropriate and relevant in our age with only minor changes. The time has definitely come for a revamping of global governance institutions within a more visionary framework that puts the interests of people at the forefront of deliberations aimed at substantive institutional change.

In this current era we should not allow institutional limitations to constrain our ability to envision a different kind of global governance framework. We have to pose some bold questions about the fundamental changes that are needed to create a framework that is fairer and more equitable than the one we are currently working within and that has a realistic chance of supporting initiatives such as the Millennium Development Goals. We must question the prevailing logic of a system that energetically enables the movement of capital, but not of people, across boundaries.

Regarding the financing of the NGO sector, many governments say civil society organisations that receive funding from the European Union and other donors based in the global North are not authentic. Civil society has responded to this assertion by stating clearly that if this criterion is used to assess the authenticity of civil society, then ninety per cent of governments in developing countries are agents of donors because they receive substantial sums from donors. However, it is in the long-term interest of civil society in Africa to look at the resource environment and to reduce dependence on that environment. And one of the ways in which governments can help civil society achieve this is to improve the taxation environment. Governments should ensure that tax laws encourage more individual and business giving to charitable work, and have

incentives for businesses and individuals who want to contribute. If this is done, civil society can begin to develop some measure of domestic resource mobilisation.

To conclude, permit me to state that it is possible for civil society to counter the growing influence of global markets and the receding influence of states. At the moment, there are few structures at the global level that can effectively counter the growing influence of markets. For some citizens who live under non-democratic regimes, coalitions provide avenues for voice and participation in decision-making processes. Coalitions amplify the visibility and voice of a broader range of actors. Civil society groups may focus on different issues but their approaches, competencies and problems have much in common.

Civil Society in Kenya, South Africa and Uganda: Lessons for Ethiopia

*Konjit Fekade**

Background

The overall objective of this study is to provide a comparative overview of CSOs in three African countries (Kenya, Uganda and South Africa) with a view to generating data for lessons to be learned. With this in mind, the study tries to document the experiences in the countries under the following sub-themes:

- Historical evolution of CSOs,
- Characteristics and key intervention areas of CSOs,
- Internal and external operating environment,
- Areas of major impact,
- Similarities and differences with civil society in Ethiopia.

The study was conducted by making field visits to the three countries and interviewing leaders of selected organizations with intimate knowledge of CSOs. Secondary data was collected from websites and documents accessed at NGO offices during the field visits. Some of the individuals interviewed for the study, being researchers themselves, also shared the studies they have conducted in their respective countries. For example, several studies made on South African social movements were made available to the consultant by Professor Patrick Bond, the Director of the Center for Civil Society in Durban, South Africa. Similarly, Professor Karuti Kanyinga of the Institute for Development Studies, University Nairobi, shared some of his research documents.

During the country visit, one to one consultation was held with the directors of the visited organizations as well as activists. Academics and Consultants that do extensive research on civil society organizations were also contacted.

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I. Introduction

According to CIVICUS World Alliance for Citizen Participation, civil society is defined as “the arena, outside of the family, the state and the market where people associate to advance common interests” (CIVICUS 2007). In the three countries covered in this study, CSOs include a broad category of voluntary associations and groupings. For example, in Kenya civil society includes development-oriented Non-Governmental Organizations (NGOs), Community-Based Organizations (CBOs), Women Groups, Self-Help Groups, Religious Groups, Trade Unions, Professional Trade Associations, Social, Economic or Market-Based Associations, Human Rights advocacy groups, Social-Cultural Organizations and Social Movements (Karuti Kanyinga 2004).

In Uganda, the legal definition for Non-Governmental Organizations (NGOs) is “an organization established to provide voluntary service including religious, educational, literacy, scientific, social and charitable service to the community or any part thereof” (Non-Governmental Organization Registration Statute, No 5, 1989). Barya on the other hand defines civil society as traditionally well known civic and political associations and those that have come to be known as Non-Governmental Organizations. According to Barya, the traditional civil society organizations include “trade unions, employee associations, and religious organizations, cooperatives” (CBR Paper No. 54-2000).

Practitioners such as Development Network of Indigenous Voluntary Associations (DENIVA) define CSOs in Uganda to be individuals that organize themselves voluntarily and that come together to pursue those interests, values and purposes usually termed the “common good”. According to DENIVA, CSOs in Uganda include “...NGOs, community groups, labor unions, professional associations, faith based organizations, part of the academia and the media ...” (DENIVA Brochure, 2003).

In South Africa, some include among civil society organizations trade unions, consumer organizations, the formal and informal welfare sector, Non-Governmental Organizations, corporate social investment, employee assistance programme, occupational social work and social workers in private practice (www.polity.org.za).

In a paper titled “institutional restructuring, state-civil society relationships and social movements”, Ebrahim Fakir, a senior researcher for Centre for Policy Studies, defines civil society as the “*organized public space*.” He argues that NGOs, CBOs and other organizations fall in the organized public space (Fakir 2004).

Another article titled “developmental civil society in the new millennium: the case of South Africa” defines CSOs as “... those organizations operating

somewhere between family/friendship, the state and the market, which were politically-independent in orientation and which were established to protect or enhance the interests and values of their members/founders...”. The same article continues to argue that the idea of civil society was highly political or partly political. According to this author, civil society represented the “...formalization of the power of popular oppositional movement (community, trade unions, women, churches, youth, etc...) and their allied non-governmental organizations...” (SANGOCO 1999).

II. Historical Evolution of Civil Society Organizations

This section will briefly document the genesis of CSOs in the three countries of this study and tries to give a general overview of their evolution based on each country’s historical, political and social context. The section will also examine the current status of the civil society organizations.

Civil Society in Uganda

During the colonial era, the Ugandan state was the main provider of social services. The colonial state nevertheless encouraged citizens to form co-operatives. During this era, the types are “co-operatives of export crop growers and trade unions /associations, as well as mission-established hospitals, educational establishments, and other charitable institutions” (DENIVA 2006).

During the struggle for independence, the cooperatives and trade associations became the main actors for the fight against colonialism (De Conick 2004a), and some of these evolved into political parties (Mamdani1976). After Independence, the demarcation between state and CSOs became blurred as a result of state attempt to integrate some of them into the state system. The remaining CSOs became confined to charity and service delivery activities. (De Conick 2004b). During the Idi Amin regime in the 1970’s and 1980’s, organized civil society continued to be restricted mainly to charity work and service delivery.

During the Obote regime from 1980-1985, international NGOs started to come to Uganda and with the state becoming incredibly weak, national CSOs expanded their role in welfare provision. Ugandan citizens started organizing themselves to overcome difficulties caused by the weak state. According to Hansen and Twaddle (1991), the civil wars in Uganda contributed to the growth of civil society organizations. The National Resistance Movement that came to power in 1986, unlike the former regimes, however, provided space for the emergence of indigenous CSOs. A rapid growth of NGOs that were supported by donors was witnessed in the 1990’s.

At the present time, although many NGOs are still primarily engaged in service delivery, some have shifted to “advocacy” work and hold government accountable on social, economic and political policies. Faith-based organizations and some CSOs are also taking a similar position.

In 2002, there were over 2000 registered NGOs and several thousand unregistered Community-Based Organizations and other formal and informal groups (Thue et al. 2002). Although the current number was not available, those that participated in the discussion believe it is much higher than 2000.

Civil Society in Kenya

As in Uganda, civil society in Kenya during the colonial era was dominated by the state. The state encouraged and in some cases coerced the establishment of ethnic-based associations and restricted the formation of national associations or movements including self-help organizations (Kanyinga 2004). The associational life of Kenyans in this era was therefore heavily influenced by ethnicity. Although the colonial state used ethnicity for “divide and rule”, popular citizens’ organizations all having ethnic-setting challenged colonialism. Some of the organizations addressed social, cultural and religious concerns (for example, the MAU-MAU peasant movement became a strong political force that fought for liberation). The prevention of the state for consolidated and national social movements led to the evolution of the ethnic-based CSOs into ethnic-based political parties. (Ibid.)

Special policy attention was given to civil society initiatives during the post-colonial government of President Jomo Kenyatta. Churches and NGOs started providing basic services to community members at the grassroots level. However, during Kenyatta’s rule, CSOs were still restricted from addressing social, economic and political issues. During this era, only self-help voluntary organizations and formal NGOs mainly addressing relief and development issues were allowed to operate actively.

The government of President Daniel Arap Moi, on the other hand, impinged on the autonomy of CSOs, a right that was gained during President Kenyatta’s regime, and put in place regulations that restricted the activities of self-help groups and NGOs. Dr. Kananga characterized this as follows: “...self-help groups were incorporated into administrative and political structures, which now meant that they could not undertake any development projects without the knowledge of local state agents... the government required these groups to register with the ministry of culture and social services; those that did not register were excluded from government and donors grants...” (Ibid.).

In 1990, the government of Kenya with the view of coordination of NGOs’ activities introduced legislation to help continue the demobilization of CSOs.

This act led to the coming together of CSOs particularly NGOs to collectively demand and advocate for amendment of the proposed legislation. Dr. Kanyinga argues that this period contributed to the strength of NGOs and CSOs towards their struggle for a democratic order and their entry in the political space (Ibid.).

According to Steve Ouma, the Executive Director of Kenya's human rights commission, the period of 1980-1997 is characterized by gross human rights violation in Kenya. He argues that this period was instrumental to the emergence of human right NGOs in Kenya. (Ouma 2008). The gross human rights violations contributed drastically to the shift by CSOs from charity to accountability. Most welfare and development NGOs incorporated the rights issue as part and parcel of their ongoing programs.

In an article titled "Growth and the Role of Civil Society: Challenge and Implication for the Future", Kanyinga states that in Kenya CSOs evolved in five distinct phases (Kanyinga et al., 2003, 20):

- a. welfare and relief,
- b. community development and provision of basic services,
- c. institutional development and focus on training for transformation,
- d. popular empowerment through awareness raising activities,
- e. engagement in advocacy and policy issues,

Currently, the number of NGOs that have registered with the National Council of NGOs is over 4000. The combined number of NGOs, self-help groups, women and youth associations in 2002 was estimated to be 220,000 (Ibid.).

Civil Society in South Africa

Pre-1994 South Africa was a society with racial division. Africans and Indians were prevented from free involvement in the country's social, political and economic life. CSOs were also accordingly segregated and many organizations operated only in specific communities and their activities were restricted. During the colonial and Apartheid era, civil society organizations included organizations committed to resistance, welfare type organizations, religious schools and churches, youth and women organizations.

Although the Apartheid regime in pre-1990 South Africa was undemocratic, it inadvertently gave rise to anti apartheid civil society. Several CSOs emerged in the 1980's. They filled the gap in service delivery areas, where the government purposely deprived basic services to some communities like the

black townships. While providing the needed services, CSOs simultaneously and systematically mobilized against Apartheid. Many CSOs organized themselves with strong commitment to principles such as social justice, equity, non-racialism, gender equality, human rights, democracy and freedom (Malhoho, unpublished paper). Post-apartheid South African laws provided an important functional framework for civil society organizations. The environment became more conducive to operate in.

According to Fakir, following the 1994 election, collaboration between civil society (social forces) for unity in action and purpose was high. Those in government and those in the public space outside government were engaged in constructive partnership. He argues, ‘...social forces, the former liberation movements, non-governmental organizations, community and civil structures all contributed in the same way to state building...’ (Fakir 2006)

This partnership did not last long. Progressively, CSOs started distancing themselves from the government and started forming a new independent coalition of forces that concentrated on addressing the increased level of social inequality and poverty.

Today civil society in South Africa is dominated by social movements that mobilize around water, sanitation, electricity, land title, access to housing, access to health facilities etc.... In addition to very active social movements, Non-Governmental Organizations that engage in service delivery, advocacy, and capacity building also exist.

Civil Society in Ethiopia

As in other African countries, Ethiopia is also rich in associational life. Traditional civil society organizations such as *idir*, *mahber*, *senbete*, etc... existed from time immemorial. What is unique about these civil society organizations in Ethiopia is that their role is strictly confined to social, economical and/or religious activities only. Because of Ethiopia’s history of not being colonized, unlike the countries included in this study, traditionally CSOs did not have any role in the political struggle. Traditional CSOs were never engaged in political, social and economic issues of the country. They concentrated on addressing either self or neighborhood/community interests, focusing mainly on social issues. They were tolerated by the government since they were not seen as threats. Until recent times, they did not have to register and were left to function without any state control.

Trade Unions also existed in Ethiopia, their role compared to the countries assessed for this study was, however, very limited. However, unlike the traditional CSOs, trade unions were not free to organize independently and were

not allowed to demand for their members' rights. They were closely watched by the government.

The formal and non-traditional CSOs (mainly NGOs) in Ethiopia started emerging during the 1950's; their numbers increased exponentially in the 70's due to the famine the country experienced. During this period, welfare type NGOs and faith-based organizations were established. They played a leading role in providing emergency relief service mostly to the community affected (Dessalegn 2002).

In the 1990's, as a result of the change in the political landscape, the number of NGOs increased fast. NGOs that addressed development issues in addition to welfare type activities also increased. Some NGOs that started addressing human rights issues began to emerge. (Diagnostic Survey on Ethiopian NGOs, November 2003).

When compared to CSOS in Kenya, Uganda & South Africa, one clear difference of CSOs in Ethiopia is the lack of a culture of activism, save the student movement. Many people who join the formal NGO sector in Ethiopia did so either with a welfare attitude (to help the less fortunate) or to advance their professional career. Most members of CSOs in the other countries, however, come from a culture of struggle against colonial oppression.

III. Characteristics and Key Intervention Areas of Civil Society Organizations

This section will try to look at the internal structure of civil society organizations, in terms of their strength, limitations and values. It will also look into the external environment such as the legislation that governs CSOs, relations with government and other development actors. In assessing the external environment, emphasis is given to the legal environment and CSOs' relation with governments.

Uganda

According to a study conducted for the Royal Norwegian Embassy in Uganda by Apollo and Maureen, the majority of NGOs in Uganda were founded after 1986. Most of them are urban-based, with a narrow social base. Most of them are involved in service delivery activities and relatively non-controversial areas. They were found to be weak in the areas of governance, democratization and human rights. The same study categorized Ugandan CSOs into five main forms: 1) Member-based and economical organizations, 2) Development/service

delivery organizations, 3) Community based organizations (CBOs), 4) Advocacy groups, and 5) Cultural and religious organizations.

Umbrella organizations/networks that are emerging are considered as a separate form or category (Thue et al. 2002). The characteristic of each category is briefly discussed below:

Member-based and economical organizations:

This category includes trade unions, professional associations (Law, Medical, Journalists, Accountants, etc...) and cooperatives. The organizations' income mainly comes from the members and they are established by law. They deal mainly with issues that directly affect their members. They are the best organized groups due to their membership who are the educated and the professional elite (Barya and Bazaari 1999). There has been a recent shift, and some of these organizations have started engaging in broad issues of democratization and governance, in addition to their members' specific interest. The Ugandan law society can be cited as one example of a membership organization that is the most active in applying pressure on the Ugandan government, specifically with regard to human rights and constitutional rights issues. Participants of this study also stated that the Trade Union Movement in Uganda, although still weak, is vocal on social and economic issues.

Development/Service Delivery Organizations

These CSOs' sole objective is to provide service to communities. They focus mostly on areas of health, education and social welfare. They are largely non-membership and highly dependant on external financial sources. Most national and international NGOs fall under this category. According to a 2000 study by Bazaara, the rise of development service delivery organizations is a direct result of structural adjustment programs. This author argues that the removal of government subsidies resulted in the poor not being able to pay for education and health. Hence, the donor community encouraged the formation of NGOs to fill the vacuum (Ibid.).

The bulk of these CSOs do not engage the state to widen the democratic space, nor do they want to be in conflict with the state. As a result, most NGOs in this category have a good and harmonious relationship with the government. The government sub-contracts this type of NGOs to implement some of its poverty alleviation projects. These NGOs are also invited by the government and donors to development consultative processes. Although their role is narrowly focused and they are heavily reliant on foreign funding, their ability to hold the

state accountable remains limited. That being said, suffice it mention that they are slowly developing their ability to engage the state and local government.

Community Based Organizations (CBOs)

These are informal mutual self-help associations. They are both urban and rural based. Usually they do not have legal status and are not registered. They constitute the largest number of CSOs in Uganda. Their main focus is on income generating activities. They do play a vital role in local politics, but because they have few contacts or networking amongst themselves, they rarely have a common agenda, and rarely engage the state on national issues, such as democratization and governance. However, many CBOs are members of the Development Network of Indigenous Voluntary Associations (DENIVA). Through DENIVA they participate in advocacy work.

Advocacy Groups

These are CSOs that focus on issues of civil, political, social and cultural rights. They hold the state accountable and advocate on behalf of the poor, the marginalized, and all citizens/groups that have suffered violation of their rights.

The most prominent advocacy CSOs in Uganda are the Foundation for Human Rights Initiative (FHRI) and the Human Rights Network (HURINET). Most of the advocacy CSOs focus on issues of civil and political rights. Some are vocal on women's rights while others address and advocate on behalf of disadvantaged groups such as persons with disability, minorities and others. CSOs that address economic, social and cultural rights are few in number. One notable organization that advocates for financial accountability and anti-corruption is the Uganda Debt Network (UDN).

According to the NORAD study, although these advocacy CSOs engage the government in more difficult political issues, such as human rights, their advocacy work is limited to small circles and has not been able to mobilize large numbers of citizens around these issues.

Cultural and Religious Organizations

The history of religious and cultural groups indicate that while religious groups have been directly involved in politics allying themselves with one or the other political parties, the cultural groups are tied up with kingdoms and ethnic groups. The main religious bodies in Uganda are the Catholic Church, the Anglican Church of Uganda and the Ugandan Muslim Supreme Council. These religious and faith-based CSOs are heavily involved in the provision of social services and

community developments. In addition, they play a prominent role in influencing government policy positions.

The Catholic Church for example actively participated in the debate over abortion and use of contraceptives during the enactment of the reproductive health policy. Similarly, the Islamic faith represented by the Ugandan Muslim Supreme Council opposed restricting the number of wives one can marry. It did so during the enactment of domestic relations law (Joe 2000)

According to Oloka, most cultural groups' primary interests lie in traditional leadership, language, music promotion, etc... However, the study states that some cultural groups like the Kabaka, traditional institution of the Monarchy in Buganda, engage the state to advance their interest as well. The kingdoms of Buganda, Busooga, Bunyoro, and Tooro, for example, have played and continue to play a significant role in the politics of the country. Oloka further states that the cultural and religious organizations have structures to mobilize their population for cultural and social causes. Some of the cultural organizations like the kingdom of Buganda are strong and have engaged the NRM government of Uganda on land reform and governance-based federalism. He asserts that other cultural organizations are influential at the local political level and have power of political mobilization.

Umbrella Organizations/Networks

Networks and Umbrella organizations are nowadays considered as separate categories of CSOs in Uganda. In recent years, the establishment of networks by several NGOs has been driven by donors' preference of working with networks instead of individual organizations. Most Ugandan NGOs now either form networks or join existing networks to improve their capacity and their influence on the state.

Some examples of networks cited by the NORAD report as the most active networks include: the Development Network of Indigenous Voluntary Associations (DENIVA), Uganda Debt Network (UDN), National Association of Women's Organization in Uganda (NAWOU), Human Rights Network UGANDA (HURINET-U), the Uganda NGO Forum (UNF), National Association of Trade Unions (NOTU), Anti Corruption Coalition of Uganda (ACCU) and the Coalition for Political Accountability to Women (CPAW).

The following list shows some examples of networks and their membership size:

Name of the network	Number of members	Remarks
DENIVA	800+	Full membership is only for Ugandan NGOs and CBOS
UDN	100	Most work on development and HR issues
HURINET	30	Most work on general human rights issues
NOTU	17	Affiliated labor organizations
ACCU	70	Membership is open to individuals

(SOURCE: www.google.org).

Brief Overview of Some Networks

i) Development Network of Indigenous Voluntary Associations (DENIVA)

Development Network of Indigenous Voluntary Associations (DENIVA) is a network of Ugandan indigenous non-governmental and community-based organizations. It was founded in 1988 by representatives of 21 NGOs. DENIVA has since grown into a large national network that has over 800 members. Although international organizations are eligible for associate membership, DENIVA's membership comprises only indigenous NGOs and CBOs. The main purpose of the network is to empower DENIVA's member organizations and other civil society organizations for democratic growth and sustainable development through networking, advocacy, capacity building and research.

ii) HURINET-U

The Human Rights Network-Uganda (HURINET-U) was established by a group of eight human rights organizations in December 1993. It was formally registered as a network in 1994. It is a Network of human rights groups in Uganda. Currently it has 29 members. Members of HURINET-U, although committed to diverse human rights issues, the issues they each address are complimentary in areas of focus. The issues for example range from child, women, labor and refugee rights. Both National and International NGOs are Members of HURINET-U.

The main thrust of the Network's interventions is creating space and opportunities for collective advocacy, defending human rights defenders, and capacity building of human rights defenders. In 2006 HURINET-U was one of several networks that advocated for an enabling NGO legislation. It has also undertaken the first Democracy Audit that gave a snapshot of Ugandan citizens' perspective on the status of Democracy in Uganda.

iii) Uganda Debt Network (UDN)

It was established in 1996 by 23 organizations with a mission of advocacy for pro-poor policies, and for full and meaningful participation of the poor in influencing policies. Part of its mission is monitoring utilization of public resources and ensuring borrowed resources are managed appropriately and in a transparent and accountable manner. Currently, it has close to 100 members. UDN closely works with the media, academics and religious institutions as well as grassroots civil society groups.

iv) Anti Corruption Coalition (ACCU)

ACCU was formed in 1999 and registered as an NGO in 2003. Its mission is to provide a forum for members to tackle corruption and build a strong voice that can engage government on issues of corruption. ACCU conducts research and uses its findings to advocate on corruption-related issues. ACCU was one of the organizations that took part in the recent campaign to save Mabira forest from being given to a company that was growing sugar cane. It is also among the five CSOs that took the case to court.

Kenya

According to Kanyinga, CSOs in Kenya are categorized in eight broad categories: development NGOs, human rights and democracy advocacy groups, knowledge generating groups, community based and mutual aid groups, community social movement/neighborhood association, religious groups, professional associations, social economic [market-based] groups. The characteristic of each category is briefly described below (Kanyinga 2004).

Development NGOs

These are formalized NGOs and CSOs that have the longest presence in the development space and they deal mainly with relief and welfare activities. In the 1980s these organizations shifted to institution building. Some among this

category of NGOs began using the rights-based approach to development work and started addressing issues of democratic development. Their main income comes from donors. Currently, more than 2300 NGOs that address relief to good governance are registered with the NGO coordination bureau.

Human Rights and Democracy Advocacy Groups

These categories of CSOs emerged as a result of liberal politics. Their number is few compared to the 1st category. Their activities range from monitoring human rights violation to political empowerment of citizens through civil education. By 2002, there were around 100 advocacy groups. Few are legally registered, while most of them operate as projects of legally registered organizations. Similar to the development NGOs, this category also depends on donor funding.

Knowledge-generation Groups

These categories deal mainly with generating and disseminating research findings. They inform the public about government and development partners' policy and facilitate debate and discussion on key policy matters.

Community Based and Mutual Aid Groups

These are the traditional informal membership groups. These groups are mostly established to respond to social and economic difficulties. They constitute the largest number of CSOs.

Community Social Movement/Neighborhood Association

These Civil Society Organizations are formed as community voluntary associations to address their communities' problems. Their energy is derived from community grievance and they play a watchdog role. They are informal and are not donor dependent. Their financial resource comes from the community.

Religious Groups

These groups consist of religious associations such as church groups, Islamic groups and Hindu associations. Among these groups the Christian church organizations are the most active in the national political space. Their funding comes from their congregation.

Professional Associations

These are mainly associations created by the professional elite. Although they are established to address their own members' interests, they are the most influential CSOs in Kenyan society.

Social Economic [market –based] Groups

Although these groups are located in the private sector, since they are established to promote the collective interest of their members they are considered as CSOs. Cooperatives and businessmen clubs are examples of associations that fall under this category.

The following list (NGO Bureau 2003) shows the distribution of Kenyan NGOs by area of intervention:

<u>Sector</u>	<u>Number of NGOs</u>
Agriculture	301
Children	322
Education	514
Environment	342
Food security	416
Gender	318
Governance	211
Health	132
HIV/AIDS	372
Microfinance	378
Relief	561
Water	402
Welfare	739

South Africa

Civil Society Organizations in South Africa emerged in the context of South Africa's apartheid history. Most of the CSOs were born out of the conflict for social justice. They played important roles in promoting principles of citizenship and advocated successfully for the Bill of Rights in the constitution. They also contributed to the emergence of a political culture of dialogue. In addition, they played a major role in persuading the ANC Government to tolerate dissent.

However, civil society in South Africa cannot claim to speak with a homogenous voice. They are divided by race, class, gender and politics. They represent particular interests, communities and groups. Few organizations crossed the boundaries either before or after 1994. The difference within civil society also comes from their relationship to the state, their approach to partnership, ideological conflict and the urban/rural divide. Beginning in the 1980s, most CSOs accepted the idea that underdevelopment would be an inappropriate cost to pay and refused to deal with the government. Culture of boycott and non-engagement therefore prevailed. Although in 1990 the nature of CSOs began to change, some organizations still did not support the social transformation that took place under neo-liberal politics.

The other important area for differences was CSOs' relationship with the political parties. Some CSOs positioned themselves in a partisan manner while others aligned themselves with a specific issue of a particular party, and yet some others were non-partisan and took the role of mediation, peace making and conflict resolution among the different parties. CSOs working at provincial, regional, national or international level also found themselves in conflict. These differences among CSOs resulted in the creation of many different kinds of groups. Currently South African CSOs can be broadly categorized into the following 3 broad forms.

a) Progressive CSOs

These are NGOs and traditional and non-traditional community organizations that struggled against the Apartheid State's repressive nature on behalf of citizens of the country, particularly the black citizens. These organizations struggled to liberate their people and sometimes created alternative structures of power. During the era of Apartheid, CSOs were responsible for provision of services such as education, health, food, etc., in the black townships. After 1994, these CSOs shifted their strategies from protest to development and became either developmental CSOs or social movements.

b) Developmental CSOs

The years immediately following the election saw an unprecedented level of collaboration between the former liberation movements and progressive CSOs. Some progressive CSOs slowly became development oriented. They fully participated in the transition from apartheid to post-apartheid era. The reconstruction and development program [RDP] was fully supported by these CSOs.

There were several forms of CSOs under the broad category of developmental CSOs. The following list reflects some of the CSOs and their primary functions within the category of developmental CSOs (Fakir 2006).

Mass based democratic organizations: These included trade unions, women's organizations and others that mainly operate for their members' interests.

Welfare organizations: These are organizations that provide basic services such as health, education, housing, etc., to individuals as well as communities that are in need.

Service [Think-tank] organizations: These are mainly NGOs that provide training and technical assistance to community based organizations or other NGOs.

Traditional community based organizations: These are burial societies, saving groups, and self-help associations.

Cooperatives/income producing organization: These are organized for specific economic activities

Religious service: faith-based organizations that emphasize welfare provision. Their targets are mainly their members and community groups.

Interest based associations: Groups with similar interest or profession.

Human rights groups: Those that monitor abuse, lobby against abuse, protect and assist victims of abuse.

Civic education Groups: these groups concentrate on public education of civic rights.

Community development organizations - rural & urban self-help groups: These are groups that promote development of their community through service provision, income generation project and saving clubs.

Advocacy organizations: These groups form alliances with other organizations to educate and lobby on specific policy issues.

Relief organizations: Those that provide humanitarian assistance to victims of famine and other natural disaster.

Civil society networks: These provide information to other organizations, give training and hold workshops on specific issues.

Social movements: The newly created democratic space in post-1994 created a new space for engagement. Social forces that initially aligned themselves with the government started adopting an oppositional stance. After some

period, ideological conflict within CSOs arose. Some organizations did not support social transformation. Some placed their faith in the neo-liberal parties while some others tried to remain non-partisan. CSOs also started to be divided on the approach they adopted. Some CSOs defined a different ideological agenda for themselves. In all of South Africa's cities, social movements arose to confront what was perceived as active attack on the poor.

According to Ebrahim Fakir (2004), a senior researcher for Center for Policy Studies, "Social movements and other social agents began engaging government on a more independent, adversarial and negatively critical basis due to increased level of social inequality, unemployment, and poverty".

Many movements organize at local levels; some organize as community based organizations. The majority of social movements deal with single issues or single problems and are created in a spontaneous manner to address social and political issues. One interviewee said, "most of these movements are based in particular communities and are the results of poverty and marginality and a direct response to the current state policy". He further stated that these movements keep the debate on development alive today. The Anti-Privatization Forum (APF) and the Soweto Electricity Crisis Committee (SECC) emerged as a result of water and electricity cut-offs due to government privatization policy and poor people's inability to afford the bills. Similarly, the house eviction for non-payment of rents due to inability to pay resulted in the formation of the Western Cape Anti- Eviction Campaign (WCAEC). Some of the social movements are supported by city based NGOS. However, the traditional social movements, such as Coalition of South Africa Trade Unions (COSATU) have not fully accepted the new social movements because of their position against ANC's neo-liberal policies (Oupa-lehulere 2005). The social movements use the traditional struggle strategies of the apartheid era. However, some social movements have fairly organized structures and follow the traditional movements. Recent trends show that some of the social movements are organizing themselves and started operating as an NGO. The APF and SECC are examples of movements that have fairly organized structures and operate in a planned and strategic manner.

The growth of new social movements in post-apartheid South Africa has attracted a lot of media, academic and police attention over the past decade. The Centre for Civil Society (CCS) and School of Development Studies (SODS) at the University of KwaZulu-Natal in Durban have specialized in studying these movements. What follows is the list of the social movements studied by the Center for Civil Society (Ballard, Habib, and Valdoia 2006):

- i) The Anti-Eviction Campaign (AEC), Western Cape,
- ii) The Anti-Privatization Forum (APF), Gauteng,
- iii) The Concerned Citizens' Forum (CCF), Greater Durban,
- iv) The Congress of South African Trade Unions (COSATU),
- v) Environmental groups,
- vi) Gay, lesbian, bisexual, transgender and inter gender (GLBTI) groups,
- vii) The Homeless People's Federation (HPF),
- viii) The Jubilee 2000 Anti-debt Campaign,
- ix) The Landless People's Movement (LPM),
- x) The Mapogo-A-Mathamaga vigilante organization,
- xi) The People Against Gangsterism & Drugs (PAGAD) vigilante organization,
- xii) Refugee groups,
- xiii) The Self-Employed Women's Union (SEWU),
- xiv) The Soweto Electricity Crisis Committee (SECC),
- xv) The South African National Civics Organization (SANCO),
- xvi) The Treatment Action Campaign (TAC),
- xvii) The Women's Movement.

The findings by Ballard, Habib, and Valdoia (2006) about these social movements are described as follows:

A quick scan of the issues pursued by social movements indicated a diversity of concerns: Land equity, gender, sexuality, racism, environment, education, formal labour, informal labour, access to infrastructure, housing, eviction, HIV/AIDS treatment, crime and safety, and geopolitics. Many movements suggest that they draw from class based ideologies with notable self description as: anti neo-liberal, anti capital, anti GEAR, anti globalization, anti market, and pro poor, pro human rights, socialist and autonomist. However while the material improvement of poor people's lives is at the core of many of these movements they are by no means limited to demands for delivery or indeed to the concerns of the poor.

Some also speak to legal rights, social and environmental justice, and stigma and discrimination of certain categories of people rooted in every day

society and culture. In addition to issues, social movements vary according to geographic scale. On the one end of the continuum, Durban's Bay View Flat Residents Association focuses its works on a micro local scale in loose and sporadic affiliation with other organizations and movements around the country while the Treatment Action Campaign (TAC) is a national organization strongly represented throughout the country...institutional shape is also a dimension of variation. Some are local branches of international movements. Others such as the National Land Committee describe themselves as independent NGOs... Some still choose not to formalize their structure at all and prefer to remain unregistered and informal. Social movements are not 'Spontaneous grassroots uprising of the poor' as they sometimes romantically imagined, but are dependent, to a large extent, on a sufficient base of material and human resources, solidarity networks and often the external interventions of prominent personalities operating from within well resourced institutions. ... Social movements challenge mainstream policies and approaches on political, social, economic and often moral grounds.

There are many opportunities to practice advocacy in South Africa, from street activism to parliamentary hearing. One interviewee told this consultant that in the last 3 to 4 months there were more than 700 protests in Johannesburg city alone.

As a result of this opportunity, CSOs in South Africa, including the social movements, can be characterized as having placed their main priorities on advocacy. The examples cited below illustrate the extent of CSOs' role as advocates of the poor and as watchdogs of the government:

<u>Area of advocacy</u>	<u>Reason for advocacy</u>
Finance	<ul style="list-style-type: none">• Liberalization of foreign exchange,• Value Added Tax on basic goods, failure to regulate financial institutions
Trade & Industry	<ul style="list-style-type: none">• Massive job loss,• lack of small business promotion,• failure to impose anti-monopoly, and corporate regulatory regime
Education	<ul style="list-style-type: none">• Far-reaching policies,• failure of redistribution,• fairly narrow approach to higher

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	education
Health	<ul style="list-style-type: none">• Refusal to provide cheap anti-viral drugs,• cutting down hospital budgets,• not emphasizing community health, and primary health care strategies
Welfare	<ul style="list-style-type: none">• Attempting to cut the child maintenance grants,• for insufficient disability program
Land & Agriculture	<ul style="list-style-type: none">• For failing to redirect agricultural subsidies,• for land distribution,• lack of support for community farming project, privatizing marketing board
Housing	<ul style="list-style-type: none">• Lack of consultation on housing policy,• insufficient housing subsidies,• lack of rural housing,• genders insensitive design of housing
Water	<ul style="list-style-type: none">• water privatization program
Public works	<ul style="list-style-type: none">• Low pay for contract work on rural public work projects,• reduction in national staff capacity,• favoring consulting firms for community based project
Energy	<ul style="list-style-type: none">• corruption,• lack of attention to the need of small-scale mines,• high tariff of electricity
Environment	<ul style="list-style-type: none">• approval of toxic waste importation,• water and air pollution,

- central government allowing ill equipped provinces to enact regulation
- Americanization of broadcasting,
- rapid commercialization of telecom
- deregulating formally regulated public transport, not promoting public transport
- arms sell to repressive regimes, rearmament
- allocating high resources to white neighborhoods than to townships for fighting crimes
- conservative and inconsistent foreign policy to sustain the non-aligned movement
- leaving residual power in old guard judicial and prosecutorial hands,
- for failing to reform court procedures in cases of sexual offenses against women

VI. Internal and External Challenges

Uganda

A countrywide study conducted by the Ugandan National NGO Forum revealed that many CSOs suffer from weak internal management. The majority lack the capacity to engage the state in policy analysis; many CSOs also lack the capacity to evaluate and monitor government development programs. CSOs especially at the district level lack skilled human resources. They often do not communicate or share information among themselves and with the people they claim to represent.

Internal

In Uganda, NGOs are mostly small and many are relatively weak. The national NGO forum noted that of some 3000 officially registered NGOs in Uganda, only 200 are fully functional and operating with appropriate administrative structures and clear objectives. CSOs formed by some individuals operate with little or no constituency and their internal management is often undemocratic and they are managed like a private enterprise. The founders take all the decision and create jobs for themselves. Many CSOs suffer from weak internal management. They lack human resources. They often do not communicate or share information with the people they represent (paper by Julie Hearn, Ghana Institute of Development Studies).

The civil society index report of Uganda, published by CIVICUS in partnership with DENIVA, also reveals that most leadership position is held by the upper class and women and the rural population is mostly under-represented in leadership positions. Similarly, a survey conducted by Bari et al. in 2003 showed that although women lead many women's NGOs and rural community groups, 75% of the surveyed NGOs' directors are male.

Interviewees for this study also identified the following points as the internal constraints for Ugandan CSOs.

- Most CSOs prefer handling soft issues;
- Their participation is high only on invited issues;
- Most fear engaging in the hard issues such as mobilizing people to express their views and addressing human rights and governance issues;
- Instead of empowering citizens to express their view, they prefer to speak on behalf of a community;
- They suffer from lack of unity and negative competition;
- Many grassroots CSOs still using need-based approach are not advocating on rights,
- Most are donor dependent and not sustainable.

The same interviewees also identified the following points as strengths of CSOs in Uganda:

- Traditional CSOs have legitimacy; they are self-reliant and sustainable;
- NGOs conduct research and analyze problems;

- Most CSOs shifted from service delivery to issues of governance and human rights;
- Formation of networks and increased interest by CSOs to join coalitions and networks;
- Emerging social movements that address social, economic and political issues;
- Having their own code of conduct;
- Being able to develop strong human rights organizations.

External

Legal and policy environment

Uganda's legal framework generally provides sufficient space for the formation and operation of civil society organizations. The 1995 constitution recognizes the right of associations and specifically recognizes the role of civil society organizations and their existence. Most CSOs in Uganda operate under the 1995 constitution. Principle 5(ii), article 29(1) and article 38(2) of the constitution all talk about civil society organizations' rights and legal existence. For example Principle (ii) provides that "the state shall guarantee and respect the independence of non governmental organizations which protect and promote human rights." Article 29(1) provides for "the freedom of association which shall include the freedom to form and join associations or unions including trade unions and political and other civic organizations". Article 38(2) provides that "every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organizations".

The Ugandan constitution protects CSOs better than Political Parties. Article 269 for example puts limitation to political organizations such as not holding public rallies; not opening branch offices, not carrying any activities that may interfere with NRM. Because of these limitations, some political parties register as and operate like CSOs. In addition to the constitution, some CSOs have to be governed by additional laws. NGOs were for example initially governed by the NGO registration statute of 1989 until the new NGO-Act was enacted in 2002. This statute defines what NGOs are, and provides guidelines for the registration and regulation of NGOs.

Section 13 of the NGO registration statutes no.5 of 1989 defines NGOs as follows: "A non-governmental organization established to provide voluntary service including religious, educational, literary, scientific, social, or charitable

services to the community or any part thereof”. This statute requires NGOs to be registered with the board and obtain a registration certificate for legal operation. (Uganda Government, 1989).

Since 2002, however, three additional bills that threatens to limit CSOs’ general freedom has been enacted by the government. These bills are:

- i) NGO registration (Amendment) Bill 2000. This bill:
 - requires CSOs to have a permit in addition to registration,
 - provides punitive penalties for individual NGOs ,
 - requires the new board to include state officials and security agents as its members.
 - gives the minister of internal affairs to be the authority to review appeals in the event of cancellation of certificates.

- ii) The political parties’ bill 2001. This bill:
 - negates political pluralism, and
 - stifles political parties’ operations.

- iii) The bill on the suppression of terrorism (2001):
 - threatens fundamental freedoms of expression and liberty, and
 - threatens the protection of human rights. (NORAD Report)

According to the NORAD report, the registration process for NGOs is considered to be cumbersome and not supportive. Having a bank account, work plan and statute are requirements for registration. On the other hand, the majority (49%) regional survey respondents for the civil society index said there was no restriction or reasonable restriction on advocacy work while 22% sated that there is intimidation on those CSOs that advocate governance issues.

Examining the tax law, the civil society index finding is that the tax law is somewhat favorable to CSOs since it allows tax deduction for individuals or companies and tax exempted organizations.

- The consultants’ discussion with NGO leaders and staff revealed the following points: Not all CBOs are not required to register, but those who want to register, do so at district levels.
- NGOs are required to register with the national NGO board if they work beyond one district.
- Time for registration at times can take longer, because the board meets only 4 times a year and has limited capacity.

- Reporting to the NGO board annually is expected, but not many adhere to the requirement and the NGO board does not take any retaliatory measure.
- The new act has introduced an annual permit in addition to certification that lasts for three years. However, the permit has not yet become operational.
- Enforcement mechanism by the NGO board is weak due to limited capacity; the NGO board has only 2 employees that are supposed to monitor and enforce over 7200 NGOs.
- Except one on occasion in 2005, the government has never closed or suspended CSOs. The only incident is when the local government in Northern Uganda closed the district network temporarily.
- NGOs, if registered under the company act, can own properties.

Some interviewees stated that the government tries to discourage or take a harsh stand against NGOs that deal with civic education, corruption, and other issues that have political nature and all interviewee expressed concern about the new Act. The director of the NGO Forum, for example, stated that the manner in which the new act is planned is to silence NGOs.

Patrick Kalama of HURINET told the consultant that a Coalition of NGOs against the NGO Bill (CONAB) has been formed and it is working to take the case to court, since they believe the NGO ACT is not in line with the constitution. The members of CONAB are DENIVA, HURINET, CENN, APKAN, ACORDE & NGO Forum.

The coordinator of the NGO Forum, Mr. Dio Nyanzy, similarly stated that as a reaction to the NGO Act, the NGO Forum has been advocating against the bill since 2000. He further stated that the NGO Forum produced an alternative bill and presented it to the government. Mr. Dio said, the bill was smuggled to the parliament and passed without CSOs' knowledge. It was a bit late to do anything; now a group of CSOs are analyzing the bill to start lobbying for the amendment of the law while others are preparing to take the case to the constitutional court. Lobbying of members of parliament has also begun.

A Brief Review of the Ugandan NGO Code of Conduct

In September 2006, to promote generally acceptable ethical standards, Ugandan NGOs launched a self-regulation instrument known as the NGO Quality Assurance Mechanism (QUAM). All NGOs operating in Uganda have agreed to adopt and abide by the regulation. The standards are developed for the NGOs'

program and performance improvement. A total of 59 standards were adopted, out of which 32 are minimum standards whereby all NGOs are expected to adhere to and 17 of the standards are meant for further improvement.

The minimum standard for the NGO as an organization revolves around ethical governance, and effective management of resources. The minimum standard for the NGO program activity revolves around documentation capacity, accessing and sharing information with government and other actors, as well as transparency.

An NGO which has fulfilled the entire minimum quality for both organizational and program related standards will be issued a full certificate. NGOs that are recently created and that meet the standard designated for startup NGOs will be given a provisional certificate. NGOs that have met the entire minimum and improvement standard are issued the advance certificate (QUAM Standards, Part 2, September 2006).

The process takes a maximum two months. Once the certification process is completed, the National Certification Council will award the certificate. The process of certification is currently supported by the Donor working group fund. However, to make this process self-sustainable, the NGO that undergoes the certification process will pay a fee.

Relation with the State

Civil Society-State relationship can be characterized on one of the three ways: confrontational, complimentary and /or collaborative. A 2001 report by DFID characterized the relationship between Ugandan CSOs and the State of Uganda as follows, “engagement with government in policy process has been increasing and these are widely perceived to have been an opening of space... Nevertheless, although engagement is often through structured and defined process, the basis on which engagement takes place is often unclear or contradictory.” (DFIO, 2001)

The NORAD study on the other hand described the relationship as follows, “...Consultation made under this study indicates that there is a noticeable and growing interaction dialogue between CSOs in Uganda and the government in the process of policy formation and implementation. This is neither widespread within the government, nor are all civil society actors involved in the process.”

Several of the CSO representatives interviewed for this study pointed out that the relationship is mostly collaborative, especially with the service delivery NGOs. The coordinator of the NGO Forum, for example, stated that, “except the NGO-Act Government is generally responsive. For example, the Ministry of

Finance is very cooperative but the Defense Ministry could be difficult especially if we want to work in areas of conflict.”

CSO-Donor Relations

Although assistance to CSOs is relatively small and mostly directed at specific types of CSOs that are categorized as NGOs, donor assistance to countries in Africa has contributed to the continent’s development and democratization process. Donor assistance to civil society organizations is distributed to CSOs that address basic livelihood issues as well as to those that work to strength the democratization process.

According to a discussion paper by Julie Hearn , Ugandan CSOs committed to promote liberal democracy and economic liberalism were the most popular among donors. In her assessment, formal, urban based professional, elite advocacy NGOs are the most popular actors for democracy assistance. The author argues that the vast arrays of other social groups are excluded from donor assistance.

Donors have been actively supporting CSOs in four main areas:

- i) Holding government accountable in its management and allocation of public resource,
- ii) Opening dialogue on broad political issues facing the country,
- iii) Legislative lobbying, and
- iv) Defending human rights.

Women organizations, human rights groups, development NGOs, governance and democracy NGOs, youth organizations and professional media associations are some example of CSO s that receive regular donor assistance.

According to the same paper by Julie Hearn, between the periods 1992 to 1996, civil society as a specific sector did not receive assistance from USAID program; support was given through the US Embassy as a democracy and human rights fund. However, starting in 1997, democracy and governance became the USAID strategic objective and CSOs in Uganda began to access the fund from USAID.

Prominent national advocacy CSOs such as Human Rights Network (HURINET), Foundation for Human Rights Initiative (FHRI), Forum for Women in Development (FOWODE) and others have been supported by USAID, Ford Foundation, National Endowment for Democracy (NED), and Friedrich Ebert Foundation, among others.

Denmark, Norway and the Netherlands also provide significant support to CSOs. For example, Denmark through its development agency DANIDA has a large program support. It works with the Uganda National Farmers Association

and the African Center for Treatment and Rehabilitations of Torture Victims (ACTV).

Similarly, Sweden also supports CSOs in Uganda, but it has chosen to concentrate its resource on one main organization, i.e., HURINET.

The 2006 CIVICUS civil society index report showed that 86% of total NGOs' revenue comes from donor assistance. Similarly, according to a study done by Barya in 1998-the Association of Women Lawyers (FIDA-U), Association of Small-Scale Industries, the Uganda Law Society (ULS) were heavily dependent on donor funds. Barya stated that 80 to 98% of this organization's fund comes from either foreign government or donor fund.

Most of the NGOs directors and staff interviewed for this study expressed concern that donor fund is becoming more and scarcer and the mushrooming of NGOs has made the competition fierce.

Challenge

A 2002 report by NORAD identified the key challenges for Ugandan CSOs to be the following:

- The new NGO act gives them limited space for advancing democratization;
- Fear and lack of courage by many CSOs to engage the state;
- Lack of political will by the government;
- High dependence on external funds for their progress, coupled with receiving some fund from the government to provide service to communities - due to the direct budget support – and such an arrangement undermines their independence;
- NGOs' narrow social base, their being mainly urban based and having very minimal representation in rural areas;
- Some CSOs' lacking internal democracy and accountability to the people they claim to serve;
- Inadequate information and skill sharing among individual CSOs and networks.

Those interviewed for the study acknowledged some of the above challenges while they also said much has improved in some areas of the challenges. They informed the consultant that increasingly, CSOs are being involved in the trilateral meetings with donors and government on major policy priority issues. The interviewees also stressed that more than before, CSOs'

voice is being heard on issues of human rights, basic needs and marginalization of the people.

Kenya

Strength, limitations and challenges

Although there is an increasingly open political space, CSOs in Kenya still have limited influence on the policy formulation process. Many CSOs in Kenya concentrate on changing laws tabled in parliament. One of the interviewee stated that this action was widely seen as the main goal of policy influence, while such strategy seems misguided given the inefficiencies of the Kenyan institution.

Participants of the study identified the obstacles and limitations to CSOs engagement in policy process to be the following:

- Insufficient staff capacity,,
- Limited fund base,
- Limited knowledge about policy processes,
- Government policy not being open to engagement,
- Policy makers not taking CSOs' work or evidence as credible,
- Staff not having adequate time.

They also acknowledged the strength of Kenyan CSOs. Some stated that CSOs in Kenya use networks to influence government polices or laws. Interviewees noted that strategic networking among coalitions was found to be the best strategy to engage with policy makers. Some of the other CSO leaders on the other hand stated that Kenyan CSOs still have a long way to go since weak linkage and networking is still a key challenge to influence government policy.

Limitations

When asked about limitations, almost all pointed out to the recent crisis of the NGO Council that was responsible for self-regulation. The internal conflict within the leadership of the NGO Council resulted in NGOs' loosing interest in the Council and this in turn led to the emergence of weak thematic networks, hence the lack of being able to speak with one voice.

Other participants identified the following as major limitations of the NGO sector:

- Perception by some NGOs that they have systems that are better than the government's,
- Not being accountable,

- Elitism,
- Not being able to forge a strong people's movement,
- The same individuals circling around at all places,
- Some loosing public focus and some focusing on private interest.

Challenges

In the wake of Kenyan political transition, CSOs faced several challenges. As stated before, CSOs lost their dynamic leaders when the individuals joined the NARK government. After NARK came to power some former leaders became members of parliament, some became the head of human right commission and other institutions such as the judiciary and other public services. This created a leadership vacuum in the CSO sector. Furthermore, the relationship between the former leaders with the remaining CSO community is not based on old comradeship. Those that joined the new government started to believe the current government shares their ideals and the CSOs should collaborate and closely work with the government. Those outside the government felt that the few that joined government will not have enough clout to determine government agenda; hence they should still continue the watchdog role and not depend on former leaders to abandon their traditional role.

The other challenge was how to replace the dynamic leaders they lost to the government. For example, the human rights groups that have focused on holding the authorities to account found it challenging to justify their existence in the changed circumstance. Most have to find new objectives or redefine their vision and mission. The possible shift of donors' alliance from CSOs to the government is also another challenge identified by the interviewees. Most donors started supporting the government or even left the country assuming their fund is no longer needed.

Self-Regulation

Self-regulation is used when a sector perceives the need to order and manage itself in order to protect and promote its values and to enhance its reputation. In 1990, the Kenyan parliament passed the NGO Coordination Act. This Act made Kenyan NGOs realize that there was lack of information and transparency both in the NGO sector and government. NGOs felt the need for legislation that will create an enabling environment and a need for NGOs to protect and promote the sector.

As a result of the Act, several NGOs formed a coalition that was called the NGO Network to address the issue of enabling environment. The NGO Network began a series of consultations with the Office of the President and the Attorney

General around an enabling legal framework within which NGOs and CBOs will have larger roles in self-regulation. The consultation led to several amendments of the NGO Act and by 1992 the National Council of NGOs (NGO Council) was established as a legal body for the purpose of self-regulation.

The NGO Council is therefore a self-regulating body and is independent and has no government representation. It has its own secretariat, and all registered NGOs become automatically members of the NGO Council. The secretariat is self-financed through members' contributions and donation. The Council elects an executive committee of 15 people. The NGO Council began the process of developing a code of conduct that would reflect the principles by which NGOs will abide.

External

Legal and policy environment

The Kenyan constitution provides for the rights of assembly. Any group can form an association or organization for any purpose. Several laws guide the process of registration. Most CSOs register with the department of social services. Some register with the NGO coordination board. Others register as non-profit companies or as cooperatives.

For example section 80 of the constitution of Kenya states, "no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his rights to assemble freely and associate with other persons and in particular to form or belong to trade unions, or other associations for the protection of his interest".

The interviewee mentioned earlier stated that while there are various laws facilitating registration, and the government does not seem to create barriers to the formation of CSOs, there are delays in the registration of some CSOs that engage in "political" matters. Human rights organizations are examples of CSOs that experience delays. Furthermore, such organizations are subject to security clearance before they receive their license; such a requirement is against the law, but it practised by the executive arm of the government.

Steve Ouma of the Kenyan Human Rights Council stated that most human rights and democracy groups, especially outside Nairobi, do not register since it was difficult to register during the Moi regime. However, most of them operated under the legal registration of his organization. Mr. Ouma said that currently registration is not difficult and there are several registered human rights organizations working all over the country.

When asked how long it will take to register an organization, most participants of this study stated a maximum of six months will be typical for

most organizations. Those that have the mission of engaging government and are formed to advocate for rights had hard time and it will take them longer than the others. Other than operating as a project of a legally registered organization used by such NGOs, another method is to register outside the country and operate in Kenya.

Generally speaking registration for most organizations is not difficult. According to the Global Integrity Report (2004), a country report since the NGO Act came into force, it has registered 2,800 NGOs. Women's groups that register with the department of social service find registration less difficult. According to the same report there were more than 122,000 women's groups operating all over the country. The cost for registration is also not high.

NGO legislation

The NGO sector policy provides the framework for NGO regulation and facilitation of its activities. The policy recognizes the dynamism of the sector and its complimentary role in the provision of basic services to Kenyan citizens. In addition, the policy recognizes the need to work together.

According to the Sessional Paper No.1 of 2006 on non-governmental organizations, the objective of the NGO policy is, "to create an enabling environment for NGOs to operate effectively and efficiently in the social and economic transformation of the country." The policy has the following 8 specific objectives:

- Provision of operational definition of NGOs,
- Provision of broad legal operational framework,
- Providing registration procedure while safeguarding freedom of association,
- Strengthening government and CSOs partnership,
- Enhancing collaborative relations between government, CSOs and funding agencies,
- Promoting transparency and accountability,
- Facilitate exchange of information, and maximizing utilization of resources.

The NGO sector policy states: "...the government shall engage with NGOs on all matters of development and shall invite them to participate in policy making. The government shall facilitate exchange of information and regulate dialogue with NGOs and other stakeholders. The government shall

encourage and empower NGOs to become more involved in matters of economic development. It will promote and enhance the operatives of the national, provincial and district level networks existing currently through the effort of the NGO Council...”

The policy further states that these organizations have specific rules and regulations. The NGO Coordination Board is the key government institution that is responsible for registration, deregistration and coordinating the activities of NGOs. The NGO Council on the other hand will be responsible for self-regulation of the sector. This Council is required to be run by professionally qualified individuals that are elected from and by the voluntary sector. The NGO Council is also responsible for the enforcement of the code of conduct. NGOs are required to submit annual activity and audit reports to the NGO Coordination Board. The NGO Council is also expected to submit a report and the NGO Code of Conduct to the NGO Coordination Board for its approval.

Discussions with members of the civil society confirmed that the government did not control NGOs’ activities. Haron Mobdi, a human rights lawyer and former elected member of the NGO Council, said that CSOs in Kenya are made up of people struggling to transform public good, to fight poverty and to fight for equity and justice. The constituency of CSOs is very large and it will be difficult to clamp down on them; and that is the reason why the government does not take drastic measures. He further said that the constitution guarantees the right of association, freedom of expression, freedom of assembly. CSOs will challenge government using constitutional rights and take it to court. The judiciary’s being strong and independent has also helped. Haron said the first law that tried to regulate CSOs was the NGO coordination act that was enacted in 1990.

According to Haron, CSOs working on human rights and governance felt the act was motivated to seek control, hence many of them sought to register as trusts instead of NGOs. Explaining how one registers as a trust Mr. Mbodi said the requirement is simply to donate 1000 Kenyan shillings, establish the entity as a trust and register with the Ministry of Land. He further stated that those that did not choose to register as an NGO or a trust can also register using the societies act, welfare & cooperatives act.

In Haron’s view, the NGO Coordinating Act was enacted to control rather than to facilitate. Because the NGO board lacks the capacity to control and regulate NGOs’ activities, by and large, Kenyan NGOs in the past were free to operate without much restriction.

According to another interviewee, the 1990 NGO Act was made into a law without any policy framework, but recently a framework is being discussed, referring to the July 2006 NGO sector policy.

Relationship with the State

Kenya has a history of citizen's engagement in advocacy. This role expanded a lot in the early 1990s. Although government delayed registration and used to harass some NGO leaders in the 80's and early 90's, the relationship between government and CSOs was not hostile. According to Karuti Kayunga the state-civil society relation has evolved through time.

The Kenyatta government had accorded civil society initiatives special policy attention; however, it restricted them to address only social and economic issues and denied them access to political space. During the Kenyatta period, self-help groups and NGOs remained independent and yet became important forces in the development process; thus the CSO-State relationship remained cordial.

During President Moi's regime, the government was associated with demobilization and distraction of CSOs. The government introduced measures to stifle cooperatives, it incorporated self-help group into administrative and political government structures. As the self-help groups could not undertake any development projects without the knowledge of the government, this act curtailed their autonomy. The government requested self-help groups to register and those that did not register were excluded from government and donors' grants. Around 1989, the Moi government made it clear that NGOs would be co-ordinated and supervised by the state which made the relationship between the CSOs and government antagonistic.

In the beginning of the 90s, the government introduced a legislation that was meant to restrict CSOs, especially those that were critical of the government. As a result of the legislation, CSOs gathered together to force the government to make amendments; they constituted themselves into a strong standing committee to negotiate the amendments. Due to the entry of donors on the side of CSOs, the government introduced a few amendments to the legislation. This gave the NGOs courage and sufficient skills to continuously engage the regime and the CSOs' struggle for a democratic order began. The relationship during this period therefore was confrontational until the new NARK government won the election and took power.

The current CSO-State relation is not confrontational but is very challenging, since the CSOs are still in the process of re-evaluating and assessing the new government's actions. Some CSOs are still grappling with the challenge of justifying their existence.

Civil society and the Kenyan political transition

The year 2002 is seen by most people in Kenya as a year where a new chapter for Kenyan democratization process began. For the first time the country managed to replace a government through open and free election. An article by professor Civet Kawabata published by Partner News (2002) states: "...with the change in government the civil society sector has undergone change too. These include notably loss of key luminaries in the civil society movement to government, change that has brought along several challenge that need to be demounted if Kenyan civil society is to continue playing the critical role it played in the democratization process as effectively in the context of a dramatic transition..."

What role did Kenyan CSOs play?

When multi-party politics was re-introduced in 1991, Kenya's political context changed dramatically. Citizens started discussing politics and government issues freely. The media started speaking with an increasingly independent voice. Civil society became the training ground for new actors who are interested in promoting change. Many CSOs started to provide civic education training to citizens in both rural and urban settings. In addition to the exiting ones, new CSOs evolved and within one year the number of CSOs providing civic education increased from 10 to 30. By the time election was held in 1997, the number increased to 70 and by 2002 there were 210 CSOs that were involved in providing civic education (Kanyinga 2004).

In the past, the focus of the civic education training was on voters' education. Civic education providers and donors reviewed the past strategy and in 1999 the CSOs agreed to provide non- partisan, non-advocacy, and politically neutral civic education programs. They further agreed to standardize the training programs and as a result they developed the National Civic Education Programme (NCEP). The objectives were to create a mature social, economic and political culture in which citizens exercise their rights and responsibilities and participated effectively to broaden democracy in Kenya. A common curriculum, a handbook and a training manual were produced to ensure credible content. Over 3700 facilitators were trained and deployed. The NCEP started in July 2001. During the program period, over 40,000 different activities were carried out and close to 4 million adults were reached (Kenya Human Rights Commission 2003).

The NCEP assisted in making informed presentation to the Constitution of Kenya Review Commission (CKRC), which was carrying public consultation during the same time.

Francis Angela of Pact Kenya, one of the persons interviewed for this study, stated that the NCEP resulted in citizen empowerment, political enlightenment and push for a new constitution.

South Africa

Strength

CSOs played an important role during the post-apartheid era. They promoted citizenship and successfully advocated for the bill of rights in the constitution. CSOs are instrumental for the emergence of a political culture of dialogue. Because of CSOs' advocacy, for example, budget allocation & budget systems have been changed and successfully implemented. According to CIVICUS Index on Civil Society (Civil Society in Uganda, DENIVA, September 2006), South African CSOs play a significant role in the promotion of human rights. 73% of the respondents for the study run programs and projects in areas of human rights. Another strength observed from the same study is that more than 90% of the CSOs that participated in the survey have written conditions of employment, disciplinary policies, staff development and training policies and written performance appraisal.

Limitations

The internal governance of civil society organizations might be considered more democratic than other sectors, but this does not mean all CSOs are uniformly democratic.

According to a paper titled "Development of Civil Society in the New Millennium - the case of South Africa", democratic governance is not widespread among CSOs.

Similarly, the survey conducted by CORE has also shown that many board members of CSOs lack the capacity necessary to adequately govern the organization and the level of commitment is also found inadequate. The staff of most CSOs (social movements) lack skill, as a result of lack of opportunity to gain experience during the apartheid era. This is especially true among the CSOs established and run by black South Africans.

Scarcity of funds tremendously affected the performance of CSOs post-1994. Trade Unions, Professional Associations, and NGOs representing the voices of the poor people have been seriously affected by lack of access to funding. The other limitation was the gap created at the leadership level. Most CSOs lost their leaders as a result of exodus to the government.

Challenges

South Africa's CSOs, during the apartheid era, played mainly oppositional roles. They were heavily involved in the anti-apartheid struggle. During the post-apartheid period, their approach has changed from opposition to engagement. This transformation was very challenging to most CSOs. They didn't know how to deal with the State as well as society at large. Due to drastic change of donor funding, competition among CSOs to secure support has also been a challenge. The camaraderie relationship that existed during apartheid changed into rivalry for funding.

Brain drain and exodus of CSOs' prominent leaders to the government and parliament left a huge gap in CSOs' leadership in general and for the social movements in particular.

Incorporation of CSOs in consultative forums, while benefiting the leaders in terms of their capacity to engage government, undermined the empowerment of their constituency and this was challenging since it created a knowledge gap between the leaders and their large constituency

Self-Regulation

Unlike Uganda and Kenya, the CSOs in South Africa have not developed a code of conduct and a self-regulatory scheme. Because of the relatively free space to operate and high tolerance of CSO activities by the state, the need for self-regulation was not realized. However, interviewees have expressed concern on the mode of engagement of social movements and some CBOs' becoming more and more violent. There is a need for some kind of agreed code of conduct. The diverse political ideology among civil society activists might make this process difficult. The state/CSO relationship's being smooth might also be the reason for not having a self-regulatory framework.

External

Legal and policy environment

The 1996 constitution of South Africa is highly progressive. The Bill of Rights that is part of the constitution provides human, civil, social and political rights. It also accorded CSOs a broad legal space.

The most recent legislation, the Non-Profit Organization Act (NPO Act) that was passed in 1997 provides for registration of non-profit organizations with the Department of Welfare (DOW). There are also other legislations that

provide alternative means of registration. South African CSOs register as non-profit, trust, companies not for gain, voluntary organizations, educational or welfare organizations, trade unions, etc. Some CSOs do not register at all.

The relevant laws for CSO registration include:

- The Non-Profit Organization Acts No. 71 of 1997,
- Companies not for Gain, Section 21, Companies Act No. 61 of 1973,
- Welfare Organizations - National Welfare Act No. 100 of 1978,
- Trusts: Trust Property Control Act No. 57 of 1988,
- Labor Relations Act No. 66 of 1995,
- Fundraising Act of 1978.

The NPO Act is the most important and recent legislation and was enacted after a long consultative process with CSOs. The Department of Welfare is responsible for registering the non-profit organizations. According to NPO – Act Section 2, its aim is to create an enabling environment and to establish an administrative and regulatory framework. The Act also promotes a spirit of co-operation and shared responsibility with government. Between 1997 and 2001, approximately 7,000 NPOs have registered (NPO Act Section 2, 1997).

When participants for the CIVICUS study were asked if their organization was registered and how it was registered, out of a total of 92 organizations, 38 said they registered under section 21 Not for Profit Companies Act, 36 stated that they registered under the NPO Act of 1997, 10 said they registered as trusts. Others used the Voluntary Organizations Act and Cooperatives Act, while 8 organizations stated that they were not registered at all. When asked how easy or difficult it was to register an organization, interviewees for this study said that it was not difficult to do so, and furthermore, the reason for not registering was not because it was difficult, but for not seeing any benefit in registering. A few participants of the CIVICUS study (9%), however, indicated failure to understand the ACT and being far from the registration office as the reasons for not registering. The majority of the respondents for the CIVICUS study and people interviewed for this study said it takes a maximum of three to six months to complete the registration process (CIVICUS 2000).

CSO State Relationship

Since the 1994 shift of donor funding to CSOs, some CSOs, especially at the provincial and regional level, are obtaining funding from government for development programs or as fee for services. During the transition period, prominent CSOs worked very closely with the government. Some still continue this relationship. The CSO–State relationship in this case is very cooperative. In

fact, 54% of the respondents for the CIVICUS study described their organization's relationship with the state as co-operative and only 4% described it as confrontational. However, some CSO leaders interviewed for this study raised concern about the danger of CSOs losing autonomy from the government and said that they are uncomfortable with the concept of 'Loyal Opposition'.

Currently, increasing numbers of CSOs that started recognizing the inabilities of the government to deliver on its promises are saying that their relationship is becoming more and more critical. The State also started frustrating those NGOs that started holding the government accountable and that started confronting particular government institutions. Due to their advocacy role, some CSOs are engaged in constant conflict with the post-apartheid government. The vast majority of Social Movements remain locked up in conflict with the current democratic government over policies, programs and projects at all levels.

Relations with Donor

During the anti-apartheid struggle, almost all foreign donors were channeling their funds through CSOs and organizations allied to mass-based movements. However, after 1994, donors' approach shifted and their inclination was to channel their fund through the government. Some donors even left and moved to other countries. In addition to donors' fund, other sources of fund, such as individual gifts, corporate gifts and voluntarism also declined. One interviewee said: "Most donors do not work with CSOs directly, but indirectly relate with CSOs through government."

Alternative ways of fund mobilization

As stated in the previous section, during the apartheid era, funding for South African CSOs came mostly from foreign donors. Although some support came from citizens and some corporations, their contribution was limited. Mass-based movements have a multitude of funding options from different groups including foreign donors. When donors were more inclined to channel their funding through the government, the Reconstruction and Development Program (RDP) of the ANC state introduced the right to government funding for CBOs. This fund was, however, mainly for building the capacity of their members and staff of Community Based Organizations. Participants interviewed for this study expressed concern about the funding situation. But they also acknowledged that there are several sources of funding and CSOs have to advocate for getting more resource from government and other sectors. Some of the interviewees argued

that unless CSOs become less dependent on foreign funding, their independence will be compromised and their organizations will not be sustained.

Types and characteristics of funding sources are: individual contributions, citizens' voluntarism, corporate donation, government fund, foreign donation, community chest, that is, community based support, sale of service and national lottery. The National Funding Agency and national job creation funds are also other means of government fund that can be accessed by CSOs.

Concluding Remarks

In conclusion, this section will try to compare and contrast the role of civil society organizations in the three countries and document lessons to be learned by the Ethiopian civil society sector.

Historical development

CSO in Kenya, South Africa and Uganda have emerged from a culture of resistance. They all played key and active roles in the struggle for independence and their present-day activism and their values are deep-rooted in their experience of struggle during the colonial period.

Despite the vibrancy of pre-independence civil society, some CSOs were severely weakened by the independent states. In Uganda, the Amin and Obote governments restricted CSO activity and weakened the movements. Under the current government, CSOs in Uganda have become more politically aware and are engaging the state and advocating for the poor.

Similarly, in Kenya and South Africa, CSO's played critical roles during and after independence. Although the Jomo Kenyatta presidency was supportive of self-help groups, the Arap Moi presidency was known for suppression of the CSOs. However, it was during Moi's rule that Kenyan CSOs mushroomed to struggle against the repressive regime.

During the apartheid era, the South African state used all means to repress civil society, but the massive mobilization and struggle of civil society across all sectors resulted in the destruction of apartheid and the emergence of the democratic ANC government. South African civil society organizations enjoyed an excellent relationship with the state during the first decade, although the relationship is slowly souring in recent years. CSOs in South Africa still play key roles in the country's democratization and development processes and actively advocate for good governance, human rights, justice and a multitude of other causes.

Civil society groups in Kenya, South Africa and Uganda have passed through various phases since the struggle for independence began. They

withstood different regimes' repressions and played key roles in the transformation of autocratic regimes into democratic ones. From the interaction this consultant had with members of CSOs and from the reviewed literature and personal observations, it can be easily concluded that the majority of people that work in the civil society sector are value-driven and not careerists as is the trend in Ethiopia. Most people in this sector joined it to seek justice, advocate for pro-poor policies and contribute to the broadening of the democratic space within their countries.

Growth of CSOs

In all the three countries, a common denominator is the mushrooming of NGOs and CSOs. The growth of CSOs to a large extent is facilitated by the development partners. Existence and growth of mainly NGOs is directly tied with the type of support they get from donors.

Among the three countries, it is only the South African government policy and institutional framework that allows support to NGOs and CSOs. As a result of the policy, many developmental NGOs and CSOs are able to access government fund to implement programs. If this cordial relationship between CSOs and the South African state remains unchanged, CSOs in South Africa will be more sustainable than the ones in Kenya and Uganda that totally depend on donor support.

Policy and legal environment

The governments of all three countries do not openly oppose the presence and growth of CSOs. The constitutions and policy documents encourage the development of all categories of CSOs. However, examining the framework for implementation, only the South African framework seems to be fully established. Operating in the CSO space is easy and there is no negative effort by the government either to control or restrict diverse CSO activities. On the other hand, in Kenya and Uganda, there are still some challenges, especially for pro-democracy and human rights organizations. However, as a result of CSOs' continuous engagement with governments, the democratic space is slowly expanding and tolerance for CSO work is slowly improving in both countries. The CSO actors are more engaged and determined to broaden this democratic space.

Civil society- state relationship

There has been a gradual improvement in the relationship between some civil society organizations and the state in all the countries. Most governments show more tolerance to CBOs and service delivery organizations, but there is still a varying degree of harassment and hostility towards pro-democracy and human rights groups. The Ugandan state, for example, encourages the presence of CSOs, but places some restrictions on pro-democracy groups and trade union activities. Kenya, on the other hand, has a vibrant and large civil society sector, but government policies are not considered to be enabling or encouraging for free operation. However, one also does not observe active government interference in CSOs' activities. By all measures, CSOs in South Africa seem to have more favorable conditions for free operation of all sectors compared to those in Kenya and Uganda.

Commitment to popular participation

Participation of citizens depends on a number of factors, among which are the willingness of government officials and the abilities of CSOs to allow and organize consultation. CSOs in all three countries are engaged in promotion of citizens' participation. They all played active roles in communicating and popularizing the MDGs, PRSP and are working tirelessly to mobilize people to advocate pro-poor policies. The concept of popular participation is supported by the constitutional provision in South Africa and Uganda. Popular participation is a political culture in Kenya, although without a constitutional provision. The citizens' active participation in the 2002 election is one such example. Interviewees for this study, however, feel CSOs and citizens participation is still fragile since such acts do not have a constitutional provision.

Women's empowerment and participation

Women's groups are active in all three countries; however, women have made little progress in participating in the decision-making process although they played active roles in the struggle for independence. Among the three countries, women have greater political voice and access to the development program in South Africa and Uganda. Both South Africa and Uganda use affirmative action to increase women's participation in political affairs. South Africa's constitution and its independent commission on gender addresses human rights issues affecting women. Women groups in all the three countries are active and they have the courage and determination to surmount cultural and religious

discrimination and chauvinism. Their long struggle is slowly bearing fruit in all the studied countries.

Media environment

The media is a critical instrument for development, democratization, popular participation and pluralism. The media in South Africa operates freely. The press is partly free in Uganda. The media in Kenya, although it looks like it is free, interviewee for this study stated that it is more constrained, and there are several unfriendly legislations that can be used to silence media practitioners. More than the other two countries, in Kenya members of the media are engaged in more advocacy work. Their activism resulted in the recent refusal of President Kibaki to sign the media bill, which he thought was violating freedom of expression. That being said, however, right after the election of 2008, heavy restrictions were imposed on the media from reporting election irregularities.

Lesson for the Ethiopian Civil Society Sector

- As can be seen from this brief review, civil society continues to play an important role within modern society.
- Members of CSOs in Ethiopia have to internalize this reality and actively work to protect and defend this sector by fighting for their own rights as well as for the rights of citizens. In order to do this, they must improve their own capacity and their strategy.
- In the countries studied, faith-based CSOs are the strongest and they serve as vehicles for supporting communities and providing strong voices against human rights violations. Ethiopian faith-based organizations will have to reexamine their current position and roles especially in defending human rights and voicing against human rights violations.
- The level of networking among and within civil society organizations is high in all the reviewed countries. As a result, on some issues, such as protecting and defending the sector, all CSOs stand as one body. Ethiopian CSOs need to deepen their culture of collaboration and networking if they want to overcome difficult challenges faced by the sector as a whole.
- A wide spectrum of CSOs working all over the nation exists in all the reviewed countries, although in some cases they are predominantly urban based. Some CSOs in Uganda and South Africa, however, have strong

linkage with rural based community organizations and social movements. The urban based CSOs build the capacities of the CBOs and they in turn communicate information generated by the urban-based CSOs to community members at the grassroots level. This mutual collaboration brings them together. The case of the human rights network (HURNET) described earlier is one good model to adopt for democracy and human rights NGOs in Ethiopia.

- The relationship between government and civil society varies between states and between types of CSOs. Those organizations that concentrate on human rights and governance issues are more prone to harassment than those dealing with service delivery. To minimize this demarcation of CSOs and selective harassment by government, in some of the countries (Uganda and South Africa), CSOs are adopting the rights-based approach to development and all service delivery organizations are using the rights-based approach. This approach is now narrowing the divide. They also network across all sectors. Some important lessons can be taken by Ethiopian CSOs from this approach .
- CSOs in general are accused of not using empirically based research to challenge the state or other actors. As a result of this accusation, the number of knowledge-based NGOs are emerging in all the three countries. The collaboration between academics and civil society is also increasing. Ethiopian CSOs will benefit by closely working with researchers and academic institutions to strengthen their knowledge and role in bringing impact on policy formulation processes and policy analysis.
- The need for legislative reform is still a crucial issue for Ethiopian CSOs. Strengthening networking to positively engage the state in one voice is the only mechanism available for CSOs in Ethiopia if they want to claim their space and expand their watchdog role as that is what has worked in other countries.
- CSOs in the reviewed countries have recognized the weaknesses in the governance structure of some organizations within the sector. As a result of this realization and to minimize government restrictions, CSOs in Kenya and Uganda have established a self-regulation mechanism and a Code of Conduct. The NGO Council in Kenya and the NGO quality assurance working group in Uganda provide support to CSOs in order to help them improve their governance structure and ethics. Ethiopian CSOs can also benefit by establishing a self-regulatory mechanism that is

inclusive, enforceable and legally recognized to help them to adhere to ethical standards, enhance their accountability and credibility as well as build their capacity for a democratic internal governance system.

- The relationship between donors, international NGOs and national CSOs varies between countries. South Africa and Kenya seem to have a greater parity in the relationship between donors and national CSOs. National organizations take a proactive role to engage government in development policies while donors and international NGOs have a more supportive role. The CSOs in Ethiopia and the democratic process will benefit if there is such parity in the relationship between donors, international NGOs and national CSOs.
- The media in the three countries mentioned above is a relatively strong institution. The media in Ethiopia has been incapacitated following the 2005 election. Strong and concerted efforts should be exerted for an enabling legal reform so that media restrictions can be eased and a viable and strong media institutions emerge. To this effect, the Ethiopian journalists association needs to be revitalized.
- In the three countries mentioned above, the judiciary has relative independence from the executive. Ethiopia needs a more independent judiciary and an institution advocating freedom of the judiciary is of paramount importance.
- Traditional institutions in the three countries mentioned above play important roles. Traditional institutions like the *Edirs* of Ethiopia have to be reinvigorated to be active participants in the lives of the people. As is well known, *Edirs* are set-up to address issues related to provide support and comfort to the bereaved. However, the role of *Edirs* can be enhanced by extending their roles to other social, cultural, economic sectors, and advocacy.

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II. The Ethiopian Context

The Voluntary Sector in Ethiopia *Challenges and Future Prospects*

*Dessalegn Rahmato**

1. Introduction

The voluntary sector in Ethiopia has been growing at a rapid pace since the mid-1990s, and this has been made possible by a number of factors that we shall discuss in the pages that follow. This growth is noteworthy for two reasons. One is the fact that independent non-state organizations in their modern form are new to the country, with a history extending not more than three to four decades. Secondly, the sector was operating in a difficult, often hostile, policy environment and frequently faced with severe challenges for which it had neither the experience, know-how, nor resources ready at hand. The bulk of this growth has occurred within the space of about one decade, which may be explained by the relatively improved, though still limited opportunities for associational work provided by the new political context on the one hand, and, on the other, the civic mindedness of a growing number of citizens and their willingness to engage in social causes and development activities outside the public and private sectors. Voluntary organizations are now stronger in terms of numbers, though the country still lags behind other African countries in terms of the strength and impact such organizations, and more diverse in terms of areas of concern and involvement. Despite the hurdles that have constrained the organizations their contribution to the development effort and the process of democratization in Ethiopia in the years since the fall of the Derg cannot be underestimated.

For the purposes of this study I shall take the voluntary sector to consist of a broad range of *civic* (or civil society) organizations engaged in a wide diversity of public activities outside the state and the market. Organizations here are different from those in the private sector because their objective is *not* to make

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profit for private gain; they differ from those in the public sector because they are not resourced from the public purse, and from political parties since they do not seek political power. In Ethiopia, the sector consists of organizations engaged in relief, rehabilitation and development activities (commonly referred to as NGOs or service providers); professional associations and interest groups; self-help, mutual aid and community-based organizations; and human rights, governance and advocacy organizations, and policy research institutions. In some works, both here and in other countries, trade unions and cooperatives are considered as part of civil society organizations, but in this study we shall not give much attention to them as will become clear in the course of the discussion.

As we shall see further down, the largest group constituting the sector are NGOs which are largely engaged in what is broadly termed as service delivery and welfare activities. NGOs have made significant contributions in the battle for food security, in environmental rehabilitation, the provision of health services, and the promotion of savings and credit schemes for the poor, especially in rural Ethiopia. In contrast, human rights, advocacy and governance groups are few in number and have a much less visible profile, having appeared only recently in the wake of the fall of the military government.

In the general literature, civil society organizations (CSOs)– another name for organizations in the voluntary sector– are frequently credited as being innovative (they bring new approaches to deal with existing problems), responsive (they work in ways that respond to local needs), and participatory (they involve the communities concerned in the planning, preparation and implementation of program activities). In a number of countries in the developing world they are recognized as vital partners in addressing the challenges of development and the needs for social accountability and human rights (ADB 2001, Burbidge 1998, Clayton 1996). Moreover, on some occasions the voluntary sector provides a measure of “countervailing power” to that of the state: it stands, in other words, as a counterpoise to, though not always in direct conflict with, the public and private sectors. The state of civil society organizations in a country, i.e., whether or not there are opportunities for them to actively engage in social, economic and governance concerns, often serves as an indicator of the state of democratization in that country. The evidence shows that such organizations have the right for free and active engagement in all spheres of national life only in political democracies and systems governed by the rule of law. The enabling environment in countries that are in the process of democratization is limited and not frequently reliable. On the other hand, CSOs are highly restricted or even altogether banned in countries which are undemocratic and authoritarian.

This study will explore the opportunities and challenges facing civil society organizations in this country as they have evolved through the turbulent

history of the last four decades. I shall argue that the voluntary sector is in the process of transition, and while it is still continuing to grow in number and to gain in diversity, it has reached a turning point and any decision it will take from now on will have important repercussions on its future identity and initiative. It is thus important to engage in wide-ranging debate on this issue to clearly understand where civil society in Ethiopia is heading and what its responsibilities will have to be to its stakeholders and its constituency in the years ahead.

This study will argue that the voluntary sector will need to make a determined shift towards rights advocacy as one of its major spheres of engagement if it is to remain relevant and to be a vital force for change and development in this country. It is encouraging to note that not only is the number of governance/advocacy organizations in the country growing but a number of NGOs which until recently were primarily concerned with service delivery have adopted a rights approach in their programs and are engaged in advocacy and promoting rights awareness. But this is only the beginning and there is a long way to go.

The work is based on available documentation, in particular unpublished reports and documents prepared by government offices and donor agencies, interviews with public officials in concerned government departments as well as senior officers of selected CSOs. I have also benefited from my own extensive field experience and notes gathered during research for a variety of civil society organizations in the last ten years.

2. The Voluntary Sector: Background and Context

2.1 Brief Background

There is a notable difference between the voluntary sector during the Imperial period and that of today. It is arguable whether one can speak of civil society organizations in the 1960s when the law concerning such organizations was issued. Outside informal and traditional institutions there were only a handful of organizations in existence at the time that could properly be described as non-state actors. Such organizations consisted of government approved associations (such as the Ethiopian Women's Association, the Ethiopian Red Cross), ethnic-based welfare groups (e.g., the Guraghe Road Construction Association, established at the beginning of the 1960s), professional societies (such as the Ethiopian Medical Association established in 1963), and a few welfare oriented societies and self-help groups. The law of association incorporated in the *Civil Code* of 1960 did not prohibit public interest or service delivery organizations—indeed the same law has been in use to govern voluntary organizations both

during the Derg and the present government– but individuals at the time preferred to engage in welfare or self-help activism because these were considered to be safe; other forms of engagement were viewed with a great deal of suspicion by the authorities at the time.

One may also argue that these “welfarist” institutions served as "exit" options to individuals who were overwhelmed by the dominant power of the state and who were unable to engage it in any form. While the Imperial constitution contained several provisions ensuring basic human rights and freedoms, including freedom of speech and association, the political system in reality was an absolutist one and tolerated no dissent, was not willing to recognize any other influence or political actor besides the government, and was not accountable to anyone. Here there were no citizens but only subjects, no formal mechanisms for demanding service delivery or for policy engagement. In brief, royal absolutism offered few opportunities for formal citizen groups and for the emergence of an active civil society. The closed nature of the political system was in part responsible for channeling dissent into rebellious outbreaks which flared up in different forms from time to time all through the period of Imperial rule.

On the other hand, the Imperial regime had a fairly modern labor legislation which was prepared with the assistance and support of ILO, of which the country was a long-standing member. However, there was a world of difference between what was in the law and what was on the ground. As in other spheres of socio-political life, the government was quite willing to put very progressive laws in the statute books but had no wish to see them implemented or to constrain its authority in any way. The trade unions that emerged following the legislation were highly restricted in most of their activities, and due in part to this and in part to internal weaknesses they were to remain ineffectual throughout the period in question. The government kept a watchful eye over the union movement, and employed veiled or open threats to prevent organizations from taking any kind of industrial action. Besides, the unions were ill served by weak and corrupt leadership, the lack of organizational experience and limited resources.

Partly as a result of the famine that engulfed the country during the last years of the government– a disaster which eventually created a serious political crisis– a number of foreign NGOs were allowed to set up offices in the country and to engage in relief activities. This was soon followed by the establishment of local, faith-based organizations which also became involved in the relief effort. Twelve of these groups met and formed a network called the Christian Relief Fund in 1973 which was later turned into CRDA, the first, and for many years the only umbrella organization for NGOs in this country.

On the other hand, the regime was content to let traditional institutions carry on their activities since these were seen as posing no threat to the political order or the governing elite. Indeed, informal associations, of which many were faith-based (like *idirs*, *mahbers*, and *senbetes*), were welcome because they were almost solely concerned with providing aid and support to their members and were believed to reinforce existing cultural norms and to be safely accommodated within the status quo. Moreover, it would have been difficult if not impossible to suppress these myriad popular associations because they operated outside the public sector and had no formal structures.

There were many parallels between the Derg and the Imperial political system: in both cases the powers that be were unwilling to tolerate citizen activism and to allow autonomous civic organizations. Opposition political parties were not permitted nor was there an independent press. The state was to be the sole and dominant force and was not to compete for influence with non-state actors.

When the military leaders decided to overthrow the Imperial regime in 1974, the justification they gave was that the existing system was authoritarian and had suppressed individual and social freedoms. They accused the regime of concentrating power in the hands of the Emperor and the ruling elite and denying the people the right to defend their interests. Rebel groups and dissident ethnic organizations that were persecuted under the old regime were cited as heroes and there were attempts to rehabilitate them. In the end, however, the Derg succeeded in establishing, in the name of the Revolution, repressive political institutions, and thus replacing one closed system with another. But whereas the Imperial system may be described as absolutist and autocratic, that of the Derg could be characterized as totalitarian.

The eventual aim envisaged by the hard-line “Stalinist-communist” system which the Derg adopted in the last quarter of the 1970s was to suppress almost all forms of associational life including some of the informal organizations and self-help groups that had thrived under the earlier regime. There were to be no social or political organizations except those approved by the government. The Revolution permitted only one political party and no other; state sponsored women’s and youth organizations, membership in which was virtually compulsory, replaced the few formal organizations that were in place earlier. The Derg not only wanted to replace existing civic organizations but was intent on forcing everyone to join those that had been set up under state auspices.

The Peasant Associations (PAs) that were established as part of the radical land reform of the early years of the Revolution, which were initially envisaged as the independent, self-governing arm of the peasantry, were soon incorporated into the new administrative system set up by the authorities. The PAs became the lowest tier of state administration and were entrusted with numerous duties

including public security, land administration, tax collection, etc. The peasantry thus lost its freedom even before it had begun to benefit by it. In contrast, it proved less easy to bring the trade unions under the authority of the Derg, but in the end, by means of a combination of violent attacks, imprisonment and intimidation the unions were purged of all dissident elements and thoroughly pacified, becoming another arm of the Derg and zealous supporters of the Revolution soon after (Dessalegn 2002).

The fate of other interest groups was less sanguinary but equally unfortunate. The few professional associations that were active earlier either became quiescent or were closed down. Some managed to survive partly because they were seen to be non-political (e.g., the Medical Association, Ethiopian Natural History Society, etc.) and partly because they kept a low profile. The most vocal of the professional associations, the teachers' union, was violently purged, and many of its members— young teachers in the provincial cities especially— were the prime victims of the Red Terror that was unleashed in the latter part of the 1970s as part of the cleansing of the political landscape for the Revolution.

It became almost impossible for individuals to set up any form of association because the authorities refused permits for applicants. All the ethnic-based self-help groups were either closed down or went into hibernation. Even old boys' networks or school alumni associations went into decline or disappeared altogether as it became increasingly risky to engage in any form of associational activity outside those approved by the state. The political environment inspired fear and insecurity, and as a consequence individuals retreated into customary institutions and practices as a form of social-psychological security and of what James Scott calls "everyday forms of resistance" (Dessalegn 1991b).

Nevertheless, despite all its efforts, the Derg crippled but did not manage to eradicate independent associational life, and was, in the end, forced to tolerate some and even depend on others for pragmatic reasons¹. To begin with, the crisis of livelihood affecting the rural population grew to be serious and widespread as the effects of the radical land reform wore out, and as the government continued to pursue ill-advised and damaging agrarian and economic policies. Food shortages became more pervasive and the devastating famine of the mid-1980s claimed far more lives than that of the early 1970s which the Derg had employed to indict the old regime. The result was to make the country and the military government increasingly dependent on external, particularly Western, food aid.

¹ What follows is based on my own personal experience and observations; see also Dessalegn 1991a

By the latter half of the 1980s, something like 15 to 20 percent of the country's food needs were covered through international assistance, including emergency food aid (see essays in Pausewang *et al.* 1990)

Because of the poor standing of the Derg among Western governments, many of these donors were reluctant to provide food shipments directly to the military government, preferring instead to channel their aid through international agencies such as the World Food Programme (WFP) or through Western NGOs. Thus food dependency forced the authorities to allow international organizations into the country to undertake, initially relief and rehabilitation work, but later development programs as well. While the conditions were highly restrictive, many of these organizations were willing to work in the country because of the wide publicity the famine had received in the world media and the dire conditions of the people. Indeed, all through the 1980s, there was a steady increase in the number of Northern NGOs applying to establish a presence in the country, and by the latter part of the 1980s, there were nearly fifty international NGOs active in the country. To these must be added a small number of local NGOs active in the relief effort during the famine, the majority of which were faith-based groups. Some of the secular ones, however, were later closed down by RRC on the ground that there was no need for local NGOs as the Commission was the sole agency for relief work in the country.

Secondly, suppressing independent associational life, especially the informal sector, proved to be rather difficult for the authorities despite some veiled intimidations against some groups and suppressive measures against others. In the mid-1980s, under the pretext that the government as well as the people as a whole should give priority to the rehabilitation of victims of famine and natural disasters, the Derg attempted to shut down urban *idirs* some of whose property was confiscated by kebele officials (tents, tables and chairs, cooking utensils, etc.) and whose financial assets were seized. There was a feeling among some of the Derg's ideologues that *idirs* were reactionary institutions and gave support and encouragement to the counter-revolution. The reigning ideology at the time was hostile to religion and looked with suspicion at any profession of faith and of public gatherings at places of worship.

But in the end, the repressive measures were counter-productive. While the harassment of traditional institutions was damaging initially, it failed to deter people from active engagement in one form or another. There was an immense religious revival in which both young and old fervently participated, and along with this a heightened appreciation of informal institutions, many of which had religious roots.

In the closing years of the military government, the voluntary sector was badly battered, and except for a small number of international and local relief organizations and a few professional societies, associational life revolved around

informal traditional institutions. The structures of government on the other hand were inflated on a gigantic scale, the long arms of the state reaching into the remotest rural communities, urban neighborhoods, and even families and households. The primary concern of the voluntary sector, such as it was, was service delivery and welfare work on the one hand, and mutual support in times of need on the other. “Welfarism” and service provision are important and necessary in particular in a society suffering from extreme deprivation and subject to periodic disasters and emergencies. Nevertheless, even under circumstances different from those we have just discussed, this approach will not help empower civil society and lead towards making the state respectful of individual freedoms and human rights. All through the period discussed, the absence of a vigorous voluntary sector capable of holding state authority accountable meant that human rights violations could be carried out indiscriminately and with impunity.

The human rights record of the Imperial regime was poor but that of the Derg was atrocious. A full account of human rights abuses in both regimes is beyond the scope of this study, but in what follows I shall present a brief discussion since the issue is important for our purposes (see Dessaiegn and Meheret 2004). The constitutions of both regimes promise a wide range of civil liberties but in practice neither government paid any respect to human rights, individual freedoms, or tolerated any dissent. Students were the only group which gave voice to public discontent and which demanded reforms and social justice, but during the Imperial regime student leaders and those involved in public demonstrations paid a heavy price for their actions. The Derg broke up student organizations by means of mass arrests and violent measures.

There were no proper records of human rights violations during the Imperial regime but the available evidence shows that they were extensive. While there were cases of illegal detentions, disappearances and torture, the most widespread form of injustice had to do with the illegal expropriation of the property of groups, communities and individuals. There were large-scale dispossession of peasants and their eviction from the land, in particular in areas settled by minority nationalities. This was frequently the work of powerful landed interests as well as members of the royal family. The Imperial state expropriated large tracts of rangeland, forests and other resources from pastoralists and other communities on the dubious ground that these resources had no recognized owner(s) with legal title to them. The judicial system at the time was notoriously corrupt and the poor had very few opportunities for fair treatment in the courts. Dissident groups or persons suspected of plotting against the government were severely punished, and their property expropriated often without due process. The strict censorship imposed on all publishable material stifled creative work and free expression.

Human rights violations during the Derg were not only on an unprecedented scale but they have also been better recorded than in the past. Critical reports detailing extensive human rights violations were issued by international human rights organizations, including Amnesty International. Large-scale extra-judicial killings, mass arrests, and disappearances were reported, together with the suppression of rights of free expression and assembly. The plight of prominent members of the royal family, and of Ethiopian academics and dissidents who were imprisoned without due process and the right to appear before a court, were frequently highlighted. The so-called Red Terror, which the Derg unleashed in the latter part of the 1970s in an attempt to crush its opponents, in which many thousands were summarily executed, was universally condemned by the international human rights movement. The Derg's massive resettlement program, which was under way from the early 1980s, drew strong criticism from a number of human rights groups, some of whom compared it to the forced labor camp system of the Soviet government in the Stalin era.

It would be no exaggeration to say that there was a reign of terror in the country throughout much of the seventeen years of military rule. We have presented a catalogue of the violence and repressions of the Derg elsewhere and a brief summary will suffice for our purposes here (Dessalegn and Meheret 2004). The list of human rights abuses and extreme forms of repression include the following: summary executions and extra-judicial killings of hundreds of persons during the early part of the regime and thousands more at the time of the Red Terror; arbitrary arrest and detention of people of all walks of life all through the period of the Derg (due process and the rule of law were routinely ignored); violent suppressions of trade unions, and demonstrations during the mid-1970s in which several hundred young people are reported to have been massacred by security forces; detention and torture of civil servants, and public enterprise management staff during the so-called period of counter-revolutionary economic sabotage; harassment of followers of several Protestant denominations and the closing down of their places of worship; forced resettlement, and forced recruitment of young people to fight in the various war fronts. The victims of repression were not, by and large, a particular group, community or class, but a cross-section of society, both rural and urban, civilian as well as military.

By the end of the 1980s the independent voluntary sector consisted of some sixty-five or so NGOs (of which only about a third were local organizations), a handful of professional groups, and an untold number of small informal associations of various kinds. There were no human rights, advocacy or policy reform organizations, voter education or environmental groups. Active CBOs did not emerge until the latter half of the 1990s.

Many CSOs in the country were uncertain and insecure following the fall of the Derg because they were not sure how the new authorities would view the organizations and what measures they would take in respect of them.

2.2 The Context

A few years ago there was only a limited number of written works on CSOs, much of which consisted of short pieces and of unsatisfactory quality. The focus of attention was on service providers (NGOs), and other citizen groups that were emerging and making their presence felt were ignored or given only a passing glance (see Dessalegn 2002 for references). Since then the civil society landscape has changed considerably, and there is a growing body of research on the subject with greater depth and scope as the references at the end of this study indicate. It is true that a good deal of the new work has been sponsored by donor organizations with a specific program agenda, nevertheless there is increasing interest on the voluntary sector donor agencies, academia², researchers and consultants, the media, government and civic groups themselves. Even now, however, NGOs and other service providers continue to be the center of attention, and both government and donors are finding it difficult to accommodate rights advocacy and policy reform groups.

The literature on the voluntary sector in this country often makes a distinction between informal and formal organizations, the former often referring to traditional associations that are loosely structured and not registered with the relevant government authorities, and the latter involving “modern” organizations with legal personality and clear structures for decision-making and program implementation. In what follows, I shall look briefly at the first and then examine more closely the state of the second, and its changing circumstances.

Traditional associations

As is the case elsewhere in Africa, Ethiopian society is rich in associational life. These associations bring together individuals and families in informal cooperation and interaction for social, economic and religious pursuits. It would be difficult to imagine a family in the countryside, for example, leading a normal life standing outside the associational framework. Mutual aid, and labor sharing groups, grazing alliances, religious associations, burial societies (*idirs*), rotating savings schemes (*iqubs*), kin-based (or home-boy) networks, and women’s self-help groups are the main forms of informal cooperation that are common in most

² For example, a number of thesis works on CSOs has been prepared by graduate students at Addis Ababa University

parts of the country. Some of these associations are relatively new, others have evolved over many decades or generations, but each serves a vital need and helps ease the burden of daily life (see INTRAC 2004 for details).

One source has recently estimated that in the country as a whole, 39 million people participate in *idirs*, and some 21 million in *iqubs*; there are another 9 million members in a variety of self-help organizations. In Addis Ababa alone, there is thought to be some 7,000 *idirs* (MCB 2005). While the accuracy of these figures may be subject to debate, the estimate nevertheless gives a broad indication of the magnitude of informal associational life in the country.

Such proliferation might indicate a dynamic society and a vibrant civic culture; however, the reality is more complex and in some ways a far cry from this. Traditional institutions tend to be inward looking and reactive partly because their main aim is to provide support to individuals and families in times of need or distress and to offer solace and a sense of belonging. They function best in informality, i.e., without hard and fast rules, procedures, guidelines, without documentation, and the need to build institutional memory and structure. As such, they are unable to fit into the changed circumstances brought about by modernization with its strong demand for formalization and institutionalization, and the need for management through written rules, procedures and the division of responsibility. Moreover, these small, highly localized groups, whose aims and remit are narrowly based, are too fragile to shoulder the heavy tasks of relief, rehabilitation, development, and rights and reform advocacy. Thus, they have been largely by-passed in the period under discussion, left to themselves to carry on with their traditional roles for which there is still a strong demand, though, as we shall see further down, there have been a number of efforts by NGOs and others to formalize some of the associations, in particular *idirs*, to enable them to engage in community development and service delivery (see ACORD, Dejene, A. Pankhurst).

Formal organizations

In contrast, these may be described as "outward oriented" groups since their mandate goes beyond the relatively narrow interest of their members or constituencies and embraces issues of broad public concern. The formal structures that concern us here are highly diverse, and for purposes of this discussion they may be classified into four broad categories (we have excluded government-initiated organizations such as women's and youth groups; the case of ethnic-based Development Associations sponsored by the ruling parties will be examined separately):

- i) Third party service providers (or those that in the main serve others): in this country, these are mainly NGOs;
- ii) Those that primarily serve their own members: professional associations, self-help groups (also labor unions and cooperatives);
- iii) Grassroots or community organizations: CBOs, youth associations, formalized *idirs*, neighborhood groups;
- iv) Rights and reform advocacy groups: human rights and governance organizations, rights-based women's and children's groups, environmental organizations, voter education groups, legal aid services, policy research institutions.

There are several other classification schemes employed in the literature, and each has its own merits in the given context (see references in Dessaiegn 2002); what is offered here is not meant to be definitive but only to serve as a convenient tool for our discussion. The government itself uses a different approach in registering non-state organizations as shown in Tables 1 and 2 below.

By far the most numerous organizations in this country are cooperatives, followed by NGOs, and the least numerous are advocacy groups. There is some controversy as to whether cooperatives should be included in the voluntary sector, since they cannot strictly be considered non-state agents as they are government supported, and, some would argue, they are profit-making, which violates one of the principles of voluntarism. Similarly, issues may be raised with regard to what are officially described as "mass organizations" such as women's and youth organizations which are often resourced by government. However, for the purposes of this paper we shall not enter into this controversy.

While the predominant form of cooperatives are those supported by the state, there are a small number of independent cooperatives in the rural and urban kebelles. These are often credit and saving cooperatives, many of which were set up with the support of NGOs. These organizations usually have a small membership, frequently serve women and the poor, and most often are self-managed. State sponsored peasant cooperatives in the rural areas have had a tortuous history, with the most trying times for cooperators being the time of the agricultural socialization program under the Derg in the 1980s. Cooperation was forced on peasants who had no choice but to join the organizations which were established in almost every peasant association in the country. Many of the cooperatives subsequently lost their land and were reduced to work for their former organization at incomes much below starvation level. The small number of rural cooperatives under the Imperial regime established as part of the reform of the extension program and as a means for farmers to get input credit

disappeared with the fall of the regime. At present, under the Federal government, the cooperative effort is gaining momentum, and according to official sources, nearly 20,000 primary cooperatives have been established throughout the country (Federal Cooperative Agency 2006). The main functions of the cooperatives at present is distribution of inputs, marketing services for farm produce (especially coffee marketing), and providing credit services to members. The number of cooperative unions (which consist of five to six primary cooperatives linked together) has grown in the last half decade. Despite the progress made in terms of organization, however, cooperatives are still burdened by shortage of funds, lack of management expertise and effective leadership. As a result, the organizations are dependent on state tutelage, and have yet to establish an independent identity and an assertive voice. Rural cooperatives can play a significant role not just in improving the economic livelihood of peasants but also in enhancing peasant empowerment. To do this, however, they need to stand on their own feet which they have not been able to do fully so far.

An important element defining civil society organizations is that they intercede between the state and the individual, thus opening up the political space, making it possible for individual freedom of action and choice, and enabling independent voices and initiatives to emerge. The proliferation of non-state actors and their increased influence and legitimacy will frequently lead to the reduction of the public sphere and the dominance of the state, on the one hand, and the enlargement of the private sphere and thus of personal freedom, on the other. A dynamic voluntary sector consisting of diverse and autonomous associations committed to broad human values will improve and strengthen democratic practice by:

- curbing the power of the state through public scrutiny
- promoting public awareness and stimulating participation by citizens in all matters affecting their lives
- empowering people, especially the poor at the grassroots level to articulate and defend their interests.
- and helping to reform public policies, institutions and practices.

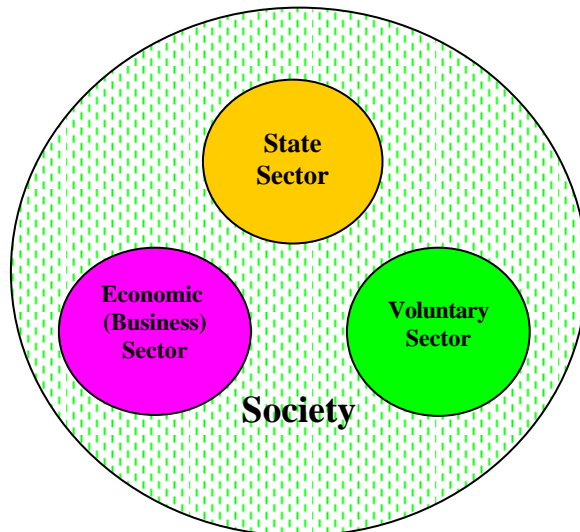
The public-vs-private sphere in society and the relative strength of each at a given time may be taken as a measure of the depth and breadth of democratization in society. In mature democratic societies, the state, market and voluntary spheres are balanced, the latter two serve as a countervailing influence on the former. In non-democratic societies such as Ethiopia, in contrast, the state

is over dominant and is the primary economic, political and social actor, allowing limited space for autonomous voices and initiative.

The following figures attempt to convey these contrasting experiences schematically: Figure 1 represents the balance of forces in mature democratic societies on the one hand and in African societies including Ethiopia on the other. Figure 2 indicates the relative size of different categories of civic organizations in Ethiopia; it shows that advocacy organizations are a small percentage of the voluntary sector.

Fig. 1. Organizational Sectors, Societal Level

a) Mature Democracies: Sectors in Balance



b) Non-Democratic States: Unbalanced Sectors

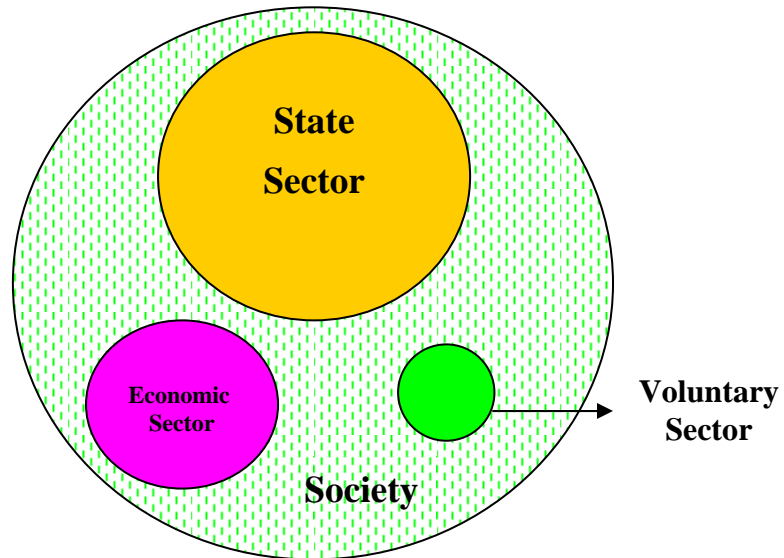
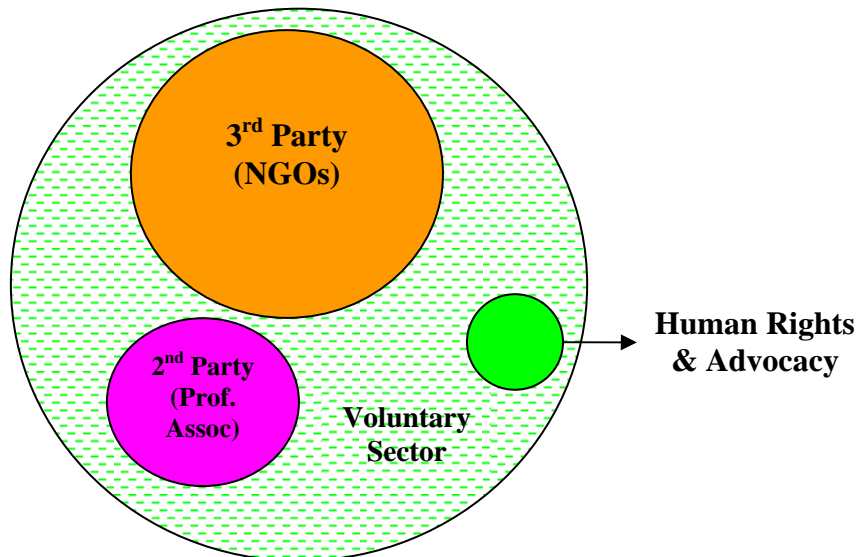


Fig 2. Organizational Sectors: Voluntary Sector



Emerging trends

The changing landscape of the voluntary sector is evidenced by a number of emerging trends. First, CSOs are now more diverse and relatively more complex than they were at the end of the 1990s- a change that has occurred in a relatively short time. There is greater program specialization and greater activism at the community and grassroots level, more so in the urban areas than in the rural. Secondly, there is a shift from engagement solely in service delivery and relief and rehabilitation towards concerns for poverty reduction, socio-economic development, human rights and policy reforms. The number and diversity of organizations concerned with rights and reform advocacy is growing though they are still a small minority at present. On the other hand, more and more organizations engaged in service delivery are beginning to raise the larger questions such as why poverty? how can equitable development for the poor be brought about? why are the poor denied the right to services and to justice which are promised in the country's constitution? These kinds of questions are becoming common among many service delivery organizations.

The issue of rights advocacy and policy engagement is no longer a taboo subject among public agencies as it was in the 1990s and earlier. There is a growing awareness among many organizations that the government has an obligation to consult with all concerned parties and stakeholders before making policy decisions. Thirdly, there is a growing understanding that CSOs would be more effective in their work and have greater influence and voice if they were to form networks, coalitions and alliances among themselves. There are at present more than a dozen networks and coalitions of one sort or another; however, only a small number have sufficient weight and visibility.

These trends are indicative that the voluntary sector is at a formative stage and that the new landscape is not sufficiently reconstructed. In particular, the process of evolution in respect of rights advocacy and policy engagement leaves a lot to be desired. In the pages that follow we shall examine these trends and emerging signs in more detail, but before that it will be useful to offer a brief discussion of the background of the voluntary sector as it has evolved during the Imperial and Derg regimes.

3. The Voluntary Sector in Transition

3.1 State of the Formal Voluntary Sector at Present³

The fall of the Derg and the establishment of a new government brought with it some radical changes but there were also continuities and similarities. On the broad political front, the changes involved the institutionalization of ethnic federalism (with each ethnic group forming its own ruling party), the grudging allowance of opposition political parties to contest elections, an electoral process which was often rigged in favor of the governing coalition of ethnic parties, a private press, and a market economy enabling the private sector much greater room than during the Derg.

The dismantling of the state apparatus of the Derg provided an opportunity for increased activism by CSOs; however, the new authorities were not favorably disposed to civil society, and, in the early 1990s, there were restrictive measures placing existing groups in jeopardy and making it difficult for new ones to be legally registered.

As during the Derg, the authorities were suspicious that CSOs were part of the opposition and a threat to the new political order. Indeed, had circumstances been favorable, the intention of the authorities was to replace independent CSOs with the newly emerging Development Associations which were ethnic-based and closely affiliated with the ruling parties. A host of factors, including the determination of civic groups, pressure from donors, the war with Eritrea, and the conflict within the ruling party, and the purge of party and state officials that followed, forced the government to reconsider its position.

The new government had accepted the economic reform measures proposed by the IMF and the World Bank, had made overtures to the major donor groups, and wanted to be seen as liberal and democratic. The immense problems thrown up by the collapse of the military government, the need for demobilizing hundreds of thousands of soldiers, and the urgency of the task of rehabilitating the country after the end of the civil war required vast resources which the country did not have. Hence it was only prudent to be in the good books of the international community. The border war with Eritrea that subsequently broke out further stretched the government, making it necessary to win as many friends as possible from all quarters. NGOs in particular were courted to provide emergency assistance to large numbers of people who were displaced by the fighting.

³ Unless otherwise noted, this section will focus on formal organizations, leaving out informal (traditional) institutions. Not much has been written about these latter groups for an in-depth assessment.

Physical Growth and Diversity

The second half of the 1990s saw the formal voluntary sector undergo what in many ways can be considered dramatic changes. To begin with, there are now more voluntary organizations active both nationally and at the local level than in the past. In 1996, the number of registered CSOs did not exceed 250, in 2000 the number had more than doubled to reach about 600 of which more than two-thirds were local and international NGOs (Dessalegn 2002). In 2003, the Ministry of Justice, which is responsible for registering almost all CSOs, put the total number of registered and actively engaged organizations at 1259. This includes some three dozen civic advocacy organizations, as shown in Table 1.

There is some difficulty in interpreting the figures, as the categories employed are unclear. Many of the organizations included in the “Religious” category are faith-based relief and/or development organizations. The distinction between “development organizations” (NGOs) and others is that the former have signed operational agreements with DPPC to which they are also accountable, while others are not. Moreover, the Ministry registers only those organizations which are active in more than one killil; local killil and Zonal based organizations are registered with the relevant office in their Zone or killil and do not appear in MoJ figures. Similarly, many urban CBOs may not be registered at all, and if they do the local city or sub-city office takes responsibility for registering them. The figures also do not show the relative strength of local and international organizations. Since the latter part of the decade, a number of the larger international NGOs have withdrawn from operations and have turned themselves into donors.

Table 1. Number of CSOs (2003)

Organizations	Number
Development (NGOs)	707
Professional associations	227
Civic advocacy	36
Religious	289
Total	1259

Source: MoJ 2003.

Secondly, the composition of NGOs has changed, with the growth and increasing participation of local NGOs both in emergency and development operations. During the Derg, there were only a handful of such organizations,

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from the mid-1990's their number grew rapidly and reaching over half of the total NGOs in the country; at present they constitute more than 88 percent of the total. The figures in Table 2 are taken from MoJ's database and give the current strength of CSOs registered with the Ministry. The categorization shown is that used in the database. The disparity in the figures between Tables 1 and 2 shown for some categories (Religious organizations, for example) may be due to a revised classification of the organizations.

As shown in Table 2, the strength of CSOs has grown dramatically, by about 45 percent in the short space of less than four years, much of this growth is accounted for by the rapid increase of local NGOs and to some extent civic advocacy organizations. Moreover, a closer examination of the database shows that more than 21 percent of the organizations (or 408 of them) were registered in the years since 2005, i.e., during and after the national elections. More organizations were formed in these two years than existed in the period between the mid-1960s and the mid-1980s. In comparison, data provided by DPPA shows that the total number of NGOs that had signed operational agreements with it as of 2007 was 1674; unfortunately, it does not give a breakdown of the comparative strength of local and international NGOs.

Table 2. Current number and diversity of CSOs (2007)

Organizations	Number
Local NGOs	1742
International NGOs	234
Prof. Associations	149
Civic advocacy	125
Religious groups	8
Adoption agencies	47
Total	2305

Source: MoJ Data base, March 2007.

As noted above, the figures do not include CBOs, CSOs registered in the killils and Zones and urban centers, trade unions, cooperatives, and some organizations registered by other branches of government, such as the Ministry of Labor and Social Affairs (MoLSA). MoLSA in particular is responsible for registering welfare organizations supporting elderly people, people with physical disabilities, women and children in distress. If we add all these to the MoJ total, the numerical strength of formal CSOs (excluding trade unions and

cooperatives) may well exceed 4000. Needless to say, this does not include traditional structures or informal associations.

The geographical distribution of CSOs in the country is an important subject but has not been adequately examined. A “mapping” exercise undertaken by a recent EU financed study looked at non-state actors from a functional approach and had little to say about the distribution of CSOs across the country (EU/MCB 2004). The standard approach is to view organizations through the formal/informal divide, placing the latter at the local level, and many of the former at the national level. This is inadequate and a better mapping exercise is needed. Until a more thorough mapping is available, I suggest the scheme shown in Table 3 as a working model. At the local level the voluntary organizations actively engaged include CBOs, neighborhood groups, HIV/AIDS support providers, and some self-help groups. At the killil level, one often finds ethnic and killil- based Development Associations (DAs), what I call “catchment” groups (e.g., pastoralist associations in Afar), area-specific NGOs, and cooperatives, while at the national level are broad-based NGOs, professional societies and rights advocacy groups.

Table 3. Distribution of CSOs in the country

Local Based	Killil or Area Based	National
CBOs, Neighborhood Org.	Ethnic-based DAs	NGOs
Self-help	“Catchment” groups	Professional societies
Cooperatives	Area-based NGOs	Advocacy and governance groups
Health-based groups (HIV)	Area-based environment and governance organizations	
“Mass organizations”		

Source: Based on own field notes and documents shown in References.

Thirdly, until recently, the voluntary sector was restricted to service delivery and welfare work, and issues related to advocacy, questions of policy relevance and demands for consultation on policy matters were all off limits. This has now changed to a considerable extent and there are now rights advocacy groups (that is, human rights and policy reform organizations) in the country. The concern for rights advocacy is not restricted to advocacy

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organizations but is also spreading among other elements of civil society, including NGOs and professional societies.

Thirdly, NGOs, the largest component of the voluntary sector, have learnt from the experiences of the past: they are now more focused in the delivery of services, relatively more knowledgeable about their constituency, and more responsive to local needs. They have realized that program diversity does not automatically spell success. Most organizations have now opted to take a more integrated and community-based approach. While each organization is now less overstretched than previously, still the programs run by NGOs in the rural areas, where a great majority of them are concentrated, are multifaceted.

What emerges from this physical review is the growing diversity of civil society. This is a healthy development, although with diversity has also come fragmentation. Many of the NGOs and advocacy groups are small in size, tend to work in isolation and have a small and limited constituency and area coverage. The best option to empower such groups is to be part of a larger network or umbrella organization; however, networking is not one of the strengths of CSOs in this country. Although there are a number networks formally established, only a few are active on a sustained basis. Table 4 provides some information on existing networks in the country.

Table 4. Local network organizations in Ethiopia

Network	Particulars
Assoc. of Ethiopians Living with HIV/AIDS	Est. 2004. Alliance for PLWHA organizations. Engages in advocacy
Assoc. of Ethiopian Microfinance Institutions	Est. 1999. Forum for microfinance organ's. Has 26 MFI members
Basic Education Association-Ethiopia	Promotes basic education programs. Has 37 member organizations
Consortium of Reproductive Health Assoc. (CORHA)	Est. 1995 Network for NGOs engaged in reproductive health work
Christian Relief and Development Association (CRDA)	Est. 1973, registered 1975. Oldest and largest umbrella organization for NGOs in Ethiopia. 266 member organizations
Ethiopian Civil Society Network for Elections	Est. 2005 by voter education groups. 24 members
Ethiopian Inter-Faith Forum for	Est. 2002. Faith-inspired development

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Development Ethiopian Federation of Persons with Disabilities	forum. 21 faith-based member groups Est. 1997. Promotes interest of the disabled
Network of Ethiopian Women Associations	Est. 2001. Engaged in gender equality; capacity bldg of women associations. 35 member organizations
Network Organizations Working in Support of Orphans and Vulnerable Children	Est. 1999. Network for OVC. Plays advocacy role; promotes children's rights. 118 members, of which 80 in the <i>killils</i>
Pastoralists Forum Ethiopia	Est. 2003. Pastoralists' rights, policy advocacy. 23 member organizations
Poverty Action Network Ethiopia (PANE)	Est. 2004. Poverty reduction monitoring; advocacy. 80 member organizations
Union of Ethiopian Civil Society Associations	Est. 2004. Network for advocacy and human rights organizations. 25 members

Source: SAG 2006; Own field notes.

Policy Shifts

The new millennium saw modest policy shifts on the part of government which promised a new partnership between it and the voluntary sector, and which appeared to provide openings enabling greater activism on the part of CSOs. The two main factors that created the new opportunities were the PRSP process and the program of local level decentralization, both of which were launched at the beginning of the 2000s.

Let us look at the poverty reduction initiative first. One of the conditions set in the PRSP initiative by the International Financial Institutions, which were responsible for approving the poverty reduction strategies of the beneficiary countries, was an obligation on the part of government to involve civil society and to hold wide consultations in the preparation of its poverty reduction program. The government was reluctant to do this initially and it was the proactive measures taken by civil society that forced the government to allow a measure of participation in the final phase of the PRSP initiative.

When the PRSP document was eventually finalized in 2002 (and came to be known as SDPRP), it contained a few statements indicating goodwill on the part of government towards CSOs. It noted that NGOs could become development partners in activities related to poverty reduction and in service delivery in the core areas of agriculture, health, education and water. The SDPRP was willing to grant CSOs at the local level the role of monitoring poverty reduction fund management. The document also envisaged a greater role for the organizations in the democratization process opened up by the poverty reduction and decentralization processes (MOFED 2002: IX).

These professions of goodwill, however, were parsimonious to say the least, considering the active role CSOs had played both at the *killil* and Federal level in the consultation process and the preparation of the final document itself. It was clear to many civil society activists involved from the outset of the PRSP initiative that this was a token gesture primarily meant to satisfy the donor community. Be that as it may, any measure of recognition by government, however limited it may be, was a change in the right direction and a welcome step. Until this time, the government had maintained an unfriendly attitude to the voluntary sector, and had on occasions made unflattering statements about NGOs and other non-state actors. A major rural development policy document published not too long ago recommends that NGOs should participate in program planning and development work at the local level; it also recognizes private sector actors as having a strong role in agricultural development (FDRE 2001). The current poverty reduction document (PASDEP) makes references to NGOs or the broader civil society, with respect to collaborative work in the health sector and in the task of monitoring and evaluation; a regular consultative process is now in place with donors and civil society, including a series of workshops on the subject (MOFED 2006)

Let us now turn to the second main factor, namely decentralization. The government's local level decentralization program was launched in 2001 and full-scale implementation proceeded immediately after (see Taye and Tegegne 2007). The goal of decentralization was to bring development effort closer to the local community and to make service delivery more efficient and effective. The *woreda* has now become the focal point of development planning and program implementation. It prepares and controls its own budget, formulates its own plans based on community needs and manages its own programs. The link between the *killil* and the *woreda* is now direct and not mediated through the Zonal administration as was the case in the past. In effect the Zone has largely been bypassed. Below the *woreda* is the *kebele* which is responsible for needs assessment and service delivery and is considered to have direct links with the rural household. Both structures are governed by elected councils and thus are expected to be democratic institutions.

Decentralization has created chances for closer partnership between government and NGOs. It has created roles for NGOs working at the local level and provides for closer consultation and collaboration between the woreda and kebele on the one hand, and NGOs working in the area on the other. The policy envisages NGO participation in at least three important committees at the woreda level: the Development Committee, Disaster Preparedness and Prevention Committee, and the Productive Safety Net Committee. However, many NGOs complain that despite this policy shift, local authorities do not consider them as useful partners and their participation in the committees is not actively sought (Dessalegn forthcoming).

Other indicators of policy shift are expressions of goodwill by public officials towards civil society in the last five years. Senior government officials, including on a few occasions the Prime Minister, have made positive remarks, recognizing the important role of CSOs, particularly NGOs, to the ongoing development and democratization process. CSOs have also been invited by government (and donor agencies) to participate in the consultative, program planning and evaluation initiatives. A number of high public officials have shown willingness to attend or participate in important functions, such as conferences, consultations, dialogues, etc., organised by CSOs.

Expressions of goodwill to civil society include a number of consultative and support programs. The World Bank's Protection of Basic Services program involves mechanisms for monitoring social accountability, and CSOs are represented in the steering committee responsible for this. A number of donors, including the European Commission, have set up civil society support programs and funds to promote capacity building, and greater participation. The Donor Assistance Group's support program for civil society, which involves pooling of funds from individual donor agencies, is managed by the UNDP. The EC's civil society fund was launched in 2006. Both initiatives target national CSOs (including NGOs), networks, unions as well as government or party affiliated "mass organizations" and kebele-based Development Associations.

The Ministry of Capacity Building has set up a department responsible for CSOs with the aim of providing support and capacity building programs to them. The program consists of the following:

- creating an enabling institutional environment and building confidence and partnership between the voluntary sector and government,
- building CSO capacity and scaling up their participation in policy reform, monitoring and evaluation, and
- governance issues (MCB 2005).

Many CSOs, however, have reacted unfavorably to the initiative, seeing in it a hidden agenda of government intervention in the work of CSOs. At a workshop organized by the Ministry to discuss the proposal, in which a large number of CSOs were present (including the author of this study), a coalition of organizations presented a written statement arguing against the program. The organizations protested that the scheme would in the end curtail the freedom and independence of the voluntary sector, discourage advocacy, human rights or governance activities by the organizations, and work against the growth of a vibrant civil society in the country. However, the Ministry and its foreign advisors were not convinced and turned a deaf ear to the protests, but the planned program is still in the early stages at the moment.

A number of government agencies are now actively seeking to work in partnership with CSOs. The newly established Human Rights Commission has made tentative efforts to work with several human rights and governance organizations, especially in the area of public awareness, human rights training, and issues on women's and children's rights. Another new agency, the Ombudsman Institution is keen to establish collaborative endeavors with CSOs. MOFED provides progress reports on the implementation of the poverty reduction program and invites CSOs to participate in workshops on the subject from time to time.

In brief, there have been encouraging signs of change with regard to government attitudes towards CSOs in the last five years. At the same time, the absence of an enabling legislation –it has been five years since the process of drafting a new CSO law was initiated*– unfavorable remarks on occasions by decision makers, and accusations of political bias leveled against them soon after the 2005 elections indicate that government still harbors hostility. Despite the new positive signals, there is still a long way to go before government will accept in good faith CSOs as partners in the development effort or recognize their contribution to the democratization process.

3.2 What Have CSOs Achieved in the Last Decade?

It is obviously difficult to measure the achievements and contributions of CSOs: we are dealing with a diverse community and there are no appropriate yardsticks to assess their performance. In the pages that follow we shall examine the record of a few civil society groups, leaving out some of the rest that are not particularly relevant for our purposes here (see Dessalegn 2002). Let us begin

* This paper was prepared for the national CSO conference held in October 2007, before MoJ issued the new draft Charities and Societies Proclamation.

with NGOs since they are the largest group and have been around since the 1970s.

Non-Governmental Organizations

It is relatively easier to examine the NGO record because almost all of them have been involved in work in which large sums of money have been invested. However, we lack sufficiently accurate data to come to definitive conclusions regarding the extent and diversity of the investments made during this period. According to a recent information package on NGOs published by CRDA and DPPC (2004), between 1997 and 2001, NGOs working in the country invested 3.5 billion Birr, of which only 10 percent was spent on relief and rehabilitation, with the rest, i.e., 90 percent, going to a diversity of development programs⁴. Table 5 shows the program components and the distribution of expenditure in this period.

Table 5. NGO expenditure for selected *Killils* by sector (1997-2001) (in million birr)

<i>Sector</i>	<i>Amhara</i>	<i>Oromia</i>	<i>SNNPR</i>	<i>Tigray</i>	<i>Total</i>
Food Security	197.55	267.31	165.44	179.95	948.49
Health/Water	131.53	361.00	325.16	68.69	991.28
HIV/AIDS	14.50	2.73	9.12	2.91	48.92
Education	101.49	234.07	130.54	84.54	700.75
Capacity Bldg	128.10	12.92	31.92	28.93	287.47
Infrastructure	96.87	36.57	28.52	12.47	209.37
Emergency	158.84	26.67	14.94	119.67	346.83
Total	828.88	941.27	705.64	497.15	3533.11

Source: CRDA & DPPC 2004, p. 35.

Note: Total includes expenditures for Addis Ababa and Somalia *Killil*.

⁴ A recent document notes that “non-state actors” in Ethiopia have invested 11 billion Birr (1 billion USD) in a variety of programs between 2004 and 2008; this is an annual injection of about 200 million USD. However, the document includes trade unions and cooperatives as well as NGOs and what it calls “civil society entities” in its definition of non-state actors (Cerritelli et al. 2008)

The sectoral breakdown used in the document is unfortunate; putting health and water together is not a useful device. It would have been better, for our purposes, to have separated them, as will become clear later. Nevertheless, in SNNPR, Health/Water is shown to have attracted the largest share of NGO investments, whereas in Tigray the investment in the sector is relatively low. In Tigray, also, a much greater share of NGO expenditure went into emergency programs. A closer reading of the document shows actually that of the two, the health sector absorbed by far the biggest expenditure in most killils.

The same document notes that in this same period 20 million persons were direct beneficiaries of NGO projects in one way or another. Moreover, 3.2 million people were reached through the organizations' emergency relief effort. We should note here that there were no major emergencies in the period covered by the document. If the data had covered 2002/2003, when there was a major food crisis in many parts of the country, the number of relief beneficiaries would have been much higher. In 2002, NGOs operating in the country as a whole provided employment for over 9800 employees, of which 36 percent were female. Over 98 percent of the staff were Ethiopian nationals and only a very small number expatriates. Half of these employees were support staff, with the rest in technical and managerial positions.

A catalogue of NGO program activities is not possible to present here, but the highlights of program successes can be summarized as follows:

- numerous health facilities, schools, and water supply schemes have been provided thus contributing to better health services, higher school enrollment and improved well-being for rural communities; a growing number of NGOs are becoming engaged in HIV/AIDS protection and public awareness programs;
- Considerable work has been undertaken to promote food security; programs in this sector consist of improvements in agricultural production, provision of a variety of farm tools and farm animals, introduction of appropriate farm technologies, promotion of income generation schemes, and savings and credit cooperatives;
- considerable investment has been made to promote soil and water conservation and to rehabilitate degraded environments; these are clearly visible in many areas, and their contribution to improved food and livestock production is obvious;
- a large number of small-scale irrigation schemes have been built and are in use by communities, and these have contributed to farmers' resilience

against recurrent drought and helped improve agricultural income and food security; in this connection, the importance of the control of the tse fly and the deadly diseases associated with it by NGOs working in the lowland *woredas* cannot be underestimated;

- many rural access roads and bridges have been constructed making the movement of people and goods and access to social services easier and more efficient in rural communities.

*Community-based Organizations (CBOs)*⁵.

A brief look at CBOs is in order here. These are the most common institutions at the grassroots level. The promising development in the last ten years or so is the emergence of idirs as development actors at the community level; this has meant going beyond their traditional roles and embracing new functions and responsibilities. Quite how successful they will prove to be in the long run is a question that remains to be answered in the years to come. Development idirs were formed through the initiatives of their members or leaders, and through the active support of some NGOs (ACORD Ethiopia is one example; SOS Sahel is another). While most of these kind of *idir* are to be found in the urban areas, there are a growing number appearing in the rural areas as well.

In addition to their traditional functions, the new idirs, which are frequently registered at the local sub-city or kebele office, are engaged in a variety of community development activities. A good number have established savings and credit associations, and provide income generation schemes to community people. Some have embarked on HIV/AIDS prevention and support programs. Neighborhood clean-ups and environmental sanitation activities are common among CBOs. Other programs include children-centered programs such as establishing orphanages, playgrounds and kindergartens, and construction of basic infrastructure such as roads, and in some rural areas, irrigation schemes. Idir officials interviewed for this study noted a number of problems facing the associations, of which the following are some of the main ones: lack of experience in program planning, limitations having to do with decision making and participation, and poor financial management and fund utilization.

While there are certainly difficult hurdles to overcome, a growing number of idirs are forming networks and umbrella organizations to improve their effectiveness, to shoulder greater responsibilities and to extend their outreach. Financial, technical and other support has come from community people themselves, NGOs, donors and local government offices. It is quite a leap to

⁵ Based on own field interviews and ACORD (Voice of Iddirs) 1999-2002. See also Dejene 2002; A. Pankhurst 2002, 2001.

change leadership structures from those based on informal voluntary practices to more formalized leadership, but the few networks that have now been set up have overcome the difficulties in this respect. The great potential of CBOs is that they are close to the people and better attuned to the needs and priorities of their communities.

Development Associations

This may be a good place to raise the issue of what are known as Development Associations (DAs) established by the ruling parties in each *killil*, and in the case of the SNNPR, in each autonomous Zone, and to which the organizations are accountable (see Agedew and Hinrichsen 2002, Agedew et al. 1997 for details). These organizations are a product of the new political order, and while a few of them trace their origins to the time of the civil war when the ruling groups were in the bush, most of them were set up soon after the collapse of the Derg. There are similarities between them and the ethnic-based self-help associations during the Imperial period. First they are ethnic-based and concerned with undertaking development work within their own ethnic boundaries; in this they resemble the organizations in the Imperial period. In contrast, the latter were independent, set up voluntarily by concerned individuals, while the former were formed by a decision of the political parties concerned. These Associations were originally intended to be the driving force to replace independent NGOs, and in this sense, they resemble the organizations set up by the Derg during the 1980s which we have briefly examined above. Most DAs' chief officers are appointed by party officials who frequently have high government posts. The General Assembly of the organizations are frequently a gathering of the party faithful and almost resembles a party conference. There is a very close link between government and the Associations, and at the lower levels it is difficult to separate the formal structures of one or the other.

My provisional estimate is that there may be more than 35 such Associations in the country as a whole. In the SNNPR alone, there were in 2002 twenty DAs active in one form or another; each autonomous Zone in the *killil* supported at least one DA (*ibid*). Many of these Associations manage large-scale operations, employ many staff and spend considerable sums of money annually. They are involved in a wide variety of development activities, mostly in the rural areas. Initially, they were not formally registered under the MoJ but this has changed in the last half dozen years. They have become beneficiaries of donor organizations and thus compete for funds with other independent groups, though they also raise large sums of money through televised fund-raising programs- a privilege denied ordinary NGOs. A number of them are members of CRDA.

Whether DAs may be considered as part of civil society is a question that is open to debate. Certainly, organizationally they are closely tied to government, at least *killil* government, but on the other hand many of them are not directly financed through the public treasury, though they enjoy many benefits. It is difficult to call them independent bodies, and hardly any of them are engaged in rights advocacy and governance activities.

Advocacy and Governance Groups

I have discussed the activities of human rights and advocacy organizations, including the work of two prominent groups, EHRCO and EWLA, elsewhere and I shall not go over the same ground here. The discussion covers monitoring of human rights abuses, election monitoring, defending the rights of women and children and similar activities (Dessalegn 2002). Rights advocacy and governance organizations are new to the country having emerged only about a decade and half ago. Indeed, until the second half of the 1990s, there was only one human rights organization (EHRCO) in the country. Much of the work of advocacy has been carried out by small and dedicated organizations but lacking in advocacy experience, trained staff, and financial resources. The main activities have centered around monitoring human rights violations (EHRCO), supporting the rights of women, children and other vulnerable groups, training of law enforcement officials in human rights issues, providing legal advice, election monitoring, and in a few cases (PANE mainly) monitoring service delivery through the poverty reduction program.

One of the occasions where CSOs made a strong advocacy intervention was during the preparation of the country's poverty reduction program or PRSP. The initiative for CSO participation in the poverty reduction strategy debate was taken by policy research and advocacy groups, but eventually a large number of CSOs became engaged in the debate and demanded participation in the consultation process and the process of document preparation. During the final federal level consultation conference, five non-state organizations were invited to present their case. There was a wide variety of proposals prepared by CSO groups before and during the conference and submitted to the authorities⁶. The debate on poverty reduction continued among advocacy and other organizations long after the government had completed drafting its policy document.

Due in part to the good showing of CSOs in the PRSP initiative, the government made a concession to involve civil society in the monitoring and evaluation of the implementation of the program. However, while some

⁶ See *Medrek: Newsletter of the Forum for Social Studies* (2001 and 2002 issues); NGO PRSP Task Force 2002; Pastoralist Forum Ethiopia 2002

networks, particularly PANE, have taken an active interest and are involved in the monitoring process, what has been achieved has not been quite satisfactory. The reasons for this include:

- the difficulty posed by the inadequate preparation of monitoring tools by the government itself,
- the reluctance of public officials at the woreda and lower levels, the main locus of poverty program implementation, to provide accurate and useful information,
- the lack of experience of CSOs in monitoring and evaluation of large-scale government programs,
- the question of capacity constraint of CSOs and networks: the lack of adequate financial resources, trained staff and logistical support.

Another “success” story, modest though it is, has been in the area of women’s rights. The work of EWLA in defense of women’s rights has already been covered in the work noted above, but two important CSO initiatives that involved mass participation need to be mentioned. The first was a vigil and peaceful demonstration held in February 2001 to highlight the plight of women in this country and to submit a petition to Parliament for reforms in the legislation affecting women. The event was organized by EWLA and a few sister organizations. Both the vigil that preceded the demonstration and the demonstration itself attracted a large crowd, male and female. The demonstration that followed, in which between six to eight hundred people were involved, was perhaps the first human rights demonstration in the country.

The other initiative was the holding of a massive public hearing in April 2002 at the Addis Ababa convention center on violence against women and the issuance of a declaration calling on the government to take measures to stop such violence. The hearing attracted nearly a thousand participants, of which some 75 percent were women. The day-long event brought women who had been severely and physically abused by their husbands, male relatives and customary practices from across the country to give testimony at the hearing. The organizers had invited not only independent CSOs but also government affiliated “mass organizations”. The day-long event was capped with the drafting of a declaration to be submitted to decision makers and to serve as an advocacy document by women’s and human rights groups.

Mention must be made here of the growth of environmental advocacy organizations both at the *killil* and national level in the last decade. The environmental crisis in the country, which has been going on for many decades, is on a massive scale and is responsible in one way or another for deep poverty,

food insecurity and social and ethnic conflict. Natural resource degradation continues to be alarming and there are some who fear that the danger of large-scale environmental collapse is imminent unless urgent measures are taken soon. The rate of soil erosion and deforestation is currently very high, deforestation is occurring on a large-scale and the pressure on the remaining forests is quite severe. The evidence is that unless the massive environmental degradation that is taking place now is soon reversed, the natural resource base of the country will shrink considerably in the next fifty years, causing misery and deprivation to millions of rural people. It is thus surprising that there have not been environmental groups in the country for so long. Environmental advocacy is a safe issue and has no overt political overtones.

Environmental activism is a new experience in this country, and until the second half of the 1990s, there were only one or two environmental groups but hardly any environmental advocacy organizations in the country. While many NGOs run natural resource management and environmental rehabilitation programs, environmental advocacy was not part of their immediate concern. There are currently a fair number of environmental advocacy groups. While all of them are small outfits, they are becoming vocal and making their presence felt. Apart from engaging in a number of nature rehabilitation activities, many engage in programs to raise public awareness and to promote policy reforms.

Another indicator of diversity within the advocacy component of civil society is the emergence of civic or voter education groups. These groups appeared with the promise of elections soon after the consolidation of power by the new authorities. The earliest organizations have been involved in voter education programs since the national elections of 1995, and all have taken part in local, *killil* and federal elections. There is a slight distinction between civic and voter education groups, the former undertake broad civic education programs, including training voting procedures and are engaged in the activities before, during and after ballot time, while the later are active mainly in the period just before elections. According to evidence from some of the voter education groups obtained for an earlier study, the groups as a whole have reached 25 to 30 million people of voting age through their training programs in the period since 1995 (Dessalegn 2006). The organizations played a critical role in the 2005 elections: their training programs and the fact that they were able to reach millions of people, particularly in the rural areas, was responsible in part for the high voter turnout during voter registration and on ballot day.

Voter education programs often take place within a relatively short period of time. The basic aim of the programs is to familiarize voters with the basic rules of democratic governance and electoral procedures. The subjects covered in most cases include human rights, democratic principles, voters' rights and the

election process, and the role of an independent media. These are broad subjects but the aim has been to present the salient issues in simple form to enable non-literate or semi-literate people to understand them easily. Attempts are made to mainstream gender issues into each subject. So far, the teaching has been conducted in the local language though the teaching aids were prepared only in Amharic, Oromifa and Tigrigna.

In most cases, the teaching materials available were quite limited. The main tool employed was the flip chart which contained the basic points in each subject with sometimes a sketch or illustration to draw peoples' attention. However, some groups employed innovative approaches, such as for example political drama to draw audiences and to put certain ideas across. Different groups employed different methods to attract community people to attend the training programs. The more conventional approach was to rely on the cooperation of the kebele. This often meant asking the kebele to call a meeting of residents of a community for training purposes. A more innovative approach was to identify occasions and places where community residents were likely to congregate and hold training sessions there. These included hospitals, market places, places of worship, and schools. In the rural areas, there are often a lot of people sitting patiently in hospital grounds waiting for medical attention. This provided some groups a good opportunity to undertake voter education. Quite often, there are more women in the audience here than in other settings.

Finally, a word on legal service organizations and their role in advocacy work. In a number of African and Asian countries, legal service NGOs are active providing legal aid to the poor which may include representing them in court cases. This has proved to be an effective measure for defending the rights of poor people in the face of unjust treatment either by the state or powerful interests (Manning 1999). Legal service organizations have yet to make their presence felt in this country, though it is hoped that some of the new legal advocacy organizations that are emerging will make the provision of legal services to the poor and the disadvantaged their main concern. At present a small number of advocacy groups provide legal services to marginalized people on a limited basis. In most cases, this involves legal advice of one sort or another, and only one or two groups include court representation. Moreover, a few organizations provide legal literacy programs mainly in the urban centers. Needless to say, both of these are woefully inadequate.

Such in brief are some of the experiences of advocacy and governance organizations in this country. This experience and the existing capability of the organizations is quite inadequate relative to the immense tasks at hand. In particular, the issue of respect for human rights on the part of government and law enforcement agencies – a subject to which we now turn – must come high on the agenda of such organizations.

Human Rights Violations under the Present Government

When the Derg was finally overthrown, there was public expectation that the country would make a fresh start and the atrocities and mass terror of the past would not be repeated. While there was considerable apprehension regarding the ethnic policies of the new regime, there was hope that human rights violations on the order of the past would not be repeated. The Constitution of the new regime, which came into force in 1995, guarantees a wide range of human rights and freedoms, including the right to freedom of expression, of assembly and respect for the rule of law. However, what was guaranteed in the constitution and the measures the government has taken since then to deal with its opponents, real or imagined, and the political decisions undertaken were highly contradictory. As we shall see below, there were numerous cases of unlawful killings and arbitrary detentions, and the rule of law was frequently flouted.

The human rights record of the present government, measured by most accepted standards, has been very poor, though, as we noted above, comparison between it and the two other regimes that preceded it is difficult to make. It can be said, however, that mass atrocities on the scale perpetrated by the Derg have not been committed so far. Another important difference is that at present an independent press has been allowed (it is coming under increasing restrictions), and civil society institutions, including rights-based advocacy organizations, which would have been unthinkable at the time of the Imperial or Derg regimes, are becoming part of the socio-political landscape. A third difference to be noted is that while not exactly invited to the country by the authorities, international human rights organizations have been able to send monitors to gather information and to report on the human rights situation in the country.

International human rights organizations such as Amnesty International (AI), Human Rights Watch, Africa Watch (AW), and others have issued numerous reports on the government's record and the state of human rights in the country. Amnesty in particular has issued frequent reports since the mid-1990s highlighting numerous cases of illegal detentions, torture, threats to press freedom and the arrest of journalists, mass deportations of citizens of Eritrean origin (54,000 according to one of its reports), and disappearances (AI website). Similarly, Human Rights Watch and the U.S. Department of State have produced reports on the country at least once a year. In the latest report available, the first two organizations argue that human right conditions have not markedly improved in 2002, and go on to document a wide diversity of cases of violations; on the other hand, the report prepared by the State Department points out that the rights record remains poor but there have been improvements in a few areas.

One should note, however, that international organizations are, for understandable reasons, constrained by a number of factors chief of which is the

lack of a deeper understanding of the political process in the country, the inability to follow events closely and to ensure the accuracy of information received and the credibility of informants. None of these organizations have local representation here although EHRCO is affiliated with a number of them; on many occasions the former depend on the reports published by the latter.

EHRCO has been monitoring the human rights situation in the country and issuing reports on rights violations since it was first established in 1991. The main violations frequently reported on include cases of extra-judicial killings, illegal detentions, disappearances, torture, unlawful expropriation of property, threats to freedom of the press and harassment and detention of journalists. Table 6 is based on a tally of reported violations that occurred from 1991 to 2000 that appear in EHRCO's two published volumes (1999; 2003).

The Table does not include what EHRCO describes as massacres that occurred on a number of occasions in different parts of the country, of which the main ones have been in the towns of Areka, Gonder, Tepi, Awassa, and in Addis Ababa following the peaceful demonstration of students. In all these cases, no measures were taken against the security forces responsible for the human rights violations by the government.

Table 6. Human rights violations (1991-2000)

<i>Type of Violations</i>	<i>No. in period 1991-97</i>	<i>No. in period 1997-2000</i>
Extra-judicial killings	185	141
Torture	70	31
Disappearances	120	30
Illegal detentions	5525	1052

Source: EHRCO 1999, 2003.

Let us look briefly at some of the most serious cases of violations discussed at length by EHRCO (1999, 2003). It is of course impossible to include all the violations reported by the organization given the limitations of space. The massacre in Areka (a small town in south central Ethiopia) occurred on 14 July 1992 when security forces opened fire on a peaceful demonstration by demobilized soldiers demanding stipends which they had been promised but which they had not received. EHRCO quotes a report by a Parliamentary fact

finding mission as saying that 31 persons were killed and 29 wounded but it suspects the casualty figures are higher. The 1993 massacre in Gonder, a large town in northwest Ethiopia, also led to a large number of innocent civilians being hurt. The incident occurred when security forces shot into a peaceful assembly of worshippers at a church in the process of trying to arrest a priest of the church. EHRCO puts the casualty figures at 18 civilians killed and 17 wounded. The conflict in Tepi in southwestern Ethiopia occurred in March 2002 when two ethnic groups clashed due to political rivalry. In the ensuing clash, security forces, including soldiers and a special police force brought into the area by the authorities, opened fire indiscriminately, leading to many deaths and thousands of people displaced from their homes. EHRCO lists the names of 24 people, including 4 security officers, as having been killed in the clash; some 4738 people are believed to have been displaced. The violence in Awassa, a town in south central Ethiopia, in which security forces opened fire on a peaceful crowd demonstrating against the decision of the local authority to relocate the seat of the Regional government elsewhere, led to the death and injury of scores of civilians and the arrest of over thirty-five demonstrators.

Addis Ababa has witnessed a considerable number of clashes between the authorities and different sections of the population, but for our purposes it is enough to cite two examples. The first incident was the violent suppression of the protest of businessmen in the city. The capital's business community was quite upset when in 1996 the government decided to raise rents of offices, shops, stalls and other business premises by a substantial margin. The government owns a majority of the city's buildings, offices and rental houses and most people are tenants of the state. The business community decided to hold a peaceful demonstration to express its grievances on 17 May 1997. This was followed by a strike, which closed down most shops, trading centers and business offices a few days later. The government reacted angrily and used strong-arm methods to quash the protests. According to EHRCO, 84 alleged leaders were placed in detention and the licenses of 52 of them were revoked as a retaliatory measure (EHRCO 1999: 276ff). Many of the detained were not released until many weeks later.

The second example concerns the violent suppression of students in Addis Ababa, in particular Addis Ababa University students in 1993, again in 1997 and in 2001. In all cases, the government used violent methods to stop students and other young people from staging peaceful demonstrations. In these incidents dozens of students were hurt and several hundred arrested. EHRCO reports, for example, that in the last incident, 10 people including students were killed, and over 200 students arrested.

Finally, a brief word on the suppression of the protests and attempted strikes in Addis Ababa and elsewhere following the elections of 2005. The full

story of these events has yet to be told but the response to the protests by the government was a massive use of force. The protests were forcibly put down by the security forces, culminating in the death of many protesters and innocent civilians, and the arrest and detention of thousands of people. Most of the leadership of CUD, a large number of its campaigners as well as journalists and civil society activists were arrested and charged with genocide and attempting to overthrow the Constitution by violent means. IRIN news reported that over 11,000 political prisoners were released several months after the protests (16 January 2006). Many western governments and a number of international human rights groups condemned the authorities for the use of excessive force in suppressing the protests. An inquiry committee set up by the government itself to investigate the events concluded that 196 people were shot and killed by the security forces. In the rural areas, the situation was different. Local authorities here conducted considerable harassment of peasants suspected of voting for the Opposition in many localities, and in a few occasions, peasants who resisted harassment were reported to have been threatened with the loss of their land allocations.

4. Challenges and Opportunities

4.1 Challenges

CSOs face a wide variety of difficulties and challenges and suffer from a number of inherent limitations. This is to be expected given the fact that the formal voluntary sector in this country has a short history and only limited experience. Until perhaps the end of the 1990s and the launch of the woreda decentralization program, CSOs were anchored in Addis Ababa, the capital. Since then, however, killil and Zonal based organizations have mushroomed and the increasing activism of CBOs has further expanded their outreach.

The majority of voluntary organizations is small in size. These groups are engaged in small-scale operations, have a limited budget and only a few staff. As has been noted in the discussion above, many were set up formally within the last decade and have begun to benefit by their experience only in the last four to five years. A good number have struggled to survive in the face of a hostile environment and the lack of adequate funding and technical support. For purposes of this study, the shortcomings limiting civil society may be divided into two categories: difficulties thrown up by the external environment, and challenges flowing from internal limitations.

The external challenges are first and foremost the absence of an enabling policy environment. As we have noted earlier, while there has been some improvements in the last five years, the relation between the state and the

voluntary sector still leaves a lot to be desired. The government has not yet fully accepted CSOs as legitimate actors in society and agents for change or development, while many CSOs do not have full confidence in the intentions of government and are disappointed by their exclusion from participation in the consultation and program planning process. Many CSOs work with the poor and claim to have a good understanding of the dynamics of poverty. Nevertheless, they have not been regarded as partners in the poverty reduction initiative launched by the government.

The law governing the voluntary sector is in the main the law issued during the Imperial regime, namely Articles 404 to 482 of the Civil Code of 1960 and the Association Registration Regulations (Legal Notice 321) of 1966. However, this legislation has been made less and less liberal and citizen-friendly by restrictive directives and bureaucratic decisions by successive governments since then, so that today it has become a problem rather than a facilitating instrument. While at the time of the Imperial regime the law of associations was virtually a dead letter, we now realize that as a piece of legislation it was quite liberal and accommodating.

It has been some time since the Ministry of Justice has taken the initiative to prepare a new legislation to replace the old one. To date there have been three drafts presented for public discussion and comment by the voluntary sector. All three have been more restrictive than the legislation they are trying to replace⁷. At the time of writing, yet another draft legislation is being prepared to be submitted to Parliament soon, but so far there are no indications from the government whether or not CSOs will be consulted. The fear within the voluntary sector is that a new law that does not incorporate the views of its most important stakeholders will severely constrain civil society and will make it difficult to engage in advocacy work. Advocacy work cannot be undertaken or is extremely difficult under restrictive legislation.

Secondly, many CSOs face a variety of pressures from donors. Some donors have many burdensome financial spending and reporting requirements such as quarterly financial statements, stringent conditions for spending funds, frequent progress reports, numerous forms to fill out, etc., which end up putting a lot of pressure on beneficiary organizations. CSOs sometimes spend as much time fulfilling donor requirements as undertaking their program activities. Moreover, raising funds to run programs and meet basic expenses is time consuming, and on occasions organizations are forced to accept funds tied to specific projects even though these may not be their core concerns. Since many

⁷ I was a member of the CSO ad hoc committee which was involved in reviewing MOJ's draft legislations

groups operate on a shoe string budget, fund insecurity continues to be a major obstacle limiting the scale and scope of CSO operations

Thirdly, the voluntary sector, in particular NGOs, suffer from an image problem. The public image of these organizations is by and large unflattering, and there have been discussions in the private media reflecting this. In part the organizations are responsible for bringing this hostility upon themselves. I have worked with NGOs in one capacity or another since the 1980s, and I and others have on several occasions raised this issue in public forums hosted by the organizations themselves. There has not been sufficient work done to familiarize the public with the work and achievements of NGOs and other groups, and indeed raising public awareness ranks low in their agenda⁸.

The internal limitations constraining CSOs are multifaceted. Government officials and CSO activists interviewed for this study raised several key problems that they thought CSOs have to overcome in order to be better prepared for increased responsibilities and to contribute effectively to the development and democratization process in the country.

CSOs have not been able to create a culture of collaboration and working together. The relationship among CSOs themselves needs to be improved in favor of building alliances, coalitions and joint undertakings. There is a tendency of groups to operate either in isolation, or in competition with others. There was a good deal of consensus among those interviewed that there was a great deal of duplication of effort, and hardly any coordination of activities or strategic collaboration among them. Each organization is working by itself, without much effort at experience sharing and harmonization of approaches and working practices with others.

An important limitation also cited by interviewees was that there was not much networking within the voluntary sector. Networking and the creation of alliances, coalitions or umbrella organizations is a form of building one's strength and capacity to overcome difficult challenges, a tool for gaining greater influence and accomplishing greater tasks. Networking, in particular, is an essential tool for those embarking on advocacy work. The capacity constraint of CSOs has been cited several times in this work and it is a problem that cannot be over emphasized. One way of meeting this capacity constraint is of course to engage in collaborative work with others and/or play an active part in existing networks.

Another significant institutional weakness is the lack of consensus-based decision making and democratic culture within the organizations. There is often a top-down approach in program planning, implementation and staff management. Frequently, many organizations are not blessed with competent

⁸ See Dessalegn 2002 for the background to the problem

and innovative leadership. Tied to this is the problem of staff turnover within the organizations themselves. There are considerable difficulties in attracting and keeping high caliber staff, especially for organizations working in the rural areas. The further removed the project site is from Addis Ababa or other big urban centers, the more difficult it is to attract and keep skilled and experienced staff.

4.2 Opportunities

The “external” and “internal” challenges facing CSOs must be seen side by side with the opportunities that exist at the moment and that can be put to good effect by proactive and determined organizations and their networks. We have suggested earlier that while the policy environment is not fully friendly to civil society, there have been considerable improvements since the time of the Derg and there are now openings that allow civic activism and that should be taken advantage of.

The growth and diversity of civil society that we have discussed above is an asset that opens up considerable opportunities. Unlike the past, CSOs are making their presence felt, to a modest extent, not only at the national level but also in the *killils*, *Zones* as well as the grassroots level. The diversity of the voluntary sector, in terms of duties, responsibilities, concerns and objectives should also be taken as creating opportunities. Moreover, there are now chances for all groups to undertake advocacy work, which was not the case in the past. While the voluntary sector lacks mature experience in most of its activities, and may be considered relatively untried, it is gaining local and problem-specific experience fairly rapidly. The sector is still not particularly strong in terms of networking and building temporary or long-term coalitions and alliances. Nevertheless, there are quite a few network forums as noted earlier in this study and one can build on their experience. Furthermore, the emergence of advocacy organizations concerned about a wide variety of human rights, social, environmental and electoral issues must be seen as a welcome opportunity.

On the other hand, NGOs have considerable capacity working in small areas and at the community and household level. Their advantage over the public sector is that they are more flexible, more innovative, more efficient and less bureaucratic. Because they operate on a smaller scale relative to the government, they have a higher success rate than the public sector. In this connection, mention must be made of the emergence of community-based organizations (CBOs) that are beginning to be socially engaged. There are now CBOs undertaking a wide variety of community development, advocacy and capacity building work in many urban and rural areas. For example, youth associations and anti-AIDS clubs, especially in urban areas, are involved in the dissemination of useful messages, and provide peer education in cooperation with anti-AIDS

school clubs. These clubs use innovative methods to put their message across, especially creative and entertaining activities such as drama, poetry, music and other art forms. The major venues for this type of campaign are recreation centers, schools and outdoors on the streets.

Local level democracy, which *woreda* decentralization is supposed to promote, obviously opens up opportunities for community programs and non-state actors, especially NGOs, CBOs and self-help groups. Decentralization is supposed to enable peasant communities to express their needs and priorities and to make local authorities, at least elected council members at the *kebele* and *woreda* level, accountable to the people. In turn, program planning and implementation is expected to benefit by greater beneficiary participation, and better opportunities for monitoring and evaluation. Since NGOs, CBOs, self-help groups and others work at the local level, decentralization could serve as an entry point for advocacy work. Moreover, while the experience to date is unsatisfactory, the role assigned to NGOs in the new local level planning and food security structures provide chances for expanding local level democracy.

However, decentralization has been accompanied by considerable institutional instability and staff transfers, but there were expectations that this instability was temporary and that once the decentralization process was completed, there will be greater consolidation. However, there is at present a new round of *woreda* divisions and reconstitutions, as well as the redrawing of both *woreda* and *kebele* boundaries. Many previous *woredas* have now been re-divided to create one or more new *woredas*. All this has caused further instability and uncertainty.

All these gains open up valuable opportunities for expanded engagement for the voluntary sector.

5. Rights Advocacy

I have tried to argue in the preceding pages that civil society in Ethiopia is now in transition, seeking new roles and responsibilities. The growing number of rights and advocacy-based organizations that are now active and the keen interest being shown for advocacy work by NGOs and others, which previously were content to provide services and engage in welfare oriented programs, is a good indication that the shift from what may be called “quietism” to “activism” is under way, though it is still modest by the standards of many African countries. The catalyst for this shift on the part of a number of NGOs has been, in part, the PRSP initiative and the involvement of CSOs of different persuasions in the consultation process (see FSS 2001-2002). However, due to capacity constraints only a small number of organizations have kept up their interest in the monitoring and evaluation process following the launch of the program.

Capacity constraints will continue to pose serious limitations to CSOs embarking on advocacy work.

The fact that rights advocacy is a new experience for Ethiopian organizations has meant there is no clear understanding of where and how to begin. CRDA and some of its member organizations are toying with the idea of constituency building. The idea is that NGOs should build support among a section of the population so that the people will identify with the mission of the organizations and promote their activities. The concept is similar to that of political parties and their relationship with their voters (CRDA 2003). Others are considering setting up networks or building the capacity of existing ones as a prelude to advocacy work (SAG 2006). Still others are using the poverty reduction program and its implementation as an entry point for monitoring social accountability (PANE 2006). A number of organizations have attempted to draw up advocacy manuals to help those planning such activities. All these are welcome initiatives and provide opportunities for experience sharing.

In what follows I would like to raise some of the issues involved in rights advocacy and the challenges facing advocacy endeavors. My focus is *rights* advocacy as noted below.

What is at Stake?

Until very recently, the word 'advocacy' was almost taboo among government circles, in particular at the Associations Registration Office of the Ministry of Justice. Applications for registration of organizations wishing to do advocacy work were frequently discouraged and occasionally turned down. Somehow, the government associated advocacy with political opposition. This has now changed and indeed in one of the drafts of the new CSO legislation prepared by the Ministry, advocacy work is considered a legitimate activity of civil society organizations.

There is nothing in the constitution or any of the country's laws that prohibits advocacy work. Indeed, the citizens' rights provided in the constitution such as freedom of speech, of assembly and association, protect the right of individuals or groups to engage in advocacy work so long as it is undertaken peacefully and without putting in jeopardy the rights and freedoms of other individuals. Moreover, Ethiopia has signed a large number of international conventions, charters, agreements and protocols that have a strong rights content. These instruments commit the country to respect human rights and the rights of special interest groups.

By rights advocacy is meant action taken on behalf of a legitimate cause, to defend rights and freedoms guaranteed by the country's legal and constitutional framework, to bring about policy change and to support

disadvantaged or unjustly treated individuals and population groups. Advocacy is a set of targeted actions directed at decision makers, public officials and the citizenry at large in support of a specific issue, cause or reform agenda. Advocacy work often implies group activism, undertaken peacefully and within the law. The international experience of course includes a wide variety of activities, measures, approaches and strategies employed by rights advocacy organizations, from measures involving unruly demonstrations to those of individual self-sacrifice, but in the majority of cases advocacy is work undertaken peacefully often using rights and opportunities provided to citizens by the constitutional framework and decision-making structure.

There are four main types of advocacy that are relevant for our purposes and these are: 1) advocacy in support of human rights and individual freedoms, and to ensure that basic services, benefits, etc. guaranteed under the law are made available to all equally; 2) advocacy which is aimed at bringing about change in policies, legislation, etc.; 3) advocacy to support a cause seen as vital to people's livelihoods and well-being, such as the environment, peace, etc; and 4) advocacy in support of disadvantaged or vulnerable individuals or groups such as women, children, etc.

Rights advocacy often requires and is frequently accompanied by sustained efforts to change public attitudes and behavior: the aim is promoting *public awareness* and the awareness of legislators, policy makers, and other public officials. This requires considerable work, an innovative approach, and knowledge of the issues and subjects on which new thinking, new attitudes and behavior is sought on the part of the targeted people and individuals. It is frequently advisable to undertake a study of the issues concerned before launching public awareness initiatives. Unfortunately, the country does not yet have a vigorous and responsible independent media, hence the work of raising public awareness becomes doubly difficult.

Furthermore, the chances of success of advocacy work is high if there is networking and collaborative effort on the part of CSOs engaged in rights advocacy. *Advocacy networking* is important because it provides greater influence and voice, on the one hand, and because it is an important means of overcoming capacity constraints. Networks could be permanent or long-term coalitions, alliances or umbrella organizations, or short-term issue-based joint efforts, but whatever the form it is important to work together in pursuit of a given cause or causes in a harmonious and democratic atmosphere.

Advocacy work requires that those involved are fully aware and well informed of the issues concerned. This will mean undertaking issue-based *investigations, studies, surveys, and research* and arriving at decisions or preparing options after careful discussion of the findings of such endeavor. A good example is the work of Poverty Action Network Ethiopia (PANE) in

respect of monitoring the poverty reduction program. PANE's innovative approach consists of what is known as the citizens report card (CRC), which has been used to good effect by civil society groups in India and other Asian countries. The citizens' report card is a simple and powerful instrument to assess public opinion about the availability, adequacy, quality, and affordability of social services that citizens' have a right to. Citizens, as taxpayers and voters, have a legitimate right to basic services, and public agencies have an obligation to provide such services to all fairly and at reasonable cost. CRC's are surveys conducted among a given community on issues of service quality and their provision which can be used by civil society to monitor service delivery and provide feedback to public agencies as well as the public at large on the strengths and weaknesses of the services in question. CRCs have many uses and advantages: first, they provide citizens, CSOs and government agencies with hard evidence about gaps, inefficiencies and malpractices in service delivery, and second, they can be used as a tool for social accountability because they reveal areas where public agencies have failed to fulfill their obligations (PANE 2006).

Another tool for holding public agencies accountable is *budget analysis or budget tracking*. The extent to which the government is committed to provide any given service or to the welfare of disadvantaged populations such as children, for instance, is measured in part by the resources it allocates but resource allocation and the proper and efficient utilization of the resource in question are two different things. What has happened to the children's or women's budget, the HIV/AIDS' budget, the water budget, the health or education budget, etc.: such questions open up wide areas for investigation and gathering of evidence. Budget tracking or analysis provides CSOs with an important instrument to determine gaps and to indicate failures. In this country we have not developed high skills in budget tracking, and to my knowledge there are only a few organizations (PANE is one of them) that have attempted to do that as part of their major advocacy or monitoring and evaluation activities. Expert budget analysis is a tool that advocacy organizations need to learn or to have access to when and where they need it.

Only a few CSOs have the capacity to undertake such or similar investigations or analysis either in-house or by employing consultants, hence the importance of network organizations or policy research institutions. On the other hand, advocacy work with respect to human rights and good governance requires a thorough knowledge of the legal framework and the structure of public administration, management and decision-making.

Understanding the *institutional framework* of government pertinent to service or welfare programs is crucial for engaging in advocacy work. For instance, which are the public agencies that have a bearing on the welfare or

rights of children? There are quite a few and they include, at the Federal level, the Ministry of Labour and Social Affairs, the Children's Commission, DPPA, the Ministries of Education, Health, Agriculture and Justice, and the Council of Ministers. All except the last have line offices at the *killil*, Zonal and *woreda* levels. How effective can these be in promoting child oriented causes? To what extent should citizen groups focus their advocacy attention on them? These and similar questions have to be addressed and resolved.

Moreover, advocates need to work among government institutions from the *killil to the woreda level*, for in the final analysis it is these agencies that implement government policies and plans. Then there are law enforcement agencies: security forces (especially the police), courts, prison authorities, etc. They are the ones that enforce the law but in the process quite often violate it by infringing on the constitutional rights of suspects, detainees, the accused or prisoners. Law enforcement agents play a strong role in how citizens' are treated or whether they have access to justice or not.

Rights advocacy, from small-scale or individual work such as monitoring public agencies, compiling evidence, lobbying legislators and decision-makers to large-scale endeavors involving public action measures (vigils, demonstrations, etc.), has to be carefully planned. It is important to clearly *understand the opportunities* and *assess the environment* surrounding the cause, issue or measure selected for action or consideration. Hasty decisions and unplanned measures may be counter-productive and harm the cause of advocacy. CSOs undertaking advocacy need to be prepared not just in terms of the logistics of the measures considered but in terms of evidence-based information about the issue, as well as in terms of sound and well-thought-out alternatives, options and strategies for change or reform. They have to have in-depth information and knowledge about the problems and existing situations, on the one hand, and the legal environment pertinent to the issue at hand, on the other.

On a number of occasions, advocacy work will not be successful without the *mobilization* of resources and people for action. Advocacy in isolation is rarely effective or successful. In our case, the chances for success are higher if the work involves public action and public awareness. Resources here include not just financial and material, but technical and intellectual.

Message Delivery. An advocacy instrument is different from the product of research. The advocates themselves must be informed and enlightened by research findings and the work of scholars and analysts but it will be their duty to transform such instruments into ones that are quickly grasped and easily understood by the people who are the target of advocacy, namely, government officials, MPs, law enforcement agents, and the public at large. Thus message delivery must be understood as a special art to be carefully cultivated. To find an effective way of delivering our message to different actors with different

capabilities, attitudes and experiences and without losing the essence of our objectives and cause is no easy task.

Advocacy messages must be *tailored* to different people at different times. The key question advocacy organizations face is how to project the message to different audiences: the technical expert, the government advisor, the MP, the lower official at the woreda level, the policeman on the beat, and the general public. Here, a mature media can play an important role in carrying the message to a large, often mixed audience. As was noted earlier, the media is the friend of advocates and citizen groups have to work very closely with the media. Obviously, things are much easier in conditions in which the media is in the private sector as opposed to the public sector.

Challenges Facing Rights Advocacy

There are a wide variety of challenges facing CSOs wishing to engage in rights advocacy, and here we will focus on those that are significant and of immediate concern. The subject is extensive and space limitations prevent us from presenting a full-scale review. At the basic level, it is important to note that while the need to engage in advocacy is growing there is very little experience and knowledge about how to go about it especially in the difficult circumstances noted above. Thus advocacy organizations will have to spend a long time learning the intricacies and fine art of advocacy work.

Of the many specific challenges that face CSOs, we shall select a few significant ones for a closer look. Let us begin with the challenges that are of a broadly political character. I am referring here to the existing Parliamentary experience, the extent to which legislators can be involved in constructive engagement, the prevailing political culture, and the role of the media.

Parliament: Parliament and Members of Parliament should be one of the main foci of advocacy work because it is MPs who in democratic societies debate, change or initiate legislation, and hold the government accountable. In view of this it is important to understand the workings of the institution and the persons and parliamentary bodies that wield influence and are favorably disposed to listen to the public and civil society. In our case, the issue is quite complex because Parliament is a weak body and the influence of the governing party is overwhelming. Besides, even under different circumstances, there is no culture of lobbying Parliament, or MPs holding public hearings.

The relations between legislators and citizen groups in this country is not conducive to advocacy work. The two are distant from each other, suspicious of each other, and are not engaged in dialogue of any sort. MPs think civil society organizations are part of the opposition, are strongly critical of the political order and in any case do not have any weight in matters important to Parliament or the

government. Citizen groups think Parliament has no teeth and only serves to rubber stamp the government's legislative initiative. There have been a few occasions in the recent past where Parliament has taken the initiative to invite civil society for an exploratory dialogue, but there has not been any follow up since then.

Leaving aside the controversy surrounding the 2005 elections, there are now far more MPs sitting in Parliament from the opposition than ever before. Nevertheless, the dominant power of the ruling party in Parliament has not been an enabling factor for lobbying or putting one's message across to Parliament. Legislative reform through CSO initiative is not possible because the party is not favorably disposed to civil society, and there are no alternative voices. Despite their increased number, the opposition parties have no clout and are in no position to initiate reforms or new legislation. They do, however, raise criticisms of government plans and actions, and in this they provide an alternative voice.

The political culture prevailing in the country is NOT advocacy-friendly, and the reasons are many and varied although due to limitations of space I shall cite only a few. There is, to begin with, the widespread view, particularly strong among policy makers and civil servants, that the state knows what is best for the country. Thus, decisions and policies are not submitted to public consultation and the opinion of stakeholders or civil society is not sought. There is in other words a lack of a participatory decision-making culture. The government or its senior officials rarely express a willingness to consult the public on any issues affecting a wide section of the citizenry.

Secondly, there is a lack of a culture of democratic dialogue. Quite often proponents of policy initiatives on the one hand and opponents on the other engage in confrontational discourse and few are the occasions when the middle ground is sought to resolve the deadlock. Thirdly, there is fear and hostility to criticism among public agencies as well as the voluntary sector: criticism is always considered to be destructive and hostile and no merit is seen in inviting critical opinion or opinion that is different from the one submitted. On the other hand, opponents often lack skill, tact and flexibility in providing critical opinion, and in making it palatable to officials and constructive to the problem in question. Often criticism is couched in inflammatory or alarmist language and presented in confrontational form.

The media: The free flow of reliable information is crucial for all the work of civil society especially rights advocacy, hence CSOs should fight for freedom of information and an independent media. A free press is more important to the voluntary sector than to media operatives or journalists.

In democratic societies the media is a valuable instrument of advocacy work. This is because the media itself is engaged in advocacy work of its own, or

because it is very receptive to the causes promoted by advocacy organizations, such as for instance the rights of children, the protection of the environment, or the welfare of marginalized citizens, etc. The absence of a responsible media, and the lack of respected journalists, commentators and analysts makes the work of advocacy in this country very difficult.

Concluding Remarks

Without repeating the arguments presented above, let me make a few points in conclusion. Advocacy is not only a right of citizen groups but a duty and a necessary part of their responsibilities. It is worth emphasizing again that the voluntary sector in this country will have to be increasingly engaged in rights advocacy if it is to be relevant to society and faithful to its own values and principles. The immense challenges facing civil society in this regard must not be employed as an excuse to shy away from the task. This is what the deepening of civil society means in our context. The issues are complex, but also immediate and unavoidable: they concern human rights, democratization, social accountability, and sound policy reforms.

As I have tried to show above, this country has paid a heavy price in terms of human rights violations in the last half century, in part because of the absence of a strong civil society. While one cannot say there would have been no rights abuses if the circumstances were different, the scale of the injustices would have been a good deal less if a vigorous voluntary sector had existed.

The struggle for democratization and good governance cannot be won merely on the strength of formal policy initiatives or legislation, however favorable and enabling they may be. The Imperial regime had a good many sound and liberal laws in the statute books but all of them remained a dead letter and unenforceable because the ruling elites were not willing to put them in practice and there was no citizens' groups to raise their voices. The active involvement of civil society in public affairs is important for building democratic institutions if in doing so it can promote policy reforms, monitor the activities of the state and hold it accountable, and defend the rights of citizens and the public interest.

Furthermore, efficient public sector service delivery and accountability cannot be achieved unless there is a strong demand from society which calls for the participation of a vigorous voluntary sector. On the other hand, the exclusive concern for "welfare" work and service delivery on the part of non-state actors, while unavoidable in the past and for many years to come, will in the long run lead to a dead end, and those engaged in such endeavors will eventually come to ask the larger questions of policy relevance, choice of priorities, rights and interests of the poor, etc.

I would like to end with a word of caution here. We must be careful not to exaggerate the contributions of civil society to the growth of democratization and good governance. The international experience provides a good case to ponder. The major political and social reforms in the West in the second half of the twentieth century, such as those having to do with civil rights, environmental protection and gender equality were a product of the complex interplay of mass public pressure and the activism of civic organizations and leaders. Non-state actors played a significant role because they often helped to define the issues more clearly for the public at large and to extend public awareness. But in the end, these historic reforms would not have been possible if they were not accompanied by sustained public pressure. We thus talk about the civil rights movement, the environment and women's movement because it was these *citizens' movements* that brought about the reforms in question. Civil movements such as these may be spearheaded by one or more voluntary organizations but they entail collective pressure brought to bear on governments by a broad section of society and persisting in time and space. Civic movements are nothing but *public activism* sustained over a sufficiently long period of time. It is thus clear that democratic change is the combined outcome of the persistent activism of the public and civil society organizations.

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Civil Society Networking and Coalition Building in Ethiopia: Challenges and Prospects

*Aster Birke**

Background

The establishment and the increase of networks in Ethiopia are directly linked to the post-1991 policy environment and the advent of modern non-governmental organizations. Although by most countries' standards Ethiopia lags behind in the number and strength of its NGO networks, it is evident that the last seventeen years have seen the gradual growth of networks in number, diversity and form.

In implementing the Ethiopian NGO Sector Enhancement Initiative (ENSEI), Pact Ethiopia focused on networking and network strengthening as one of its three strategic objectives. This chapter mainly draws on major lessons learned during project implementation. In this regard, during ENSEI, Pact Ethiopia provided financial and technical support to more than eleven networks.

Currently there are increasing numbers of formal and ad-hoc networks, alliances and forums reflective of the development of the civic sector. Unlike many other countries, there is no single all encompassing national umbrella organization for civil society organizations in Ethiopia. However, the Christian Relief and Development Association is a good example of an umbrella that has managed to bring together the highest number of non-governmental organizations that can be crudely classified as local NGOs (LNGOs), international NGOs (INGOs) and Faith Based Organizations (FBOs). On the other hand, the Union of Ethiopian Civil Society Associations comprises of traditional non-governmental organizations and associations that fall within broader civil society.

Taking into consideration age, with the exception of CRDA which is the oldest, the majority of networks are relatively young. More and more NGOs are attaining maturity by having been in operation for more than a decade, as in the case of Consortium of Reproductive Health Associations, formerly known as the Consortium of Family Planning NGOs (COFAP). Several others were not as

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lucky and disappeared in their youth. Cases in point are the Consortium of Ethiopian Voluntary Organizations (CEVO), which at one point had 27 members while the Society for Participatory Development (SPADE) boasted 50 members.

Although several definitions exist, for the purpose of this chapter, a network could be defined as, 'a group of individuals and/or organizations who, on a voluntary basis, exchange information or goods, or implement joint activities, and who organize themselves for that purpose in such a way that their autonomy remains intact.' For the sake of convenience, 'network' denotes any CSO grouping including umbrella organizations and coalitions.

The structure, life span, resource base and other factors directly influence the type of activities a network/umbrella organization is involved in. Most networks are involved in sharing of experiences, exchange of information, increasing solidarity and shared values, creating awareness, strengthening partnerships with stakeholders, standardizing practices/methodologies, higher profile and credibility building, working for greater impact, strengthening peer support, carrying out joint activities, accessing new information and so on. The more established ones, in addition, are engaged in research, public policy dialogue, provision of training, resource mobilization for members, rendering technical assistance, undertaking common purchasing/marketing, etc.

Trends in Networking and Coalition Building

The last seventeen years have witnessed many developments in networks and the culture of networking.

In the early 90s there were a couple of networks in the whole of Ethiopia whereas currently there are over 25 networks which are national and regional in geographic coverage. They also show diversity in their thematic focus, some being sectorally focused like the Basic Education Association (BEA) while others like CRDA or UECSA cater to a wider constituency. Generally, it can be concluded that the majority of networks used to cater to wider audiences in the earlier years whereas today they are becoming more thematically focused, e.g., education, HIV/AIDS, reproductive health, pastoralism, women, etc.

Further, networks were more informal and *ad hoc* in their earlier years in contrast to the more formal and structured variety that exist today. Geographically, they used to be more concentrated in and around Addis Ababa while there is now more decentralization of existing national networks and the creation of region or locality specific networks.

As a result of difficulties in getting legal recognition by the Ministry of Justice, many networks earlier on used to carry out different activities through a chosen member organization which was a legally registered entity. A case in point is the Basic Education Network (BEN), currently renamed Basic Education

Association (BEA) which used to be housed and implemented various activities through the Adult and Non-formal Education in Ethiopia, which is a legally registered NGO. Currently BEA is an independent network which implements various projects and provides many types of support to its member organizations.

For the sake of illustration and based on their life spans, networks could be crudely divided into three main periods: early years, i.e., the 90s, mid life covering late 90s to early 2000s, and the post-election 2005 period. In the early 90s, networks and coalitions were established to provide capacity building support to their members, in addition to channeling funds and serving as forums for collective problem solving. Generally, they could be said to have been internally focused. In the late 90s and early 2000s, more outwardly focused networks emerged. This was a period when a few networks that focusing on policy advocacy began to emerge. In the post-2005 election era, policy engagement by networks seems to have become infrequent because of strained relations between government and civil society.

Challenges in Networking

There are several challenges that networks face at various levels. One could divide the challenges into those that manifest themselves at the network level and others at the operational environment level.

Network Level

Networking is a time consuming process. In the Ethiopian context, the idea for the formation of a network usually emerged from a workshop or training event. However, when the workshop euphoria wears off, founders have exhibited decreasing practical commitment, which affected the initial take off stage of the network.

The societal needs are numerous and the existing organizations addressing them are too few, be they individual NGOs or networks. Therefore, usually networks are established to address a very wide need with too limited capacity. In addition, members have differing priorities which affects common vision and action.

NGOs face stiff competition in accessing funds. Therefore, member organisations usually prefer their network to focus on fund channeling as a priority objective. This is chosen at the cost of and over those that brought the group together, mostly for a united voice and influence, i.e., advocacy. The benefits of advocacy are seemingly intangible and long term. Moreover, once a network engages in fund channeling, the likelihood of creating rifts amongst

membership is high, with a risk diverting it from all other critical functions of the network.

Accessing funds particularly at the establishment stage is challenging for most networks. Moreover, networking being a relatively recent phenomenon, has not made it easy to acquire funds. Membership fees are usually nominal, not paid regularly and are insignificant compared to the budget requirement of the network.

In any networking initiative it is a few selected individuals/organizations that are consistently engaged and show their commitment through practical contributions that strengthen the network. When a network gets to the stage of setting up its secretariat, it is a challenge to ensure that all members participate equally in all aspects of the network's self-sustenance.

Information is critically important for the proper functioning and advancement of a network. Although with the recent development and progresses made networks are showing increasing ability to acquire and use the necessary information, earlier on information was highly limited for a number of reasons, including lack of capacity, both technical and financial, on the part of the network.

The establishment and growth of any organization is highly dependent on its leadership. Although almost all organizations including networks owe their existence to such individuals, who could also be founders, sometimes such individuals could be harmful. The identity of the network could be highly attached to the individual at the helm, so much so that if the leader leaves the organization, it finds it difficult to stand by itself and thrive.

Networks tend to be established with ambitious objectives which makes the network 'a Jack of all trades and master of none'. This has affected the quality of services networks provide, in turn undermining the effective engagement and sense of ownership of network members.

Operating Environment

The 1960 Civil Code of Ethiopia provides for the establishment of associations. Unfortunately, in the last decade, the Ministry of Justice has tended to narrowly interpret it to mean that associations are only those that are founded by individuals and not by organizations coming together to form another organization such as a network. This has affected the growth and proliferation of networks. Still, it is important to note that lately there are a few networks that have been legally registered as 'networks'.

Suspicion of contemporary associational life, reflective of the larger society, initially hampered the emergence of networks and the speed of their

growth. But as the sector grows in size and strength, the capacity to work collaboratively on common agenda is clearly increasing.

Ethiopia is a country where a huge amount of voluntary work is undertaken mainly through community based organizations (CBOs). However, when it comes to the more modern set-ups, voluntarism is highly limited. For networks that depend on voluntary contributions substantially, it is getting more and more difficult to access quality voluntary work.

As stated earlier, networking is a relatively recent development in the voluntary sector. Therefore, networks have had no real role models or mature versions to learn from or emulate within the country. This has made it difficult particularly for the pioneer networks to learn from peers and apply lessons learned.

There have been instances where two networks are established around similar thematic areas. This has created mistrust between differently set up networks.

Furthermore, although there are networks that enjoy a relatively good relationship with the government, in some instances, the relationship has not been smooth. Some networks have found it challenging to sustain good working relationships with the various layers of government mainly because there is inadequate trust among the partners. This is particularly true to those addressing sensitive topics like human rights and strategies like policy advocacy.

Lessons Learned

Based on Pact Ethiopia's practical experiences in supporting networking for the last ten years, key lessons learned are captured as follows.

The reason for establishment of a network should be a felt need among network members and sufficient time should be allotted for sensitisation and confidence building among members.

Although the various stages of networking require different levels of engagement from network members, it is essential to strike an optimal balance in their degree of involvement. This is because as network members they should be engaged and should benefit from all that the network could offer them. At the same time, they should not curtail the natural growth of the secretariat by unnecessarily interfering in the internal functioning of the network.

As stated in the challenges section, many networks start with over-ambitious objectives and risk spreading out themselves too thinly. This affects both the quality and strength drawn from members. In addition, given the scarcity of funding, it is imperative to prioritize and focus on those objectives that could be realised and allow for gradual growth. Incremental growth is also

required for confidence building within the network by tackling easy and simple tasks at the beginning and gradually moving to the more complex ones.

A network is established to strengthen individual members and add value to their work. Therefore, it is critical that the network does not engage in any activity that a member could do well, thus avoiding direct competition with a member agency.

In having supported the creation and/or strengthening of over eleven networks in Ethiopia, it has been noted that those that came together to form a network with very clear and specific objectives were able to succeed within a short period of time.

Particularly in cases where the network constitutes membership with diverse program agendas, it is important for members to concentrate on uniting factors rather than differences. This is particularly important in the early stages of establishment where trust and confidence building among members is crucial. Moreover, it is essential to base partnership among members on a win-win basis where each partner adds value by bringing to the table its strengths.

It is evident that organisations providing support, be it technical or financial, have a critical role to play in the strengthening and advancement of any network. However, their role should be restricted to that of a catalyst that facilitates learning and growth and refrain from direct and undue influence.

The *raison d'être* of any network is essentially to strengthen its membership through a united voice and ability to influence. Therefore, any network needs to be closely in touch with its environment, analyze trends and access and use information. Once it is armed with useful information, it can easily be proactive rather than reacting to issues after the fact.

The number of networks being established is increasing, some addressing similar issues. Although it is important to optimise resources in a poor nation such as ours, competition is healthy since the most responsive survives.

Any network should ensure that it treats all members equally and that it is able to create that confidence in each and every member. This is particularly true when the membership is not drawn from one homogenous group as in those networks that have multi-stakeholder members.

Prospects for Networking and Coalition Building

In spite of the many challenges facing the sector and the fact that networking is a relatively recent phenomenon, networking as a culture has shown marked improvements in the last several years. Some of these prospects are highlighted as follows.

The culture of networking is slowly growing and steadily gaining momentum. This can be attributed mainly to increasing understanding of the

importance of coming together. Furthermore, with increased linkages with the outside world, lessons from external networks are contributing to the growth of networks.

In tandem with their growth, networks are attracting professional and dedicated personnel denoting a brighter future ahead. Growth of IT and its use is opening avenues for the advancement of networking and exchanges.

Some umbrella and networking organizations are gaining credibility among their target groups and other relevant stakeholders. This contributes to the success of their work and to increasing their legitimacy and thus membership base. For networks that have passed their early developmental stage, the quality of services rendered and collective impact will drive future successes.

Networks can play pivotal roles in advocating for more enabling policies and greater civil society participation in the country's development. Furthermore, those networks that are responsive to members' needs and agile in adapting to existing operating environment have a better chance to succeed. Knowledge management will be key as it relates to accessing relevant information and using it for decision making.

Conclusion

As long as a civic sector exists, networks will continue to play a critical role. To ensure strong and thriving networks, all developmental actors have significant responsibilities and must rise to the challenge of shifting their paradigm in playing these roles.

The challenge to civil society is to come out of its comfort zone, occupy its rightful space and address critical issues related to policy and quality programming. The challenge to donors is to support legitimate, demand driven and dynamic networks and coalitions. The challenge to government is to create a conducive and nurturing environment to allow civil society to be the best it can. Lastly, the challenge to the citizenry is to hold all the above-mentioned actors accountable and to keep all focused on the overarching goals of 'ensuring public good and rights for all'.

Policy Research Institutions and Democratization

Recent Experience and Future Challenges

Dessalegn Rahmato

Introduction

This paper* is limited in scope and purpose partly because of the subject matter itself and partly because independent governance and advocacy institutions in Ethiopia, among which policy research institutions such as FSS are included, are of recent origin and have been operating under difficult circumstances. It was only in the last decade or so that independent policy institutions or institutions undertaking broadly similar functions began to make their appearance in this country. In Africa as well such institutions are relatively new, with the older ones having emerged in the mid-1970s, and many of them are fragile bodies operating on a shoe-string budget and with limited staff.

The main aim of the paper is to draw attention to the relevance of these institutions to the process of democratization –a subject which until recently was ignored both in the broader international context as well as in local settings. Research in the social and economic sciences in this country has been confined to academic institutions, serving largely academic interests. There are, to be sure, several government agencies that are engaged in research activities of one sort or another –the National Bank, the Central Statistical Agency, the Ministry of Finance and Economic Development are a few examples– however, their findings are produced largely for technocrats in public service and appear in the form of technical reports that are of limited value for engaging the public in debates or for promoting public awareness. In general, the infrastructure for public information and policy analysis, which is the main task of policy institutes, is quite rudimentary here, and policy debates in particular are not keenly sought either by the public or government authorities.

Civil society organizations in general usually grow and flourish in a political setting which upholds respect for the rule of law, and tolerates and even welcomes the diversity of views and interests. Such organizations have been associated, historically, with the rise of the middle class and the growth and

* The paper was first presented at an international conference organized by FSS on 28th March 2008 in Addis Ababa.

proliferation of professional groups (Dessalegn 2002). Both these conditions have been lacking in Africa, more so in Ethiopia where the political environment, which in the past was wholly prohibitive, now remains difficult and challenging, and the middle class and professional groups have been weak and marginalized. It has been argued by many that policy institutions in the mature democracies have made significant contributions to the improvement of the policy process and the cause of good governance and democratization (James 1993, Stone et al 1998). In conditions of political underdevelopment, such as we have here and elsewhere in Africa, policy studies and advocacy institutions will have to shoulder greater responsibilities and take on more visible roles if the goal of democratization is to be achieved.

What is meant by political underdevelopment? For the purposes of this paper, I shall view political underdevelopment in terms of "civic autonomy", defining it as a condition in which the state is predominant and civil society is weak and marginalized. Here, the voice of society is muted largely because political parties, trade unions, business associations, and social movements in general either do not exist as independent actors or, if they do, they are highly restricted in their activities. Economic society as a whole is fragmented and private enterprise in particular is feeble, confined, or dependent on state patronage and thus in no position to pose as an independent force. The state, in other words, is the most active force in society and the social space between it and the individual is narrow, restricting the autonomy of the latter and his/her primary associations. Political authority seeks to exercise unrestricted dominance over the individual and society, and a good part of the task of government is to extend this dominance and to marginalize those actors that strive to define an autonomous space for their constituents. Thus in the absence of organic social actors, or in conditions in which they are muted and fragile, the responsibility for giving voice to public concerns, and for promoting the public interest falls on the shoulders of civil society organizations.

The political experience of the 1990s, both here and in the rest of Africa, is too well known to require an extended treatment; however, the lessons of that experience have yet to be sufficiently appreciated by social and political analysts in the countries concerned. The close of the 1980s saw the emergence of what were called a "new generation" of African leaders who promised to renounce the tradition of authoritarian rule, and who committed themselves to responsible government and free elections (see Ottaway 1999). Uganda, Congo, Ethiopia, Malawi, and even Zimbabwe were included in this category. However, it was not long before these promises were conveniently ignored, and progress towards democratic government was stalled or altogether derailed. At present, in many of these countries, the authoritarian tradition is once again making itself strongly felt, and there is disregard for the rule of law, massive corruption, and lack of

administrative accountability. We shall not attempt in this short paper to examine what went wrong and to analyze why the "democratic experiment" failed so dismally. For our purposes, it is enough to draw one lesson, namely, that for the goals of democratization to be achieved it is not sufficient to have favorable policy commitments on the part of government; on the contrary, the active participation of civil society is essential.

Such organizations will have to *promote and monitor* social and political reforms, and vigorously defend what has already been achieved. Until we are able to create robust civic organizations and a diversity of public policy institutes there is the danger that the "democratic experiment" will be short-lived and the autocratic tradition will continue to prevail. We should of course be careful not to over-estimate the potential of civic organizations as has been done by a good number of international donors. According to the World Bank, for example, such organizations are thought to "hold the greatest promise of success... in building and rebuilding of state structures and institutions" (World Bank 1998, 24). But, on the other hand, it is important not to ignore their relative significance as has been done in the literature on political development until recently.

The issue of democratization should also be looked at from a different perspective for other reasons. The process of democratization in Africa as well as in Ethiopia has often been seen from what may be termed a top-down approach. Students of the subject have examined the prospect for democracy on the basis of formal legislation and state interventions in the political process. Thus constitutional provisions, the electoral process and the practice of state power consolidation are often the main issues that are singled out for analysis. While analysts writing on other African countries are now turning their gaze on the role governance and policy institutes can play in promoting responsible governance, Ethiopianists have yet to shift their focus away from the orthodox approach. I believe it is time to adopt a bottom-up and non-statist approach to the debate in Ethiopia, and it is hoped that this paper will make a modest contribution to that effort¹.

Policy Studies Institutes

In the mature western democracies, policy institutes (sometimes known as "think tanks") are playing an increasingly prominent role in policy planning and formulation, advocacy and public education. Their growing importance is

¹ There are a number of unpublished and consultants' reports on civil society in Ethiopia but most do not fully relate the subject to democratization. See Dessalegn 2007 for references. Kassahun (2002) has looked into NGOs' contribution to democratic values. For the African literature, see Kasfir 1998,

attributed, among other things, to the expansion of the democratic process and the robustness of civil society in these countries. Such organizations are also spreading quite rapidly in Asia, Latin America and Eastern Europe, but they are making a belated appearance in Africa (Stone et al. 1998). There is the belief among some in the donor community that in many of the countries in the first three regions, policy institutes are coming to be accepted by many of the governments, and have the opportunity to play an important role in promoting popular democracy, and more significantly, economic liberalism (*Economic Forum Today* 1996, CIPE 1999). In Africa, on the other hand, the organizations are facing many challenges and lead for the most part an insecure existence.

Policy institutions come, as it were, in many shapes and colors, and thus any attempt to define them and establish their identity will be met with considerable difficulties. The organizations differ in commitment, objectives, access to resources, structure and size. Some of the older think tanks in the West are large organizations with dozens of staff and a large budget. Others are smaller outfits dependent on a small core staff and a limited budget. On the other hand, think tanks may be independent organizations or may be affiliated in some way with government, political parties, faith-based organizations, labor unions, or social movements of one sort or another. But whether large or small, independent or affiliated, most institutions are dependent to one degree or another on donor organizations for their financial resources. Among the better known and well established think tanks in the West are ones concerned with economic growth and policy, democracy and human rights, poverty reduction and support to poor countries, international relations and foreign affairs, and environmental issues.

Broadly speaking, think tanks are institutions engaged in research and analysis of policy relevant issues. They serve as sources of new ideas, and often undertake advocacy activities. They are sometimes called *idea brokers* and *catalysts* for change. They produce informed and in-depth analysis of issues and seek to promote public awareness, to inform decision-makers, and to influence the policy process. Their weapon, as it were, is the force of intellectual argument, and their chief instrument for achieving their goals are publications, public debates, workshops and symposia, and the media. Unlike NGOs or charitable organizations, think tanks do not build schools, clinics, irrigation schemes, etc.; what they offer instead is an intellectual product. In the West, governments and the media listen to what policy institutes have to say, and quite often, cabinet ministers, legislators, and reporters freely borrow ideas, theories, and policy options from them. Whether or not the main end user of their product is the government, others, such as, donor organizations, civic institutions, the business community and the media equally benefit from their intellectual output. Think tanks therefore not only actively engage in dialogue with government but

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also maintain an open and healthy communication with the public, the business community and other non-government bodies.

Despite their differences there are certain basic characteristics that are common to most policy studies institutes, and these are:

- a) *Credibility*. Building credibility by providing “products” that are sound and of high standard. The views expressed in these products may not be accepted by all, but the force of argument is such that they cannot be ignored.
- b) *Freedom to undertake research*. The organizations must be able to set their own research agenda, determine their own methodology and theoretical framework, and pursue the investigation of issues independently.
- c) *Status autonomy*. Think tanks should have legal status as non-profit institutions, and must be established outside the organizational framework of the public sector. However, in some countries, the organizations may be financed by government or political parties, nevertheless, these too are expected to enjoy a good degree of autonomy in matters related to their core responsibilities.
- d) *Policy analysis*. The main objective of think tanks is to engage in policy relevant research for the purpose of informing decision-makers and making appropriate interventions in the policy process. This is what sets them apart from university research institutions whose research output is largely geared to academic purposes and is frequently less amenable to public consumption. In many African countries, research undertaken by academic institutions is often not available outside academia due to poor dissemination.
- e) *Public Purpose*. Research in policy institutes has a public purpose, i.e., it helps to inform the public, contributes to the enhancement of public debate, and encourages public participation in the decision-making process. This is what differentiates think tanks from consultancy firms. The public voice is an essential input in democratic decision making but this voice will be ineffective unless it is informed; informing the public is one of the main tasks of policy institutes.

Policy Research Institutes in Ethiopia

The FSS Experience and Challenges

There has been increasing social activism since the fall of the Derg, and the voluntary sector in Ethiopia has been growing fairly rapidly both in number and

diversity in this period. There are today numerous non-state institutions, many of which would not have been allowed to function either under the imperial or Derg regimes. The sector now consists of professional societies, women's groups, human rights and advocacy organizations, community organizations, indigenous and Northern NGOs, environmental groups, and policy research institutes. The focus of governance and advocacy organizations, which are new and only emerged in the 1990s, ranges from monitoring human rights abuses, to protecting the rights of women, to conducting voter education and advocating the care of the environment. Women's groups consist of a variety of organizations established by women, including organizations of women lawyers, women writers, women journalists, businesswomen, women's cultural groups, and women's NGOs and advocacy groups. Community organizations are engaged in cleaning up urban neighborhoods, promoting environmental sanitation, and providing support to the homeless, street children and the needy. The Forum for Social Studies, which was formally registered with the Ministry of Justice in 1998, is a product of the period of relative liberalization that saw the emergence of such organizations as the Ethiopian Human Rights Council, established in 1991, the Ethiopian Economic Association set up in 1992, and the Ethiopian Women Lawyers Association, formed in 1995.

The fall of the Derg and the subsequent political changes that took place provided a mixture of opportunities and challenges to citizens wishing to translate into action the freedom of association provided in the 1995 Constitution.² Active citizens planning to set up civic groups or non-state bodies to pursue legitimate ends soon found that what was provided in the law and the reality on the ground were two different things. On the one hand, the Constitution and other reforms that were initiated in the mid-1990s appeared to promise the liberalization of the political environment allowing greater space for independent initiatives and the public voice. The enactment of the press law in 1992 and the appearance of independent newspapers and magazines, on the one hand, and the Constitutional guarantee of free and fair elections in which political parties were allowed to contest seats in Parliament and the Killil Councils on the other, further suggested that the country was entering a new era of political liberalization. The deregulation of the print media and the subsequent end of censorship has made it possible for governance and advocacy organizations in particular to publish and distribute without hindrance studies, reports, conference proceedings, and educational and advocacy materials. While the governing principle of ethnic federalism established by the Constitution was

² For the discussion here and in the next paragraph see Dessalegn and Meheret 2004; Pausewang et al 2002. See also Dessalegn 2002 for discussion of civil society organizations.

seen by many as leading to conflict and political instability, the new authorities presented it as a form of devolution of political power and decentralization of decision-making. Elections at the national level have been held five times since 1992 though their outcome has been hotly contested by opposition parties and international election monitors.

On the other hand, all through most of the 1990s there was an insecure political environment and relations between citizens and public authorities were unfriendly and mutually mistrustful following a spate of undemocratic measures taken by the new government. There were forceful interventions in the activities of long established professional bodies and labor organizations often resulting in harassment or detention of some of the leaders concerned. The authorities looked at most independent citizens groups with a jaundiced eye believing them to be trouble-makers and part of the opposition. Moreover, there were numerous cases at this time of detention of individuals without due process, extra-judicial killings, harassment of journalists and unlawful seizure of private property. Peaceful demonstrations for redress of grievances in Addis Ababa and other urban areas were quickly suppressed, often involving the use of excessive force in which many participants were either killed or seriously injured. The voice of the state that came through the official airwaves was intolerant, uncompromising and intimidating. New organizations found it hard to obtain legal registration from the regulatory body, the Ministry of Justice, and older ones became apprehensive because of the fear of suspension or de-registration. In contrast, quasi-official organizations that were closely affiliated with the ruling political parties were given most favored status, with privileges and opportunities that were denied to independent groups. It was following the outbreak of hostilities between Ethiopia and Eritrea in 1998 that the government's hard line stance on non-state actors began to soften but this did not involve a dramatic change and citizens groups continued to be looked at with a great deal of suspicion (Dessalegn 2002).

It was in these contradictory and uncertain circumstances that the Forum for Social Studies (FSS) was born. The genesis of the organization goes back to the summer of 1996 when a few friends met to discuss the idea of setting up an open forum to stimulate public debate on development issues and public policy. By the latter part of the year, the founding members had met several times to discuss and endorse the objectives and program activities of the organization, to approve its statute and bye-laws, and set up a provisional management structure. It took well over a year for the organization's application to the Ministry of Justice for formal registration to be approved and a legal certificate issued in its name.

From the outset, FSS envisioned itself as a dynamic center for research and debate on development and public policy, bringing an innovative approach

to policy analysis and public discourse. The goals of the organization were cast in highly ambitious terms. Its core objectives were seen not just as providing an open forum for public discussions, but also embraced numerous broad concerns, such as: engaging in relevant research activities and publishing the findings to promote public awareness; supporting the cause of the marginalized and the disadvantaged; training young academics, researchers and others in research skills; providing consultancy services; and offering technical advice on strategic planning and capacity building. The list of its priority areas for research and publication numbered well over a dozen, ranging from Poverty Alleviation, to Urban Studies, Oral Literature and Development, to Indigenous Knowledge, and Substance Abuse. The founders of the organization believed that FSS was the first independent think tank in the country, and its mission was, at least in the long run, to contribute to the democratization of the policy-making process in Ethiopia. And yet, while the support provided by the members of the organization, the Board and the general public was highly encouraging, it was obvious that neither the founding members nor the staff in charge of running the organization at the time had any experience managing independent think tanks. Public goodwill and the enthusiasm of the founders could not in the end make up for the shortage of experience and capable policy analysis. This was to prove highly challenging later.

During the first half of the FSS' life, programs were undertaken with a shoe-string budget, a tiny staff, and basically through an informal and unstructured decision-making system. It was much later that FSS acquired a formal management structure, increased its staff, and had access to sufficient funds to meet the expanding needs of the organization. Similarly, it took nearly half a decade for the organization to trim its ambitions and to concentrate on a limited number of core concerns, which at present consist of poverty and poverty reduction, environment and development, and good governance. The main focus of program activities from the very beginning was organizing open debates on a wide variety of issues of concern to the public, and publishing the proceedings for distribution. Some of these public programs were important and proved to be popular with the public. For example, the series of debates running for a year more on the country's first poverty reduction initiative, the Environmental Policy Dialogue, and the Inter-generational Transfer of Knowledge (which is still going on) gave FSS a good reputation, and have influenced the thinking of a good number of civil society organizations. In March 2001, FSS launched an educational program on FM Radio Addis in an attempt to reach a much wider audience; this experience proved to be quite successful and was followed up with another similar venture with FM Radio Debu (broadcast from Awassa) in the latter part of 2005. It is estimated that FSS' educational program on the

broadcast media now reaches a combined audience of four to six million people.

However, sound and engaging policy analysis that could serve as a basis for meaningful public debates and reform alternatives –one of the chief objectives of the organization– remained and still remains a scarce commodity. While almost all of the public conferences hosted by the organization involved written presentations prepared by speakers for the occasion, the focus and quality of the papers were not up to the standard expected of a policy institution hoping to influence policy making and the reform process. Many of the papers in question could not in fact be considered policy analysis, in the strict meaning of the term, but rather commonplace discussions hurriedly put together. Policy debates require informed, thoughtful and critical analysis of public issues and the policies that have a bearing on them, based on current and convincing evidence, and the presentation of sound and feasible alternatives taking into account existing opportunities, resource constraints and the interests of stakeholders and the concerned public. This kind of product continues to be unavailable, making the work of FSS and other policy institutions similarly engaged difficult and challenging. Partly as a result of the failure of the educational system, the considerable brain-drain the country has suffered in the last three to four decades, and other reasons that are too involved to discuss here, very little capacity exists in the country for analysis, planning, monitoring and evaluation of policy processes. These capacity constraints cannot easily be resolved since their causes are deep-rooted, and as a consequence institutions like FSS will remain disadvantaged for a considerable period of time.

Another challenge that is from time to time faced by all organizations running programs of public discussion is the culture of debate in the country. Open, public debates are a product of democratic practice, and their success depends not only on the quality of the ideas and arguments presented but also on the contributions of all participants. Civil discussion consists of people listening to one another, respectful of other's opinions and arguments and in which there is a healthy exchange of knowledge and experience. While it would be unrealistic to expect all participants at each forum to voice their opinions due to the limited time available for discussions, efforts must be made so that as many people as possible are given the opportunity to express themselves. There is, in other words, an unexpressed but mutually accepted code of conduct in such debates which governs both speakers and the listening audience. Over the first years of FSS' activities, it became apparent that such public conduct could not be taken for granted and there were indeed occasions when the discussions threatened to get out of hand. Thus, promoting a *culture of civil debate*, and, through that, the *democratization of voices*, should be an important task of policy institutes in this country.

Lessons Learnt?

In Africa in general (with the exception of South Africa, perhaps) policy institutes operate in a difficult environment: the state over-dominates in virtually all spheres of activity, civil society institutions are not very strong though they are emerging as a force, and the democratic process is either in its infancy or, in some cases, altogether absent. Most African governments are hostile to independent opinion, which they view as a form of opposition or as an irrelevant exercise. Independent bodies such as trade unions, farmers' organizations, or teachers' associations are not welcome and sooner or later are liable to be brought under government control. The independent media, if at all it exists, lacks the experience, resources and trained staff to assist in the task of public education and to serve as a forum for public debate. Think tanks rely on the independent media to disseminate their findings and to inform the public. The situation in Ethiopia is no different, indeed, in some respects, it may be much worse than in the other countries of the continent. Under these circumstances, policy institutes face immense challenges and shoulder a far greater burden of responsibility than elsewhere in the world.

On the other hand, the lack of a proper enabling environment should not mean the institutions should try to keep the government at arm's length. On the contrary, they should make efforts to engage in a *dialogue* and establish close *cooperation* between one and the other, otherwise they will be unable to contribute to the policy process, and the government will lose the opportunity to benefit from independent and professional opinion.

There may be a definitional problem when talking about policy institutes in Ethiopia. Are we referring to an emerging force and a set of organizations with a distinct identity? Certainly, the number of institutions that may be described as independent policy institutes is small but there is reason to believe that there will be more of them in the coming years. Some of the recent ones such as PANE are actively engaged in monitoring the implementation of the government's poverty reduction program as well as evaluating the accountability of public officials to the citizens whom they are expected to serve. Furthermore, given the existing circumstances we may have to stretch the term a little bit and include some of the more dynamic professional associations which actively seek to influence public policy and whose functions are similar to those of think tanks. The Ethiopian Economic Association, for example, while in principle a professional society, is in most other respects operating as a think tank through its research arm, the economic policy research institute. On the other hand, there are a few institutions that have been set up by government to provide research and analysis, such as the Ethiopian Development Research Institute, and the Peace and Development Institute.

The policy-making tradition in Ethiopia has not been friendly to independent opinion and the decision-making process remains essentially closed to public scrutiny. Parliament has always been a pliant institution and traditionally rubber-stamps the government's initiatives. Policy is commonly drafted by a small group of trusted individuals who are often close to the power-holders. There have been a few occasions recently when the government has submitted weighty issues to the public for discussion, but the outcome has been far from satisfactory in the eyes of the stakeholders in particular, and important feedbacks from them are rarely taken on board.

During the imperial regime major economic policy was prepared either by the donors which were expected to provide the financial backing, or by a core of technical experts composed largely of foreign nationals. The underlying assumption at the time, and to a good extent since then, was that policy formulation was a technical matter about which the public was ignorant and consultation serves no useful purpose. Moreover, policy implementation is handed over to the line ministries and concerned agencies and they for their part jealously guard their activities against any intrusion by outsiders or the public. Given this long and strong "exclusionary" tradition, it is quite unlikely that in the short run civil society and policy research institutions will be readily listened to by the state. It would, in other words, be too optimistic to expect these institutions to be the dynamic catalysts for change in the short run. We must also bear in mind that in the last two to three decades the country has suffered the ravages of civil disorder, war and economic decline, conditions which militate against the growth and influence of civil society institutions in general.

Nevertheless, I believe that in the long run policy institutions here, and in Africa in general, have an important role to play in helping open up the decision-making process and stimulating reform, for the following reasons:

1. Until recently, there was no tradition of informed and constructive public debate on reform and policy issues in Ethiopia, and think tanks and other civil society organizations have the opportunity to establish and extend such a tradition.
2. In the mature democracies, the media serves as the catalyst and the main channel through which public opinion is transmitted to the government and government intentions conveyed to the public. The media keeps alive public debates on policy issues. In Ethiopia, the media has not served this purpose, and therefore the public has no opportunity to intervene in policy debates. The independent newspapers here, most of which are quite poor and operated on small budgets by non-professionals, are almost exclusively concerned about sensational issues (Shimelis 2000). They are ill-equipped to

provide a forum for the debate of important policy matters. The government media on the other hand is strongly one-sided and on most occasions highly sycophantic; it is thus least able to present public debates in a balanced way. Think tanks therefore have the chance to fill the gap, that is, they can serve to keep alive public concerns about important policy issues, transmitting such concerns to the appropriate authorities. While no dramatic success stories can be reported at the moment, one can say that the activities of governance and advocacy organizations have had some influence on policy making and program implementation.

3. Parliament in Ethiopia is not a 'debating forum' in the constructive sense of the term. Ethiopian Parliamentarians lack access to reliable information and have no research support; hence their interventions in policy debates do not carry sufficient weight. While to date Parliament has been easily manipulated by the government, approving state policies and legislation without meaningful debate, this is bound to change in the years to come. Think tanks can become important catalysts in stimulating legislative debate and Parliamentary scrutiny of policy initiatives.
4. Policy planners are more likely to listen to the voice of the urban elite than that of the ordinary citizens in the towns or the countryside, and policy institutes can take advantage of this elitist bias to advocate for change.

We should also add here that policy institutions have, or should have, better access to new ideas and to best practices in other countries in their respective fields of specialization because of their closer linkage with the international research community. This gives them an advantage over civil servants and state institutions.

Conclusion

At the moment, civil society institutions in Ethiopia, including think tanks, operate in difficult circumstances. Most of them are seriously handicapped by a host of factors of which the most serious are the existing policy environment, lack of access to secure resources, and limitations of human and intellectual capital (see Dessalegn 2002 for more details). As noted earlier, the brain drain that has been going on since the latter half of the 1970s has seriously depleted the country's trained human power, and nowhere is this more keenly felt than in the voluntary sector, in particular among research institutions. Policy institutes cannot hope to grow and influence public policy without top class research staff and a secure organizational foundation, both of which are lacking at present. Due

to these and other limiting factors, the quality of research and policy analysis produced currently leaves much to be desired

Given resource and staff limitations, policy institutes cannot hope to tackle all the pressing problems that the country is currently facing; hence prioritization of goals and needs becomes essential. In this country, for example, poverty, food security, environmental degradation and good governance are pressing issues that should be addressed urgently. There is a need for extensive debate by the public, professionals and policy planners on these issues and it becomes the duty of policy institutes to prepare the ground and stimulate the debate. In other national contexts, there will be other priority areas needing urgent attention. Ideally, such prioritization should help refocus the nation's attention on the problems concerned, enabling a deeper understanding of the issues and providing a wider set of policy options.

Policy institutes in Africa should set themselves lofty goals even though these may not be fulfilled in the immediate future. They should provide independent opinion of the highest professional standard, which will help improve policy planning and formulation. They should, in other words, serve as *catalysts for change*. Moreover, they should work actively to promote public awareness of policy issues and to encourage public participation, and through such effort contribute to the *democratization of the policy-making process*.

The goals of think tanks in Ethiopia should be no different from those in the rest of Africa, although there will be differences in priorities and methods of operation due to differences in political culture and historical tradition. Policy researchers here have a number of very important but very difficult tasks awaiting them. First, they should make all efforts to convince the government that it should *seek* independent opinion. As noted above, the tradition among successive governments in the country has been to marginalize independent opinion. Decision-makers always turn to government experts whenever there is a need for information and analysis, or the formulation or evaluation of policy initiatives. This is, if you will, an incestuous exercise: the government is merely talking and listening to itself, and as a consequence foregoes the benefits of the diversity of ideas and options that independent opinion would have offered.

Secondly, think tanks should help create a tradition of dialogue among professionals, the public and decision-makers. Thirdly, policy researchers should pursue innovative ideas and approaches in all their undertakings. They should learn to tackle old problems in new ways, to rewrite the terms of the policy debate, and to provoke a healthy and wide-ranging debate. Finally, and perhaps in the long run more importantly, Ethiopian think tanks should strive to bridge the gap between power and knowledge, between policy initiatives and public concerns.

As policy institutes grow in number and diversity, they will be able to shoulder more responsibilities, such as, for example, policy planning, budget analysis and program impact assessment, enabling citizens to hold public officials accountable, and effective monitoring and evaluation of government programs. Until then, capacity improvements especially to enable them to produce high caliber policy analysis, and to undertake innovative programs of public education are essential. The more governance and advocacy organizations, including policy institutes make sound interventions in policy debates the greater the chances for the democratization of the policy-making process. We should therefore all make a concerted effort to nurture the country's nascent civil society organizations in general and policy research institutions in particular.

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The Regulatory Framework for Civil Society Organizations in Ethiopia

*Tsehai Wada**

Introduction

There is no universal definition for civil society organizations¹ - hereafter CSOs. As a result, different definitions are given to them depending on the result to be achieved. To cite a few examples, CSOs are defined as: “[associations] ... that make up the third sector of modern life, separate from the government and the market place”(Elbayar 2005, 1)²; “associations that are not part of the government system and not established to make profit to be distributed to members” (Ethiopian Consortium, 2005, 4)³; “associations which are separate from the state, enjoy some autonomy and formed voluntarily by members of society to protect and extend their interests, values and identities (Abebe Chekol

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¹ None of the relevant Ethiopian laws refer to this collectivity as civil society organizations. They are rather called “associations” under the Civil Code and the Regulation and “societies” under the 2008 draft proclamation. Thus these terms are employed alternatively in this chapter.

² The author’s definition reads as follows: *CSOs are the charitable foundations, civic associations, non-governmental organizations, volunteer groups, trade unions, professional organizations, and social movements – everything from medical charities, sports clubs, and environmental groups to women’s and human rights groups – that make up the “third sector” of modern life, separate from the government and the market place.*

³ The full definition reads as follows: *Civil Society is a broad term used to describe the variety associations that citizens form to achieve a common interest and pursue shared concerns. These Associations operate beyond the private sphere of families, they are not part of the government system, nor are they established to make profit to be distributed to owners.*

et al. 2004).⁴ Some other writers define CSOs in the negative in that they exclude parochial associations and those that are totally controlled by the state agencies from their definitions (Abebe Chekol et. al. 2004)⁵.

Definitions are provided to serve one purpose or another. Accordingly, tax laws' definitions emphasize the non-profit nature of associations while other writers emphasize their role in society, i.e., that they occupy a third sector distinct from the family and the state as well as the market place. Moreover, independence from the state and voluntary membership are given prominent roles in other definitions. Given the fact that narrow definitions may have the potential to exclude those that can qualify for the status, the following can be taken as an operational definition for the purpose of this chapter. Accordingly, CSOs are defined as "non-profit autonomous associations of persons – natural as well as juridical - formed by voluntary members in order to promote and /or defend shared legal interests".

The formation and operation of any CSO demand a legal framework that can enable it to achieve its purpose/s. The legal frameworks are by and large concerned with the recognition and exercise of three basic rights, namely, the right of: association, assembly and expression. These rights are enshrined in many international human rights instruments as well as constitutions of many countries.

Ethiopia has ratified many international as well as regional human rights instruments that have enshrined these rights. Moreover, the country's constitution also gives recognition to these rights in a manner very similar to that of the international instruments. As far as the history of Ethiopian CSOs goes, apart from the traditional associations, such as *Iqubs*, *Idirs*, etc., all other associations are of recent origin. A cursory look at the legal instruments that govern the control and administration of associations shows that the laws leave much to be desired so as to address the recurrent problems of the present day CSOs, which are by any standard more sophisticated than those associations of

⁴ (Quoting IDS 1998, 7). The full definition reads as follows: *[Civil Society is] an intermediate realm situated between state and household, populated by organized groups or associations which are separate from the state, enjoy some autonomy in relation with the state, and are formed voluntarily by members of society to protect and extend their interests, values and identities.*

⁵Quoting Chazan 1994, 256,257. Chazzan argues that, "not all social associations are part of civil society: some organizations contribute to its growth and others do not. Civil society is separate from the state but relates to the state: parochial associations that do not evince an interest beyond their immediate concerns, groups that do not have a concept of state independent of their own aims, and those totally controlled by the state agencies are excluded from its domain".

the 1960's.⁶ It should be noted at the outset that those laws that used to govern this area for the past forty-five years are characterized by their silence, in that they provide no solutions to the multifarious legal issues that concern CSOs, thus leaving the field open for the regulatory bodies to do whatever they like. There has been an attempt to revise these laws in the recent past but this has not yet materialized. In May 2008, a draft proclamation was tabled by the Ministry of Justice (MOJ) for discussion by CSOs and it will most likely pass the legislative process soon, in one form or another.

Associations could not flourish in the past for so many historical reasons. However, associations of different varieties have started to flourish just quite recently and the country now boasts to have over three thousand associations that are formally registered by the relevant regulatory bodies.⁷ Today's associations are quite different from their predecessors, in that they are now engaged in fields that were not covered by the latter, such as advocacy, and their administrative structures are changing from membership-based to board-led. It also appears that there is a recent tendency to portray negatively advocacy CSOs by regulatory bodies particularly because of their role as promoters and defenders of rights.

This chapter attempts to: identify Ethiopian laws, policies and regulatory practices governing CSOs and review them in the light of their enabling or disabling potentials; identify legal loopholes, ambiguities and inconsistencies which may compromise the institutional autonomy of CSOs, or undermine the exercise of their rights or the rights of their personnel and leaders; identify critical gaps in existing legal and policy frameworks and suggest specific remedies to create an enabling environment; and identify and propose international best practices.

1. Ethiopian Law

CSOs can be governed by one or different laws. Accordingly, in a given legal regime there can be laws whose purposes are to regulate this field only. On the other hand, CSOs, like any other entity, can share different rights and obligations with other similar entities. Given these multiple legal spheres, the

⁶ The first laws enacted to govern this area were promulgated in 1960 and 1966.

⁷ Database of the Ministry of Justice. It should be noted that this figure shows the number of associations registered with the federal organ but not regional states, and traditional associations, such as Iquibs and Idirs do not register in practice, though they can do so if they wish.

following sections will deal with major laws that can influence a CSO's conduct⁸.

1.1 The Constitution

As pointed out above in the introductory part, the three fundamental rights that need to be enshrined in a given constitution, so as to enable associations to discharge their missions are: freedom of association, assembly and expression. The Constitution of the Federal Democratic Republic of Ethiopia of 1995 is the fourth constitution for the country. The constitution is the supreme law of the land, meaning any subordinate laws or practices that contravene the constitution are null and void (Art.9). Moreover, as regards the major rights on which this title focuses, i.e., the rights to the freedom of association, assembly, and expression, the Constitution provides that the right to freedom of association is recognized, except in the case of those established in violation of the law, to subvert the constitutional order, and promote the same (Art. 31). The rights to the freedom of expression and assembly are also recognized under the Constitution (Arts.29 and 30)⁹. The Constitution provides that fundamental rights and freedoms shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights and international instruments adopted by Ethiopia (Art. 13/2). The Council of Constitutional Inquiry is established within the House of Federation to deal with constitutional disputes/ interpretations (Arts. 83 and 84). In the strict sense, this is not a court of law, for its power is limited to submitting recommendations to the House of Federation which has the power to dispose the case ultimately.

With regard to due process or right to lodge complaints at a court of law, the Constitution recognizes the right of access to justice under Art. 37 in an unconditional manner.

It can thus be concluded that the three basic rights are clearly provided in the Constitution albeit in a qualified manner.

1.2 Major International Human Rights Instruments Ratified by Ethiopia

⁸ The right to freedom of assembly and expression are among those rights that CSOs share with others. These rights are governed by their own laws and these laws and the practice are not covered here.

⁹ Note – the two articles provide for situations wherein the rights can be limited. The qualifications are that the limitations should be aimed at protecting the well-being of the youth, and the honour and reputation of individuals. Propaganda for war and acts intended to injure human dignity are forbidden.

Ethiopia has ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICRSCR), on 11th June 1993¹⁰. Accordingly, per Art. 9/4 of the Constitution, these instruments form an integral part of the Ethiopian law. The ICCPR provides for the above mentioned three rights in an almost identical fashion as the Ethiopian Constitution.

1.3 Other Subsidiary Legislation

The two important laws that still govern the conducts of associations are the Civil Code of 1960 and The Associations Registration Regulation of 1966.¹¹ Given the fact that the existing laws are outdated in the sense that they leave much to be desired in advancing a vibrant civil society, there have been several attempts to develop a new law in the field. The attempt to do so, had, however, failed in the past for different reasons. At the time of writing this paper, the government tabled a new draft law for public discussion¹² and it can be presumed that this draft proclamation will be legislated soon in one form or another.

Bearing this new development in mind, the following section will deal with this draft proclamation only. It should, however, be noted that since the bill has not expressly repealed the former laws or practices¹³, it may be assumed that some of the latter's provisions – not expressly covered by the new bill - will continue to govern the relevant legal field.

¹⁰ Note – Ethiopia is also a party to the African Charter on Human and Peoples' Rights (1981).

¹¹ Incidentally, it helps to note that the Civil Code mandates the former Ministry of Interior to supervise associations and this right is transferred to the Ministry of Justice by Proc. No. 471/2005. The Disaster Prevention and Preparedness and Relief Commission is given the mandate to “coordinate and supervise relief activities of NGOs” per Art. 6/10 of Proc. No.10/1995. Regional states have given the mandate to supervise associations to their respective justice bureaus – See Proc. No. 87/2004 of Oromia, 64/1995 (E.C.) of SNNP, and 58/2006 of Benishangul-Gumuz. Moreover, under the Criminal Code of Ethiopia, associations, being juridical persons, can be made criminally liable, but the punishment is fine only which can range from 1000 – 500,000 Birr – See Arts. 34 and 90/1.

¹² The Federal Democratic Republic of Ethiopia Charities and Societies Proclamation No. 00/2008 (Draft), which was issued in May 2008.

¹³ The relevant provision provides that “any laws and practices contrary to this Proclamation are hereby repealed” (Art.123).

Before dealing with any part of the bill, it is imperative to set a premise which can serve as a parameter through which CSO laws can be judged. Accordingly, what should come to mind first is the constitutional guarantee for the basic rights required to form and operate a CSO. This, as shown above, has been met. Next comes testing the constitutionality of subordinate laws. This will be the major task of the next section. Before dealing with this task, however, it will be important to ask whether the constitution or the different international human rights instruments ratified by Ethiopia do provide for standards to measure CSO laws.

The Ethiopian Constitution recognizes the three basic rights, albeit in a qualified manner. The limitations are: with regard to the freedom of association, establishment: in violation of the law, for the purpose of subverting the constitutional order or to promote the same; with regard to the freedoms of expression and assembly, protecting: the well being of the youth and the honor and reputation of individuals as well as propaganda for war and acts intended to injure human dignity – Arts. 31, 29/6 and 30/2, respectively. The Constitution also provides that most of the constitutional rights can be suspended or limited in case of a state of emergency – Arts. 93 and the following. It should be noted here that those international instruments that are ratified by Ethiopia also acknowledge these limitations¹⁴.

Concerning the limitations imposed on the exercise of rights, the conditions provided under Art. 29/2 of the UDHR, are that

in the exercise of rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

It may also be added that the conventional standard in limitation of rights is that

Interference can only be justified where it is prescribed by law, to further a legitimate government interest, and necessary in a democratic society. States must refrain from restricting freedoms of association through vague, imprecise, and overly broad regulatory language [World Movement for Democracy, 2008, 4].

The conclusion is, thus, rights can be limited to advance the causes of protecting the rights and well being of others and government intervention must

¹⁴ See Art. 29 of the UDHR and Arts. 19 – 22 of the ICCPR.

be essential in a democratic context. Any other limitation will, therefore, be unconstitutional.

2. Major Provisions of the Ethiopian Draft Proclamation¹⁵

The Proclamation is designed to govern charities as well as societies. The types of charities that may be formed are: charitable endowments, charitable institutions, charitable trusts and charitable societies (Art. 15). Charities are formed through destination of a given property while this is not so for societies. Accordingly, the administrative structure of the former is based on the control and administration of this property. Charities can engage in any of the fifteen specific areas (identified in the proclamation as “charitable purposes”), provided they meet some of the conditions, while societies can engage in any lawful activity¹⁶. As regards formation, supervision/control, dissolution and other aspects – to be discussed hereunder – all provisions are equally applicable to both unless mentioned exceptionally.

2.1 Formation, Registration and Legal Personality

The most troubling feature of the Proclamation is easily observed in the types of society and charity it attempts to govern. The Proclamation provides that charities or societies can be classified into two and these are: foreign and Ethiopian. An Ethiopian charity or society is a charity or society that is formed under the laws of Ethiopia and all of whose members are Ethiopians and is

¹⁵ The MOJ has come up with a number of draft bills at different times. The latest drafts have made certain changes over the previous ones mainly due to opposition from stakeholders. This research is based on the latest draft, i.e., the third draft issued after the June 2008 draft.

¹⁶ The following are provided as charitable purposes: the prevention or alleviation or relief of poverty or disaster; the advancement of economic and environmental protection or improvement; the advancement of: animal welfare; education and health or saving of lives; arts, culture, heritage or science; amateur sport and the welfare of the youth; the relief of those in need by reason of age, disability, financial hardship or other disadvantage; advancement of capacity building on the basis of the country’s long term development directions; advancement of: human and democratic rights, equality amongst nations, nationalities and peoples or different religious groups; the realization of the rights of children and the disabled; conflict resolution or reconciliation; promotion of the efficiency of the justice and law enforcement services; and any other proposes to be prescribed by the Agency – Art.14. Note that foreign charities or those receiving more than 10% of their income from external sources are not allowed to engage in the last five fields.

funded or controlled by Ethiopians. However, it may be deemed as an Ethiopian society if it receives from foreign sources money, not more than ten percent of its total income. On the other hand, foreign charities¹⁷ are defined as those charities that are formed under the laws of foreign countries or which consist of members who are foreign nationals or controlled by foreign nationals or receive funds from foreign sources- Art.2 (2&3). The June 2008 draft has added another category known as ‘charities or societies of Ethiopian residents’ which are defined as those charities and societies whose members are all residents of Ethiopia, which get more than 10% of their income from foreign sources and established under Ethiopian law (Art. 2/3)¹⁸. As a national law, the Proclamation is expected to govern conducts of Ethiopian societies and charities only or those societies and charities incorporated abroad but that intend to operate in Ethiopia¹⁹. The trouble comes when the law puts insurmountable conditions for CSOs to be considered as an Ethiopian society or charity, i.e., that all members should be Ethiopian and more particularly that it has to raise

¹⁷ An earlier draft had given the same definition to both charities and societies, but the latest Amharic draft has left out foreign societies from its definition. See Art.2/3 – Amharic version.

¹⁸ It is interesting to note that this society is mentioned only twice at the definitional part, and scope – Arts.2/3 and 3/1/b, but no where else. Moreover, this being a different institution or collectivity it is defined as a separate entity but no separate part is allotted for its administration, control, etc. interestingly enough it is not given the right to lodge appeal from the decision of the Agency, under Art.105/3, for it is not mentioned there. Thus, its status is not clear.

¹⁹ Foreign charities – but not societies – cannot engage in the advancement of human and democratic rights, promotion of: equality among nations, nationalities, peoples, sexes and religions, the respect for the rights of children and the disabled, conflict resolution and reconciliation and the efficiency of the justice and law enforcement agencies (Art.14/5). The law is applicable on them though they are required to submit additional documents for registration – see Art. 69/3 – but they do not have the right to lodge an appeal from the decision of the Board to the Federal High Court (Art. 105/3). Thus they can appeal from the decision of the Agency to the Board but not to a court of law thereafter. The draft law in general and the discrimination against foreign charities and societies in particular has provoked the condemnation of major international institutions – See, Human Rights Watch’s Analysis of Ethiopia’s Draft NGO Laws, June 30, 2008, at humanrightswatch.org, accessed on August 9, 2008; Development Assistance Group Ethiopia, FDRE Charities and Societies Proclamation No 00/2008, Technical Analysis of Second Draft of Proclamation, 28 July 2008, and Amnesty International, Ethiopia: Comments on Draft Charities and Societies Proclamation, amnestyinternational.org, accessed on August 9, 2008. Ethiopian civil society organizations have also strongly opposed the disabling provisions of the draft law.

not less than 90% of its income from local sources. It should be noted here that the Agency can register a foreign charity but not a foreign society – Arts. 69/4²⁰. These qualifications can kill a great majority of Ethiopian societies and charities, for most of them depend on foreign funds and the money they can raise from local sources is insignificant compared to the former. It should again be noted here that if such societies are to go out of the Proclamation's coverage, then those to be covered will be only a few mass organisations and professional associations²¹ and this takes the whole nation back to square one or even further back ward. This again defeats the very purpose for which the Proclamation is to be enacted, which according to the preamble is to "...ensure the realization of the rights to association enshrined in the Constitution.....aid and facilitate the role of charities and societies in the overall development of Ethiopian peoples".

Notwithstanding these limitations, the Proclamation provides that charities and societies shall acquire legal personality upon registration, and that membership is not transferable (Art.57); charities and societies shall be deemed to be formed when they fulfill the requirements set forth in the law; apply for registration within three months of their formation or within an additional three months where the Agency allows by a showing of good cause (Art. 65); failure to register within the limited time can be a ground for cessation of the formed society or charity, and merely formed societies shall have no legal personality; and they cannot solicit money and property exceeding fifty thousand Birr before registration (Art. 66).

In principle legal personality is a right to be sought by associations for their own advantage. Associations cannot do civil acts such as entering into lawful contracts, thereby owning properties, hiring staff, etc., without having legal personality. However, associations also need time to organize themselves and make sure that they have all the necessary resources to engage in their chosen field of activity. Moreover, so many things can go wrong between formation and registration. Thus, requiring associations to register and thereby have legal personality at the pain of cessation of the association, serves no purpose than deterring potential associations that can contribute to the social good.

²⁰ The former draft expressly denies the right of registration to foreign societies – Art.69/3/e and the recent draft mentions foreign charities only. Thus, it appears that foreign societies are not given legal recognition and they do not exist in the eyes of the law.

²¹ The reality is that so many professional associations are funded by foreign donors. Thus, the cap on the amount of money to be collected from foreign sources will affect them negatively or force them to scale their activities.

According to the International Center for Not-Profit Law's (ICNL) "Checklist for CSO Laws"²², CSOs should be allowed freely to come into existence...and should not be required to obtain legal personality in order to engage in lawful activities. Moreover, laws governing CSOs should be written and administered so that it is relatively quick, easy, and inexpensive for all persons (including natural and legal persons) to register or incorporate a CSO as a legal person. In light of these standards, the draft proclamation's requirements are disabling. Incidentally, the reason why a cap on the amount of money to be solicited²³, i.e., fifty thousand Birr has become the concern of the law is not clear as such matters are better left to the agreements between donors and prospective associations.

The Proclamation requires that societies and charities have to renew their licenses every three years-Art.77. It is not clear why they should be required to renew their licenses, for if there is any reason to dissolve them under the law the Agency can do so even without waiting for their request for renewal.

The Proclamation provides that charities and societies are required to submit a copy of their rules and other documents as the Agency may require - Art. 69/2/c. Under the Civil Code and the Regulation, however, associations were required to submit three sets of documents, namely, memorandum of associations, statutes, and a document known as "special act" alternatively. The multiplicity of documents has been criticized as being cumbersome and unnecessary. The draft law's requirement of the document of formation, i.e., rules is welcome. However, the other documents that may be required by the Agency are not specified and this opens the door for abuse and takes away the advantage pointed out above.

The Proclamation is silent on the speed, easiness or inexpensiveness of the registration process. Thus, in the absence of any relevant stipulation to this effect, it will be difficult to say anything on this requirement. Easiness of the process is not covered in the Proclamation. Moreover, this is to be determined by the actual working practice of the registering body. Thus, no comment can

²² To the best knowledge of this writer, apart from the general legal limitations discussed above, there are no other legal standards that help to measure the legal environment governing civil societies. In the absence of such legal standards the best that can be found is the ICNL's standards prepared by taking account of the best laws and practices of over 150 countries. See, icnl.org. This writer has generously borrowed from this source.

²³ There is disparity between the Amharic and English versions of the sub article. The Amharic version provides for the amount of money or property to be collected and the English for the amount of money or property to be solicited.

be offered in this regard prior to the actual implementation of the Proclamation's provisions.

As regards the speed of registration, the Proclamation provides that the Agency shall register and issue certificates within thirty days from the date of application²⁴. Despite this, the Proclamation is silent on the fate of an application on which the Agency has not acted within the prescribed time, except that an applicant has the right to appeal to the Board within fifteen days. The right to appeal is a general right provided to every charity and society – Art. 105. Thus, the remedy provided does not create a new right. As is customary in such matters, it should have been provided that failure to respond to such applications amounts to acceptance and thus curtail any foot dragging. This is thus, a disabling situation.

The ICNL Checklist does not provide for grounds of denial of registration, except that “such decisions should be appealable to an independent court”. As a best practice it may be helpful to take note of this requirement in other jurisdictions. Accordingly,

In the United States, only the state can create an [association]. Therefore the founders must apply to a state official for incorporation....the trend has been to make clear, by statute or judicial interpretation, that the incorporating authority has no discretion to deny incorporation unless the organization's purpose violates some prohibition of the law, not just the authority's personal notion of public policy. Thiskeeps [the official] from usurping the legislature's position ...and avoids the danger for abuse or corruption in the incorporation process (Durham et al. 2004, 18).

The Proclamation in this regard provides that the following grounds can lead to denial of registration: inability of the rules of the proposed charity or society to meet the necessary requirements of the proclamation; the creation of a situation in which the charity or society is likely to be used for unlawful purposes or for purposes prejudicial to public welfare or good order in Ethiopia; when the application for registration does not comply with the provisions of regulations made under the law; when the name under which the proposed charity or society to be registered resembles the name of another charity or society or any other institution or it contravenes public morality or law; and where the nomenclature of the society –not the charity - show that its operations are countrywide or federal and its work place as well as composition of members do not show the representation of at least five regional states (Art. 70).

²⁴ Under the Regulation, the registering organ is required to issue certificates within sixty days. Thus, the shortening of the time is commendable.

Failure to meet the requirements of the law and regulations issued under it are of course legitimate grounds for denial of registration. This is, however, a general limitation that does not take into account major and minor cases. Thus, it opens the door to abuse and it would have been preferable to deny registration only in cases of serious deviations from the requirements of the law and after an applicant is given the opportunity to rectify errors found in the application.

Of all the grounds of denial of registration, the one that stipulates that “the charity or society is likely to be used for unlawful purposes or for purposes prejudicial to public welfare or good order in Ethiopia”, is so subjective and amenable to abuse. Moreover, terms such as *public welfare* and *good order* are vague and open to diverse interpretation. Thus, these prerequisites are undoubtedly disabling.

With regard to names of societies, it may be argued that a society should not offer for registration a name that is misleading or identical with that of an already registered society. However, the similarity in name between a charity or society and any other institution engaged in a different field, such as a business organization should not be a ground for denial of registration for no confusion can be created in this regard. Moreover, the other condition of denial listed therein, i.e., “contrary to public morality” is again vague and amenable to abuse. The illegality of a name, though very theoretical, can be a legitimate ground of denial though it is very hard to imagine how this may happen in reality.

The conditionality that refers to societies that intend to operate nationally or federally is again restrictive and unnecessary. A society that intends to operate throughout the country may begin to operate from Addis Ababa or Dire Dawa and then expand to other regions depending on its resources, programmes and the prevailing conditions. Thus demanding representation from “five” regional states is an unnecessary administrative burden that should not be imposed on a charity or society intending to serve a wider public.

Registration is the entry point for the legal existence of CSOs. Given the importance of CSOs in contributing to the social good, the number of obstacles placed on them at this point is deterring and inevitably disabling. This is so particularly when the limitations are measured against the constitutionally allowed restrictions and their conventional interpretation discussed above. Furthermore, it would have been preferable to deny registration after a prospective CSO is given advice to rectify errors and failed to do so. It is thus recommended that reasons for refusal should be based on clear and serious legal grounds only.

With regard to the right to appeal against the decision to deny registration, the Proclamation provides under Art. 105, that the Agency has the

power to review its decisions within fifteen days²⁵; appeal can be lodged within fifteen days to the Board, whose decision shall be final except on *questions of law* which can be appealed to the Federal High Court and that a society will be deemed not to have been registered or cancelled till final decision.

The right to appeal to a court of law is conditionally recognized under the Proclamation. The Proclamation, however, immediately takes away the right by the conditions set forth above. The conditions are no doubt disabling for the following reasons:

It is provided that any aggrieved person– this naturally includes CSOs– can lodge his/her claim first at the Agency for review, then appeal to the Board in case the Agency fails to revise its prior decision. The conditions under which the Board may entertain such appeals, whether or not appellants will be given the right to be heard, represented, etc., are not provided. Under these circumstances, giving the right to appeal on “*questions of law*” only but not on questions of fact makes the right a hollow right. This also appears to be contrary to the constitutional right of access to justice (Art. 37), which is an unqualified right. The presence of such conditions will no doubt raise a constitutional issue unless the relevant provisions are amended and made consistent with the constitutional guarantee. It is to be noted here that this limited right of appeal is given to Ethiopian charities and societies only, but not to the foreign ones. This undoubtedly breaches the principles of equality and non-discrimination.

2.2 Termination, Dissolution and Liquidation

According to the ICNL Checklist, societies can be dissolved for anyone of the following reasons: voluntarily by the decision of the highest organ that should be given the power to do so, liquidation through court order, involuntarily for the most flagrant violations but only after failure to rectify a legal or ethical violation and such decisions are subject to judicial supervision.

The relevant provisions of Art. 95 of the draft Proclamation on the other hand provide that a charity or society can be dissolved when: if its appropriate organ rules decides to dissolve it in accordance with its rules; by the Agency when its license is cancelled pursuant to Art. 94, discussed below; and the Federal High Court rules that it should be dissolved for contravening the criminal code or the criminal provisions of the Proclamation or due to insolvency.

It is noted above that the ICNL Checklist divides termination/ dissolution into two, and these are: voluntary and involuntary. The draft law also

²⁵ Note – it is the third draft that introduced the fifteen days limit which was provided as “within a reasonable time” in earlier drafts and this is commendable.

recognizes the right to voluntary dissolution by the pertinent organ of the charity or society and this requirement is fully met.

With regard to involuntary dissolution, the draft law provides that the Agency as well as the court can dissolve a charity or society. Art. 94/1 provides that the Agency may suspend a charity or society when:

- a- it fails to comply with the order of the Agency pertaining to amendment or rectification of errors of its rules, in due time;
- b- contravenes the provisions of the law, regulations or directives issued under the law, or its own rules; and
- c- fails within the appropriate time to provide the Agency with information required by the Proclamation. The last leg of the Sub-Article provides that the suspension will be effective till errors are rectified.

Under Art. 94/2, a charity or society shall be deregistered when:

- a- its registration has been procured by fraud or misrepresentation;
- b- it has been used for unlawful purposes or for purposes prejudicial to public peace, welfare or security of Ethiopian;
- c- it fails to rectify the causes for suspension within the time limit set by the Agency; and
- d- it fails to renew its license within the legally set time.

Generally, the grounds for involuntary dissolution are: after-effects of suspension – failure to rectify errors in due time; commission of crimes; insolvency; procurement of registration by fraud or misrepresentation; being used for unlawful purposes or purposes prejudicial for public peace, welfare and security of the nation and failure to renew the license within the legally set time limit. The ICNL standard on the other hand demands that such grounds be the most flagrant and be effective only subject to judicial revision.

To begin with one of the grounds, “being used for unlawful purposes or purposes prejudicial to public peace, welfare and security of the nation” is vague and general as a result of which it is amenable to abuse. And this is disabling. Commission of a crime is too general again, for a crime may be serious or not. Thus, providing these instances as grounds of dissolution is no doubt disabling. Furthermore, a crime may be committed by anyone within a CSO for personal reasons and this should not in any way affect the CSO or its beneficiaries, but the convicted individual only. Incidentally what is provided is commission of a crime but not conviction and this may complicate matters unless the provision is amended.

Furthermore, since dissolution is the death of a CSO, it should be ordered for the most flagrant causes only. Accordingly, failure to renew licenses is not that serious to call for dissolution. Procurement of registration by fraud or misrepresentation, though apparently a legitimate ground if done intentionally, should serve as a ground only after a CSO is given an opportunity to explain its reasons and advised to rectify the error committed, for this can be a fault committed by a founder/s and the consequence should not affect beneficiaries.

Failure to rectify errors that have brought about the suspension of a CSO is the only ground that appears to be close to the ICNL standard and it may be argued that it is a legitimate ground of dissolution. Be this as it may, the legal grounds for suspension – listed under Art. 94/1, are too vague and amenable to abuse. The grounds in general pertain to failure to carry out orders of the Agency, and breach of the law or rules. Though these are not flagrant violations, failure to rectify vague commands can bring about dissolution and defeats the very purpose of giving time to rectify errors. Thus, unless the grounds for suspension are made clear, this can be taken as a disabling ground.

As shown above, the right to judicial review is curtailed and this may equally affect the rights of charities and societies. It should, however be noted that dissolution on the ground of commission of crimes and insolvency – Art. 95/2 - are to be ordered by the court and this is consistent with the ICNL standard.

2.3 Financial Sustainability

With regard to the issue under caption, the ICNL Checklist provides detailed conditions that need to be met. The most important ones are that a CSO should be allowed to engage in fundraising activities upon permit as well as lawful economic activities; exempted from income taxation on moneys or items received from donors, membership dues, etc.; public benefit CSOs should be given preferential treatment under value added tax (VAT) and other taxes; donations to CSOs should be entitled to reasonably generous income benefits, such as deductions; CSOs should be entitled to receive donations from any source – locally or otherwise; and the laws, including the procurement legislation where appropriate, should contain provisions that encourage partnership between government and NGOs, providing for government financing of projects carried out by NGOs, through grants and contracts.

The Proclamation has provided detailed conditions under which public collection²⁶ / fundraising activities can be conducted (Arts. 99 – 102). Some of

²⁶ Public collection is defined as an appeal in any public place or by means of visits to places of business or residence, for money or other property either for consideration or

the major features of these provisions are that: societies can conduct public collection upon the permission of the Agency, which is given the authority to permit or deny the request particularly on the grounds of: [suspicion] that the money will not be used to promote the objective of the society, submission of false, or misleading evidence and conviction and incapacity of the persons who are to conduct the collection; permission can be revoked upon a finding that the money is not administered properly and there is a breach of limitation imposed by the Agency; when this takes place, the money or property will be given to charitable purposes.

The Proclamation is consistent with the ICNL Checklist in allowing fundraising and this is an enabling situation which was not expressly dealt with under the former laws. Despite this, the conditions set for denial and revocation of permission appear to be causes of concern for the following reasons:

- No objective criterion is given as to how the Agency is to determine that the money will not be used to promote the objectives of the CSO;
- Improper administration of the money is vague and amenable to abuse;
- Though submission of false evidence can be a legitimate ground, “misleading” evidence is vague and amenable to abuse;
- The criminal conviction and incapacity of individuals who conduct the collection appear to be legitimate grounds for denial of permit. However, the suspension of civil rights as a result of criminal conviction appears to have no relevance with this and is out of place;
- Improper administration of the money and breach of restrictions imposed by the Agency are vague and amenable to abuse.

Given the importance of public collection against the background that Ethiopian CSOs are required to raise much of their income domestically which forces them to engage in public collection, this right should have been provided in a more generous manner. Moreover, the grounds of denial and revocation should have been effective only upon failure to rectify errors.

With regard to engagement in economic, business and commercial activities, the Proclamation provides under Art. 104, inter alia that: societies may engage in this field upon a written approval by the Agency; they have to

otherwise and which is made in association with a representation that the whole or any part of its proceeds is to be applied for charitable purposes and shall not include appeal made on a land or building used for the purposes of worship or burial or any land adjacent to it – Art. 2/10.

keep a separate book of account for this purpose; distribution of profits among members as well as failure to keep separate books of account can bring about suspension or dissolution – discussed above, Art. 94 – and this right does not relieve CSOs from registration and licensing requirements demanded by other organs.

Engagement in income generating economic activities was not covered by any former law. Thus, its express acknowledgment is welcome. However, the fact that breach of the conditions can bring about the suspension and revocation of license is a cause for concern. Definitely, incomes derived from such activities shall not be distributed among members and this amount to betrayal of the very purpose for which a CSO is established. This may, however, be committed by a few individuals who join a CSO for personal gain, but not necessarily by all members. Since those who engaged in the acts are to be made criminally liable, this sanction should have been enough to deter such acts. Thus, revocation of license and ultimate dissolution of the society appear to be a disproportionate as well as a disabling measure. With regard to failure to keep a separate book of account, it appears that though this may be done to evade the legal requirement of financial accountability, this should not be taken as a ground of revocation or dissolution for if taken in good faith this can be rectified upon an appropriate order given to this effect. Accordingly, prior warning before taking any such drastic measure suffices. At last, given the fact that CSOs are not principally established to engage in business but that they do so occasionally to supplement their income for charitable purposes, it would have been preferable to exempt them from the duty to secure licenses from other governmental organs. The proclamation's requirements to engage in income generating activities - such as prior permission from the Agency in addition to securing commercial licenses, and the demand that the income generating activity be related to the mission or purpose of the society or charity - makes securing permission too burdensome while the latter narrows down the fields of income generating activities²⁷.

²⁷ The ICNL Checklist does not prohibit securing a license for such activities. This argument is made with the view that given the Ethiopian practice the relevant government organ gives business licenses to business organizations established solely for profit and securing a license for such occasional engagements is an unnecessary burden and there will be no wrong to be committed if the Ethiopian law makes an exception, i.e., if CSOs are allowed to engage in this field without securing a license or permit from other government organs. Incidentally, the draft provides that the reason for engaging in income generating activities should be incidental to the achievement of the purposes of charities and societies; the profits shall not be distributed among members or beneficiaries and the income should be used to further the purposes for which the charity or society was established. A CSO may publish materials as part of its regular

As far as tax exemption is concerned, though an earlier draft had allowed exemption from income tax for charities and exemption from the same for societies on membership contributions only, the current draft has removed this privilege. As the Ethiopian tax law stands at present, CSOs are not required to pay income tax from donations and donors are entitled to deduction²⁸. The draft does not aim at expressly repealing any other law and what is provided to this effect is simply that “any law, regulation, directive or practice contrary to the proclamation shall not be applicable on matters covered by it” – Art.110. If interpreted in good faith the above two privileges still subsist for they are not covered by the draft.

Though this seems to encourage donations, it does not compare well with other generous laws. Apart from the frugality shown in the number of conditions of exemptions, it is not clear why the privilege of deduction is predicated on the certification of the registering authority. Given the fact that the registering authority in Ethiopia, i.e., the Ministry of Justice, or the Agency under the Proclamation, is nowhere given the mandate to certify that an “organization has record of outstanding achievement and its utilization of resources and accounting system operates with transparency,” the tax privilege becomes hollow and this calls for the deletion of the precondition.

Given the fact that associations are non-profit organizations, doing the government’s work, they should have been accorded many tax privileges as is the case in certain countries. In the USA, for example,

Public benefit organizations...like numerous other kinds of nonprofit organizations are generally exempt from federal income tax... [as well as state and local income

program and sale some copies remaining after free distribution to key stakeholders; it may also rent excess rooms, etc. These are not part of its objectives or primary activities, of course. But, whether permits should be requested for these is not clear and it would have been preferable to provide a provision which allows such incidental activities without permit as there is no profit-making involved in such incidental activities.

²⁸ The relevant provision of the law reads as follows: “donations to welfare organizations are allowed as deductions where the amount does not exceed 10% of taxable income of the tax payer”. The deduction is allowed only “if the recipient of the donation is registered as a welfare organization and where it is certified by the registering authority that the organization has record of outstanding achievement and its utilization of resources and accounting system operates with transparency” - Council of Ministers Income Tax Regulations No.78/2002, Art.11.

tax]....[Moreover, as regards sales tax], the law is generally designed to provide benefits to nonprofits without giving ... an unfair advantage when they engage in business similar to for-profit companies....Certain charitable organizations are commonly provided for property tax exemptions under so many state laws ...and the Federal law exempts certain educational institutions from retail and excise taxes on diesel fuels, etc....Contributions to domestic charitable organizations are deductible ... corporations can generally deduct contributions to public charities up to 10% of their income each year while an individual can generally deduct ...up to 50% of income (Durham et al. 2004, 62-64).

Compared with the above, it can certainly be concluded that the Ethiopian law is frugal when it comes to tax privileges to be accorded to associations; the law should be more generous so as to allow associations acquire income from as many as possible sources free from taxes.

With regard to the right to receive donations as noted above, the Proclamation requires that an Ethiopian charity or society needs to raise 90% of its funds – not more than 10% of its income – locally. This means that foreign donations²⁹ are allowed only to the extent of 10% of the income of a given CSO while local donations are unlimited. However, given the reality on the ground that almost all local CSOs depend on foreign donation for their existence, this limitation makes the standard disabling.

With regard to the requirement that there should be a partnership between the government and CSOs, the Bill says nothing about the matter. It may be argued that the Bill's silence amounts to non interference or not disallowing the situation when it arises. For the sake of clarity, the Proclamation should have, however, provided a provision which gives an express legal basis to this relationship.

2.5 Accountability and Transparency

The ICNL Checklist provides among others, that all reports required of CSOs should be as simple to complete and as uniform among state organs as is possible; any CSO having significant public benefit activities or with substantial public support should be required to file appropriate reports at least annually on its finances and operations with the appropriate organ (court, ministry, organ of local administration, or specialized organ) that is responsible for general

²⁹The third draft has narrowed down all options of securing donations from every donor. The relevant provision defines income from foreign source as a donation or delivery or transfer made from foreign source of any article, currency or security. Foreign sources include the government agency or company of any foreign country, international agency or any person in a foreign country – Art. 2/15

supervision of CSOs; all reporting requirements should contain appropriate provisions to protect the legitimate privacy interests of donors and recipients of benefits as well as the protection of confidential or proprietary information; the supervisory organ should have the right to examine the books, records, and activities of a CSO during ordinary business hours, with adequate advance notice. This audit power should not be used to inhibit the freedom of association of the individual connected with the organization nor to harass the organization.

To ensure compliance with the laws, all reporting CSOs should be subject to random and selective audit by the supervisory organ, but such audits should not be used to harass organizations or individuals connected with them and that in addition to the general sanctions to which a CSO is subjected equally with other legal persons (e.g., contract or tort law), it is appropriate to have special sanctions (e.g., fines or penalty taxes, or the possibility of voluntary termination) for violations peculiar to CSOs (e.g., self-dealing, improper public fundraising practices, special rules contained in tax legislation).

The draft law says nothing about the simplicity and uniformity of reports to be submitted by CSOs to state organs. The silence may not necessarily mean that the system should be cumbersome and disorganized. It is here suggested that in order to ease the tasks of societies in this regard, it should have been expressly provided that reporting documents should be simple to fill and uniform at all places.

As far as the requirement of filing reports on finances and operations is concerned, it appears that the draft's provisions are consistent with the Checklist's requirement. Accordingly, it is provided that societies are required to keep accounting records and submit the same to the Agency annually. It is also provided that societies whose annual flow is less than 50,000 Birr may instead submit receipts and payments account and a statement of assets and liabilities (Art. 79/2). Given the fact that the latter types of societies are those envisaged under the Checklist, albeit indirectly, i.e., societies that do not have significant public benefit activities or without substantial public support, the alternative simple filing requirement is welcome and enabling.

Despite the above positive values, the Proclamation demands that "charities and societies may not receive anonymous donations and shall at all times keep records that clearly indicate the identity of donors" (Art.78/3). This is contrary to the Checklist's requirement that is intended to protect the legitimate privacy interest of donors as well as the protection of confidential or proprietary information. Donors may not always be interested in the disclosure of their donations for various reasons. Such a protection of non-disclosure, therefore, encourages them to give anonymous donations. Thus, the draft Proclamation's requirement of mandatory disclosure, no doubt closes this opportunity.

As far as supervision is concerned, the relevant provisions of the draft Proclamation provide among others that: the Agency has the power to institute inquiries; order a society, an officer or employee to furnish accounts and statements and copies of documents; societies shall notify the Agency in writing the time and place of any meeting of the General Assembly of the society not later than 7 working days prior to such meeting.

It may be argued that the above listed supervisory powers are innocuous. However, the Proclamation does not provide that such powers should be conducted during working hours and that an advance notice should be given. Moreover, the draft's silence on the manner of the exercise of this power, that is, that it should not be employed to inhibit the freedom of association of the society or individuals connected to it or harass the same, can be taken as disabling for the exercise of such power can lead to abuses.

The duty to notify a meeting is again unnecessary for different reasons. Though it may not be a big deal on the part of societies to write a letter to this effect, given the number of societies, the Agency cannot attend every meeting even through proxies. Thus, this unnecessary requirement is again intrusive.

Apart from the above, the draft contains provisions that apparently manifest an alarming power of intrusion and these are dealt with below. The pertinent article - 92 - provides in summary that: if the Agency upon inquiry or investigation has proved that there has been a misconduct or mismanagement in the administration of the society and where it is necessary to act for the purpose of protecting the property of the society, may order: the [relevant] organ of the charity or society to suspend and replace the officer; the amendment of its working procedures; prohibit the formation of contracts which impose certain duties or effecting certain payments as well as parting by a person who has the possession of property belonging to the charity or society payments of debts without the authorization of the Agency, till the above mentioned order is effected.

It should be noted here that the grounds given for the suspension or replacement of officers of a society are very vague and susceptible to abuse. "Misconduct or mismanagement in administration" may be trivial or serious depending on the degree. Moreover, phrases such as "necessary for the purpose of protecting the property of the society" are again vague. Given the fact that these powers are given to the Agency without any qualifications, it simply means that it can take the measures even without giving prior warning and for trivial reasons. Officers of a society are appointed or employed based on their merit and potential to promote the causes of that society. Thus, suspension and replacement are purely administrative matters that should have been left to the societies concerned unless they seek the Agency's intervention. Though it appears that the concerned society may appeal from this decision, albeit in a

qualified manner as discussed above, it is not clear whether a society can say no to such orders, though the order seems to be mandatory. What is again surprising here is that the Proclamation does not provide whether beneficiaries, the remaining officers or other employees have to consent to the removal and replacement. Nor does it provide for the mechanism/s by which the Agency can investigate and adjudicate such cases, i.e., whether the concerned society or any stakeholder will be given an opportunity to be heard or the possibility of public hearing on the matter, etc. Given all these shortcomings, it is not that difficult to see that the powers of the Agency under these provisions are sweeping, discretionary, and intrusive.

3. Miscellaneous

Though this chapter deals with those provisions of the draft law that demand attention due to their enabling or disabling qualities, it is important to first deal with two sets of legal conditions that fall within its ambit. These are mandatory allocation of budget for operational and administrative purposes and penalties for crimes.

3.1 Administrative Costs

Art. 90/1 provides that charities and societies cannot expend more than 30% of their expenses as administrative expenses. According to one group of stakeholders, “the ceiling may provide an incentive for some CSOs to manage and account for their finances unethically and thereby undermine CSO accountability” and transparency...and forces them to engage in “creative accounting” in order to meet the stringent administrative cap [Development Assistant Group Ethiopia, 2008, 6.1.2]. This limitation will naturally constrain the works of CSOs as a result of which it can be considered as a disabling ground. Moreover, given the fact that not all but some CSOs consume most of their money for administrative purposes out of necessity than choice, the formula is one size fits all and this needs to be rectified³⁰.

3.2 Penalties

The second draft had listed some eight crimes some of which were unknown to the formal criminal law. It had also aggravated the punishments. Whether out of

³⁰ The third draft provides that administrative costs shall mean those costs incurred for emoluments, allowances, benefits, goods and services, traveling and entertainments necessary for the administrative activities of a charity or society.

unilateral change of mind or as a result of the outcry against such criminalisation of from the side of the CSOs, the third draft has transferred all criminal matters to the criminal code. The additional crimes listed under the draft are: failure to keep accounting records per Art. 78; failure to submit annual statements of accounts, per Art. 79; failure to notify bank accounts, per Art. 84 and allocation of more than 30% of expenses for administrative purposes, per Art. 90. The punishments provided for these crimes are: a fine which is not less than ten thousand Birr and not more than twenty thousand Birr, for charities or a societies, and a fine of not less than five thousand Birr and not more than ten thousand Birr, or with imprisonment not less than three years and not exceeding five years or both – for officers or workers. Despite the above mentioned change, the newly added crimes show the lawmaker's intention to punish any minor transgression as well. The crimes listed are not that serious to call for such criminal sanctions as administrative sanctions would have sufficed.

4. The Practice

The Ministry of Justice has issued two codes of conduct for associations and quite a few directives. The Ministry has been at the center of criticism for taking severe measures against some vocal and strong CSOs and courts have interfered in these matters. A number of CSOs have also been deregistered for one reason or another. The following section will, therefore, discuss these circumstances.

The code of conduct – This code was issued by the Ministry of Justice in 1996, to be applied in conjunction with the Civil Code and the 1966 Regulation. An identical code was also issued for adoption agencies in 2003.

The Code provides for seven cardinal values to be observed: probity, self-regulation, justice, service, cooperation, prudence and respect.³¹ The Code provides that failure to comply with the provisions may result in regulatory action by the Ministry or suspension or cancellation of certificates.³² It should be mentioned here that the sanctions should not have included suspension or cancellation of certificates without other intermediate measures, such as warning. These provisions are no doubt contrary to the international standards.

³¹ The details of the values are provided in the document. Since the purpose of this chapter is not to deal with such details, they are not discussed here.

³² The Amharic version reflects the latter and the English version the former. Whether or not these grounds of suspension will be made redundant by the new law remains to be seen.

Directives³³ – The Ministry has issued a number of directivities that pertain to different aspects of CSOs’ activities. Of all the directives the following deserves special attention because of its disabling features.

The Relief Organizations’ Directive:³⁴ The directive is applicable to development/ relief organizations only. Though it is not clear when the directive was issued, the contents indicate that it was issued after 1995, i.e., after the enactment of Proclamation No. 4/95³⁵. The directive contains 15 articles and the relevant ones provide among others that: associations cannot engage in profit generating activities³⁶, engage in a different field other than those for which it is established and allowed, without the authorization of the registering office, or establish any relationship with similar associations which are not licensed. It further prohibits associations from establishing a relationship with any other association which claims to be an association but which is not legally registered, either directly or indirectly as well as donating or presenting as gift, money in cash or [other property] in kind to any non-governmental organization without the authorization of the Agency for Disaster Prevention and Preparedness. By way of sanctions the directive provides that the Minister, while implementing its prerogatives provided by law, may at any time suspend or cancel registration certificates that it issued based on sufficient grounds and that failure to observe Directive and or code of conduct of associations shall amount to sufficient grounds to revoke certificates.

In the hierarchy of laws, the directive³⁷ is a lower law than the proclamation and the regulation. This being so, it cannot impose further restrictions other than those provided by superior laws and this makes its

³³It should be noted here that the following documents are not titled as “directives” nor are they given proper dates or reference numbers. Some of them are issued in Amharic and their literal translations are provided here. Out of the multiple “directives” issued by the Ministry which were accessible to this writer, the following one is selected based on its exceptionally disabling features.

³⁴ The Amharic equivalent of the document reads, “Licenses Explanation and Conditions”. The following are the author’s literal translations of the articles. As the title appears to be cumbersome, it will be mentioned as “Relief Organizations” Directive.

³⁵ This is the proclamation that has transferred the power of supervision of associations from the Ministry of Interior to the Ministry of Justice.

³⁶ This may be superseded by the relevant provisions of the Proclamation.

³⁷ Since the Proclamation has not expressly repealed any law or practice, it is difficult to conclude with certainty that this directive will subsist in the future or will be made redundant. The following discussions are offered assuming that its affectivity will continue in the future.

restrictive provisions legally null and void. In line with this, the restriction on establishing relationships with other organizations, political parties, etc., are not mentioned by other superior laws, and violate the latter. Moreover, since the powers given to the Minister/ Ministry are sweeping and couched in vague terms, such as “sufficient grounds”, they need to be made clear.

4.1 Court Cases of CSOs

CSOs have come into conflict with the Ministry of Justice and other governmental organs on different issues and occasions. Some of the conflicts were settled through litigation and some through administrative mechanisms. Some of these are discussed hereunder.

4.1.1 Fifteen CSOs – represented by Organization for Social Justice in Ethiopia vs. the Ethiopian Election Board³⁸

In a nut shell, this is a case that demanded court intervention in order to recognize the right of associations to engage in election monitoring even if their articles of association do not expressly provide for such activity. This right was acknowledged by both courts – first instance as well as appellate³⁹ – and the plaintiff associations won the case. As a result of this they were able to field their representatives to some polling stations at the 11th hour, for the last decision was given four days before the beginning of the election.

4.1.2 The Ethiopian Teachers Association vs. the Ethiopian Teachers Association

This is a case that emanated from the division of the former veteran association – The Ethiopian Teachers Association – into two. The former association and

³⁸ The other plaintiffs are: Action Professionals Association for the People APAP), Self Help Women’s Association, Initiative Africa, Ethiopian Women Media Association, Zegha Leedget, Hunde, Students Association of the Addis Ababa University, Christian Relief and Development Association (CRDA), Ethiopian Teachers’ Association, Vision for Justice in Ethiopia, Youth for Sustainable Development, Coalition of Ethiopian Women’s Associations, *Yesra amerar chilota madaberia medrek*, and the Ethiopian Bar Association. (Note – the Students Union of the Addis Ababa University was struck from the list for not having a legal personality).

³⁹ First Instance court File No. 38472 and appellate court File No. 19699.

the newly formed splinter group have been in dispute over the legitimacy of their respective associations⁴⁰.

4.1.3 Action Professional Association for the People and forty-seven other associations

These forty-seven associations were deregistered by the Disaster Prevention and Preparedness Commission in 1995 on the grounds that they “failed to discharge their activities to the expected level, interrupted their activities, totally failed to carry out any activity, etc.”⁴¹ One of these associations, APAP, responded to this allegation that all the alleged reasons do not apply to it and it was denied of its right to be heard.⁴²

Though APAP did not bring any legal action against the Commission, all deregistered associations were required to register anew with the Ministry of Justice. APAP did the same and the whole affair ended there. The current practice is that such associations are no more required to be supervised by the Disaster Prevention and Preparedness Commission.

The Commission’s decision is an indicator of unchecked powers which may be repeated anytime. Thus, care should be taken to curb such arbitrary decisions, for it will compromise the very existence of associations and violate basic rights enshrined in the Constitution.

4.1.4 Ethiopian Women Lawyers’ Association (EWLA)

EWLA was suspended by the Ministry of Justice on August 30, 2001 on the ground that “it had been found acting beyond its mandate and code of conduct guidelines”. Its bank account was also frozen as a result of the order. EWLA took the case to court, as a result of which the court gave an order for the partial lifting of the suspension and at the end the Ministry agreed to close the case on the ground that “EWLA had admitted the allegations made against it and that it had shown willingness to correct its mistakes”. The suspension was lifted on October 17, 2001 [*Dimsachin*, no date: 1-4].

⁴⁰ The case started in 1993 and was finally ruled in favour of the newer ETA in 2008. Files opened for the dispute are: First Instance court File No. 38472 and appellate court File No. 19699, Civil File No. 2586/85 of the FDRE First Instance Court, Addis Ababa, Civil File No. 11985, Addis Ababa, Civil Appeal File No. 13828, and Addis Ababa, Civil Appeal No. 24949, Nov. 2006.

⁴¹ *Addis Zemen*, Nehasse 11, 1987 EC.

⁴² *Addis Zemen*, Nehasse 17, 1987 and APAP Press Release, August 23, 1995.

4.1.5 The Ethiopian Human Rights Council (EHRCO)

EHRCO is one of the prominent indigenous human rights groups.

The government tried to silence EHRCO from the early days of the organization but without much success. Initially it refused to approve the Council's application for registration alleging that [it] is a political organization and should be registered as such.... In 1996, the state owned Commercial Bank of Ethiopia blocked [its] account and the organization has to rely on public donations The Council sued the Bank but the court was reluctant to handle the case....In mid 1999, EHRCO's application for registration was finally approved and its bank account was unblocked soon after [Dessalegn and Mehret 2004, 71-74].

The administrative fiat employed against the above associations amply demonstrates that unchecked power can easily kill associations.

4.2 NGO Codes of Conduct

The NGO community affiliated to the umbrella organization, Christian Relief and Development Association (CRDA), has adopted a code of conduct in 1998 that was later amended in 2006. The Code provides for core values⁴³ to be observed by signatories as well as procedures to sanction violators. Though the enforcement and inclusiveness⁴⁴ leave much to be desired, the initiative of self-regulation is a milestone in the process of creating civil society accountability.

4.3 Data on Deregistered and Dissolved Associations⁴⁵

The data maintained by the Ministry of Justice indicates that 138 associations were dissolved/ deregistered between 2003 and 2007 (1995 and 1999 EC).⁴⁶ The grounds for dissolution and number of associations affected include:

⁴³ The core values are: people centered fairness and equity, moral and ethical integrity, transparency and accountability, good governance, independence, communication and collaboration, gender equity, environment consciousness, sustainability. The 2006 revision has added sound financial policies and systems.

⁴⁴ As of 2007, the total number of members was 247. See, CRDA Members List, January 2007.

⁴⁵ See Supra Note 7.

⁴⁶ The figures are not necessarily exact, for sometimes grounds for dissolution are not shown, and there are multiple causes for dissolution.

Tsehai Wada

- Failure to renew registration – 2
- Failure to discharge obligations owed to DPPC – 43
- Completion of mission – 1
- Voluntary dissolution – 45
- Failure to carry out duty/any duty – 21
- Engagement in unlawful transactions – 3
- Cancellation of operational agreements – 5
- Discontinuation of operation – 2
- Administrative problems – 2

The Bureau of Justice of the Southern Nations, Nationalities and Peoples Regional State has currently 250 associations registered with it and no association has been deregistered so far.

There are currently 125 associations registered in Benishangul-Gumuz Region, and 12 were deregistered on the grounds of failure to renew registration and engaging in activities other than those for which they have registered⁴⁷.

4.4 Other Practical Problems

Facts on the ground indicate that there is distrust between the CSO community and government. Though it may not be a mainstream view, the public perception of CSOs and more particularly NGOs is not healthy, too. Researchers who have studied this relationship noted the following:

From the [federal] government's side there is recognition of the lack of trust, which it sees in part as an "unfounded" fear of government control...[this stemmed] from the history of Ethiopia: a "hangover from the previous regime" which had bred mistrust in both parties.... Some government personnel view civil society organizations as part and parcel of opposition parties... and some government officials believe that civil society organizations should always support government policies and ideas, leaving little space for a pluralistic approach.

.....
[From the donors' point of view, some] suggested that NGOs feared government and were therefore reluctant "to speak out" and that in some cases the lack of NGOs' own accountability gave the government an excuse to ignore them.

.....
[With regard to lack of accountability], it is important to note that this lack of internal accountability is emphasized by government which speaks of "brief case NGOs", organizations that are "family businesses" and accountable to no one. In

⁴⁷ Supra, Foot Note 24.

one region the research team learned that there were about 20 briefcase NGOs but only one local NGO that was considered acceptable. Their much disapproved presence is a weakness for the NSA [non-state actors] sector since the government can and does use this category as typifying the NGO sector as a whole, which is not the case [Abebe Chekol, et al., 2004, 37-45].

Another development that strained the relationship with government occurred following the May 2005 general election. Ethiopia held the most widely contested multi-party election in which the CSO community also participated in voter education, election monitoring, etc. Unlike the pre-election process, the post-election period did not meet a happy ending. Accordingly, it resulted in the death of so many individuals and the incarceration of key opposition parties' leaders as well as two prominent CSO activists who are both lawyers. This incident pitted the CSO community against the government and the relationship is not yet repaired. In a study conducted by CRDA in 2006, the researchers concluded that

Civil society members believe that the current operating environment has declined post election 2005, and that there is, once again, a revival of caution by government, a "keep your head" down attitude by CSO/NGOs and a reshuffle of strategies by donors. Whatever the reasons for this (whether right or wrong), the nature of these perceptions and actions is in itself significant and warrant dialogue [CRDA 2006, 36].

Given these differences, future efforts should be geared towards bridging the gap and creating a conducive atmosphere for dialogue and meaningful partnership.

5. Best Practices

Since no laws are identical for different historical reasons, the attempt to select best laws and/or practices poses an issue of relevance. In the above sections, selected US laws and practices have been cited as an example. Given similarities in social development, the following section will cover certain African laws that may serve as best practices.⁴⁸

⁴⁸ No attempt is made to canvass laws of European countries, North and South America, Asia in general. The writer's assumption is that, best practices of African countries are more relevant to the subject at hand than any other law.

Malawi⁴⁹ – Among its strong qualities, the Malawi’s Non-Governmental Organizations Act of 2001 provides that the Council for Non-Governmental Organizations, the designated NGO coordinating body, has seven representatives out of ten on the board which has the mandate of registering and regulating NGOs’ operations and that its decisions are subject to review by a court of law. As regards practice, the Act was enacted after six years of extensive consultations with non-governmental organizations.

Tanzania – Tanzania’s Non-Governmental Organizations Act, 2002, in the same way as the Malawian law, provides that four out of ten members of the board shall be representatives of the NGO community recommended by the National Council for Non-Governmental Organizations – an umbrella organization.

Mozambique – Under the relevant law, i.e., Decree 55/98, registration is not mandatory for local NGOs, but a large percentage do register with the Ministry of Justice, apparently because registration ensures greater donor funding.

South Africa – the major qualities of the Non-profit Organizations Act No.71/1997 are that: registration is voluntary but not mandatory; decisions of the supervisory organ are subject to review by an arbitration tribunal whose members are to be elected through a public and transparent nomination process; every organ of the state is duty bound to support and enhance the capacity of NGOs; refusal of registration is preceded by advice to rectify errors; while making or amending a regulation, the supervising organ is required to invite public comments; and with regard to offenses to be committed because of failure to comply with a condition, restriction or prohibition contained in a regulation, to the extent practicable, before being subjected to criminal liability, the affected person must be given notice of the offence and an opportunity to comply with regulation.

Algeria⁵⁰ – Though The Associations Act of 1990 (Act 90) has many shortcomings, the following can be taken as its strong points: the

⁴⁹ The following discussions on the laws of Malawi, Mozambique, South Africa and Tanzania are based on the brief presentation of the laws, by Human Rights Watch, www.hrw.org, Global Issues, visited on April 30, 2007. It should also be noted that the following four countries have all engaged in serious consultations with civil society before introducing their laws and this is a practice that is worth emulating.

⁵⁰ Algeria and Egypt alone are discussed here, though the article covers the laws of so many countries in the region.

government can dissolve or suspend any NGO upon court order and after a finding that the NGO has violated a *major provision* of the law, as opposed to trivial causes.

Egypt – the Law on Non-Governmental Societies and Organizations (No. 84 of 2002) and The Executive Statute on Law 84 of 2002 have their own shortcomings, but the fact that they allow sixty days only on requests for registration, in the absence of which the request is considered accepted and that NGOs are entitled to a reduction in telephone, water, electricity, and gas charges, a 25% discount on railway shipments, and an exemption from stamp taxes, customs duties, and contract registration fees are best practices that should serve as lessons for CSO laws of other countries [Elbayar 2005, 4,5,8.].

Conclusion

Civil society organizations do fill up the gap between the state and the society by way of doing the government's job. Hence, CSOs should be accorded the best legal framework that guarantees their formation as well as existence. This conclusion is premised upon the expected partnership between the two. In this respect, the minimum that is expected of the government is to create a conducive legal environment that enables them to exercise these rights and help them achieve their purposes in whatever way possible.

In this regard, Ethiopia has enacted a constitution that recognizes the three basic rights required for the formation and operation of CSOs in a more or less identical manner as that of the international human rights instruments it ratified. These are enabling acts.

Apart from the above legal instruments, the country has enacted different legislations that govern this area of concern. The Civil Code of Ethiopia was the first law to be enacted in this regard and it contains several provisions that were intended to govern the societies of the early 1960s. This was supplemented by a regulation enacted in 1966. These two laws have been inadequate to address the needs of the newly created CSOs that started to emerge as of 1991. Attempts to revise the laws in the past have failed and there is now a move to pass a draft bill that may be enacted soon.

The current laws, being old laws, are mainly characterized by their silence as a result of which the supervising authority filled the gap by issuing disabling directives and taking devastating measures that have brought the very existence of important CSOs under threat. The new proclamation, though

expected to be more liberal, is again characterized by several disabling provisions⁵¹.

A look at its important provisions reveals that any right recognized by it, is easily taken away by the number of limitations provided therein. Moreover, the limitations run through all the processes of formation and operations of CSOs or put differently, from registration to dissolution, as a result of which no process is unaffected.

The two most disabling elements of the bill are its requirement that a charity or society needs to raise up to 90% of its income from local sources in order to engage in rights advocacy, and its denial of the right to appeal to an independent court against the decision of the Agency or the Board. In addition to these, there are several limitations which are couched in general terms and which enable the regulatory Agency to interpret them subjectively and apply either discriminatively or arbitrarily to the disadvantage of any organization or its officers. The different measures taken by the supervisory authority at different times in the past are symptomatic of unchecked administrative fiat that should not be repeated in the future.

It has been noted at the consultative meeting held between stakeholders and the Ministry of Justice that the Proclamation has drawn from similar laws of, among others, Canada, the UK, Singapore, South Africa, Zimbabwe and Uganda. It is not, however, clear which provisions were borrowed from where except for those from Singapore, a country not known for being democratic. Canada has many state laws and the relevant UK law has no resemblance. The South African law is by far very liberal. The Zimbabwean and Ugandan laws, though not necessarily liberal, allow CSOs to participate as voting members in the highest decision making organs. The new draft, however, limits the CSO representatives to two out of seven only while the proportion of representation under the former laws is much higher. Whatever the case, the Proclamation should have borrowed the positive values of foreign laws and not otherwise.

Given all these limitations, it will be very difficult for Ethiopian CSOs to easily come into being as well as operate freely. It also appears that the Proclamation's requirement of raising their income locally will force a great majority of CSOs to close down.

The MOJ as well as the Prime Minister had held meetings with stakeholders and it appears that the inputs gained from these meetings have

⁵¹ The Draft Proclamation that was prepared by the Ministry of Justice in 2002/3 was by any standard more liberal than the current draft bill. It may be presumed that the mistrust created particularly after the 2005 election has contributed to this state of affairs.

helped shape the drafts issued thereafter in a slightly more positive way⁵². It is thus, strongly suggested that such consultations should be continued in the future, too, before the enactment of the final version of the law. Moreover, given that the reason behind the issuance of such drafts is the absence of a clear policy to this effect, it is suggested that the country should adopt a clear written policy on civil society.

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⁵² This is not to suggest that the bottleneck provisions are affected by the consultations. One cannot, however, fail to see the many changes made by the 2nd and 3rd drafts which have somehow taken away unnecessary encumbrances and improved the quality of legal drafting. See, Comments of CSO Task Force on the Charities and Societies Draft Proclamation, which were presented to the Ministry of Justice, for detailed points of concern and recommendations for amendment.

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Annex

Checklist for CSO Laws

(The International Center for Not-for-Profit Law, 2006)

1. Protecting Fundamental Freedoms

- 1.1 Creation of a CSO: Protecting fundamental freedoms of expression, association, and peaceful assembly means that CSOs should be allowed freely to come into existence. It also means that CSOs should not be required to obtain legal personality in order to engage in lawful activities.
- 1.2 Registration (Incorporation) of CSOs. Laws governing CSOs should be written and administered so that it is relatively quick, easy, and inexpensive for all persons (including natural and legal persons) to register or incorporate a CSO as a legal person.
- 1.3 Registration or Incorporation Organ. The organ of the state that is vested with the responsibility for giving legal existence to CSOs should be adequately staffed with competent professionals, it should be even-handed in fulfilling its role, and its decisions not to register CSOs should be appealable to an independent court. If the registration or incorporation organ is a court, its adverse decisions should be appealable to a higher court.
- 1.4 Public Registry. Whether CSOs are registered or incorporated in one or many locations, there should be a single, national registry of all CSOs that is accessible to the public (in addition to any local public registries that may exist).
- 1.5 Termination, Dissolution, and Liquidation. The highest governing body of a CSO should be permitted to voluntarily terminate its activities, dissolve it as a legal person, and liquidate its assets pursuant to the decision of a court and upon application by the organization. The registration or supervisory organ or court should be allowed to involuntarily terminate a CSO's existence only for the most flagrant of violations, and then only after a requested correction of a legal or ethical violation has not occurred. To ensure that fundamental rights are not violated, all involuntary terminations should be subject to judicial supervision.

1.6 Permitted Purposes and Activities

- (a) In general, CSOs should be treated like all other legal entities and be permitted to engage in activities for the benefit of their members and in public benefit or “charitable” activities.
- (b) CSOs are key participants in framing and debating issues of public policy and should have the right to speak freely about all matters of public significance, including debate about and criticism of existing or proposed state policies and actions.
- (c) Any CSO engaging in an activity (e.g., health care, education, social services to persons living with HIV/AIDS, etc.) that is subject to licensing or regulation by a state organ should be subject to the same generally applicable licensing and regulatory requirements and procedures that apply to activities of individuals, business organizations, or public organs.

1.7 Qualification for Public Benefit Status. Where it is thought appropriate to establish a separate state organ to determine whether an organization qualifies for public benefit or charitable status, such an entity should be an independent, mixed commission (with representatives of the public, the government, and the CSOs themselves), similar to the Charity Commission of England and Wales.

1.8 Media Access. CSOs should have access to media outlets to publicize their activities, including state-owned media, where such exist.

2. Integrity and Good Governance

2.1 Mandatory Provisions for Governing Documents. The laws governing CSOs should require that certain minimum provisions necessary to the operation and governance of the organization be stated in the governing documents of a CSO. The requirements may be different for membership and non membership organizations, with the latter possibly being required to have additional governing bodies (e.g., supervisory boards, audit commissions, etc.) because they do not have members.

2.2 Optional Provisions for Governing Documents. Laws governing CSOs should give a CSO (through its highest governing body) broad discretion to set and change the governance structure and operations of the organization within the limits provided by the law.

- 2.3 Internal Reporting and Supervision: Duties and Liabilities of Governing Bodies and Their Members. The highest governing body of a CSO (or its delegate) should be required by law to receive and approve reports on the finances and operations of a CSO. The law should provide that officers and board members of a CSO have a duty to exercise loyalty to the organization, to execute their responsibilities to the organization with care and diligence, and to maintain the confidentiality of non-public information about the organization.
- 2.4 Prohibition on Conflicts of Interest. Careful consideration should be given to whether and the extent to which the law should provide that founders, officers, board members, and employees of a CSO must avoid any actual or potential conflict between their personal or business interests and the interests of the CSO.
- 2.5 Prohibition on the Distribution of Profits and Other Private Benefits.
- (a) Laws governing CSOs should provide that no earnings or profits of a CSO may be distributed as such to founders, members, officers, board members, or employees.
 - (b) Laws governing CSOs should provide that no CSO should be permitted to distribute assets to its founders, members, officers, board members, or employees upon the dissolution of the CSO.
 - (c) Laws governing CSOs should provide that the assets, earnings, and profits of a CSO may not be used to provide special personal benefits, directly or indirectly, (e.g., scholarships for relatives) to any founders, members, officers, board members, employees, or donors connected with the CSO.
- 2.6 Methods and Subjects of Voluntary Self-Regulation. Although basic standards of conduct and requirements for governance of all CSOs should be enacted as published laws, CSOs should be permitted and encouraged to set higher standards of conduct and performance through self-regulation and codes of ethics.
- 2.7 Umbrella Organizations. The laws should permit and the society should encourage the formation of umbrella organizations to adopt and enforce principles of voluntary self-regulation.

3. Financial Sustainability

- 3.1 Fundraising Activities -- General Rule. CSOs should be permitted to engage in all legally acceptable and culturally appropriate fundraising activities, including door-to-door, telephone, direct mail, television, etc., campaigns, lotteries, raffles, and other fundraising events. Lotteries, charity balls, auctions, and other occasional activities conducted primarily to raise funds for a CSO are a form of fundraising and should not be regarded as economic or commercial activities.
- 3.2 Fundraising Activities -- Limitations, Standards, and Remedies. Fundraising through a public solicitation method should require registration with a state organ or an independent supervisory organ, which will issue permits, badges, and other identification materials to the fundraisers, set standards for public solicitation activities, provide information to the public, and sanction inappropriate conduct.
- 3.3 Economic Activities. A CSO should be permitted to engage in lawful economic, business, or commercial activities, provided that (i) the CSO is organized and operated principally for the purpose of conducting appropriate not-for-profit activities (e.g., culture, education, health, etc.), and (ii) that no profits or earnings are distributed as such to founders, members, officers, board members, or employees. Such activities may be engaged in provided that the appropriate requirements for licensing and permits are met.
- 3.4 Income or Profits Tax Exemption for CSOs. Every CSO, whether organized for mutual benefit or for public benefit, and whether a membership or non-membership organization, should be exempt from income taxation on moneys or other items of value received from donors or governmental organs (by grant or contract) and regular membership dues, if any. A variety of approaches may be taken with respect to exemption for interest, dividends, or capital gains earned on assets or the sale of assets, with greater preferences on such items generally being made available to public benefit CSOs.
- 3.5 Income Tax Benefits for Donations. To encourage philanthropy and good citizenship, donations of individuals and business entities to public benefit CSOs should be entitled to reasonably generous income tax benefits (such as deductions or credits).

- 3.6 Taxation of Economic Activities. CSOs should be allowed to engage in economic activities as long as those activities do not constitute the principal purpose or activity of the organization. Any net profit earned by a CSO from the active conduct of a trade or business could be --
- (a) exempted from income taxation,
 - (b) subjected to income taxation,
 - (c) subjected to income taxation only if the trade or business is not related to and in furtherance of the not-for-profit purposes of the organization, or
 - (d) subjected to income taxation under a mechanical test that allows a modest amount of profits from economic activities to escape taxation but imposes tax on amounts in excess of the limit.
- 3.7 VAT, other taxes, and customs duties. Public benefit CSOs and their activities should be given preferential treatment under a value added tax (VAT), other taxes (e.g., property taxes), and customs duties provided that appropriate limitations are in place to guard against fraud and abuse.
- 3.8 Support for Endowments. The laws should contain provisions that support the formation and maintenance of endowments. These include special tax incentives for donations to form endowments, prudent investment policies, etc.
- 3.9 Foreign Funding. A CSO that is properly registered or incorporated should generally be allowed to receive cash or in-kind donations or transfers from aid agencies of another country, a multilateral agency, or an institutional or individual donor located in another country, as long as all generally applicable foreign exchange and customs laws are satisfied.
- 3.10 Volunteers. The laws should encourage volunteers to work for CSOs, by encouraging employers to permit employees to have time off for such work.
- 3.11 NGO-government partnerships. The laws, including the procurement legislation where appropriate, should contain provisions that encourage partnership between government and NGOs, providing for government financing of projects carried out by NGOs, through grants and contracts.

4. Accountability and Transparency

- 4.1 Reporting Generally. To the maximum feasible extent, all reports required of CSOs should be as simple to complete and as uniform among state organs as is possible.
- 4.2 Reporting to Supervisory Organ.
- (a) Any CSO having significant public benefit activities or with substantial public support should be required to file appropriate reports at least annually on its finances and operations with the appropriate organ (court, ministry, organ of local administration, or specialized organ) that is responsible for general supervision of CSOs.
 - (b) All reporting requirements should contain appropriate provisions to protect the legitimate privacy interests of donors and recipients of benefits as well as the protection of confidential or proprietary information.
- 4.3 Audit by Supervisory Organ.
- (a) Consistent with the normal state powers of inspection for all legal entities, the supervisory organ should have the right to examine the books, records, and activities of a CSO during ordinary business hours, with adequate advance notice. This audit power should not be used to inhibit the freedom of association of the individuals connected with the organization nor to harass the organization.
 - (b) To ensure compliance with the laws, all reporting CSOs should be subject to random and selective audit by the supervisory organ, but such audits should not be used to harass organizations or individuals connected with them.
- 4.4 Reporting to and Audit by Tax Authorities. It is appropriate for separate reports to be filed with the taxing authority(ies). Different kinds of reports may be required for different kinds of taxes (e.g., profits taxes, VAT).
- 4.5 Reporting to and Audit by Licensing Organs. Any CSO engaged in an activity subject to licensing by a state organ should be required to file the same reports with that organ as individuals or business organizations are required to file.
- 4.6 Disclosure or Availability of Information to the Public. Any CSO with significant activities or assets or with substantial public support should be

required to publish or make available to the public a report of its general finances and operations; this report may be less detailed than the reports filed with the general supervisory organ, the taxing authority (ies), or any licensing organ and should permit anonymity for donors and recipients of benefits in addition to protecting confidential or proprietary information.

- 4.7 Special Sanctions: In addition to the general sanctions to which a CSO is subject equally with other legal persons (e.g., contract or tort law), it is appropriate to have special sanctions (e.g., fines or penalty taxes, or the possibility of involuntary termination) for violations peculiar to CSOs (e.g., self-dealing, improper public fundraising practices, special rules contained in tax legislation).

